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Washington, DC 20002

RESERVATIONS: (202) 741-6008

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Presidential Documents

Title 3—

The President

Presidential Determination No. 2007–15 of March 19, 2007

Presidential Determination on the Eligibility of the Republic of Montenegro and the Republic of Serbia To Receive Defense Articles and Defense Services

Memorandum for the Secretary of State

Pursuant to the authority vested in me by the Constitution and the laws of the United States, including section 503(a) of the Foreign Assistance Act of 1961, as amended, and section 3(a)(1) of the Arms Export Control Act, as amended, I hereby find that the furnishing of defense articles and defense services to the Republic of Montenegro and the Republic of Serbia will strengthen the security of the United States and promote world peace.

You are authorized and directed to transmit this determination to the Congress and to arrange for the publication of this determination in the **Federal Register**.

[FR Doc. 07–1608
Filed 3–29–07; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 91 and 92

[Docket Number: AMS–ST–07–0045: ST–05–01]

RIN 0581–AC48

Changes in Hourly Fee Rates for Science and Technology Laboratory Services—Fiscal Years 2007–2009

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is changing the hourly fee rates for Science and Technology (S&T) Laboratory Services. The agency is raising these rates to reflect, among other factors, national and locality pay increases for Federal employees and inflation, operating costs, instrumentation and training, and program and agency administrative overhead costs. In the past, AMS has amended its regulations on an as needed basis in order to recover laboratory program costs. With this regulation, AMS is providing for three annual standard hourly fee rate increases for fiscal years 2007–2009. This will provide the agricultural commodity industries and other stakeholders with more timely and relevant information regarding user fees for voluntary laboratory testing services. The agency is also removing tables and schedules with listings of individual tests and services. Three annual hourly fee rate adjustments are established by this action for appeals, holiday, and overtime services to reflect the anticipated increase cost of providing these laboratory services each fiscal year. The regulations also are updated to identify current facility addresses. Part 92 is obsolete and therefore has been removed.

DATES: Effective March 31, 2007.

FOR FURTHER INFORMATION CONTACT: James V. Falk, Docket Manager, USDA, AMS, Science and Technology Programs, 1400 Independence Avenue, SW., Mail Stop 0272, Washington, DC 20250–0272; telephone (202) 690–4089; fax (202) 720–4631, or e-mail: *James.falk@usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

Science and Technology (S&T) Programs has been performing voluntary laboratory services under the Agricultural Marketing Act of 1946, as amended, for the AMS commodity programs (Fruit and Vegetable, Cotton, Livestock and Seed, Poultry, Dairy, and Tobacco) and applicable customers in these industries since its inception on August 17, 1988. Before that, voluntary laboratory testing was provided for a user fee by AMS under the various commodity programs. The current standard hourly rate of $45.00 and the premium hourly rate of $67.50 have been in effect since publication in the **Federal Register** on October 27, 2000 (65 FR 64302). The standard fee rate for laboratory services will be $60.00 per hour for the remainder of fiscal year 2007, and will increase to $63.00 per hour in fiscal year 2008, and $67.00 per hour in fiscal year 2009. The premium hourly fee rates will also be adjusted for fiscal years 2007 through 2009. An increase in the premium hourly rates over the three fiscal years for laboratory services performed on holidays, appeal samples, and overtime basis is also needed since Science and Technology laboratory personnel may be required to work extended hours of service at the time and a half pay or the double hourly pay to accommodate clients. This is due to stakeholder demand for immediate test results. Generally, the processing of all laboratory samples is continuous over a 24/7 timeframe due to the recent introduction of automated equipment.

The AMS laboratory testing programs are voluntary, user fee services, conducted under the authority of the Agricultural Marketing Act of 1946 (AMA), as amended (7 U.S.C. 1621, *et seq.*). The AMA authorizes the Secretary of Agriculture to provide Federal analytical testing services that facilitate marketing and trade. In addition, consumers may be able to determine the quality and wholesomeness characteristics of a commodity or product through laboratory testing. This allows agricultural products to be assigned official AMS grade designations or to meet specifications. The AMA also requires that reasonable fees be collected from the users of the services to cover as nearly as possible the costs of maintaining the programs.

With this rulemaking, AMS will amend its regulations to provide for annual hourly fee rate increases for laboratory services over three years (FYs 2007 through 2009) in one action. AMS will continue to perform a yearly cost analysis to determine whether the voluntary hourly fee rates established for its user-fee-supported laboratory service programs are adequate to cover expenses. The most recent review determined that the existing fee schedules and tables of individual tests or services, which have been in place since October 27, 2000, will not generate sufficient revenues to recover operating costs.

A more flexible user fee system, using set hourly rates for multiple fiscal years, is established by this rulemaking to ensure that AMS properly recovers its full costs for providing laboratory services, and that all stakeholders are charged reasonable fees. By enacting a three year fee increase instead of a single year fee increase, AMS will help ensure that the fee increases are effective at the beginning of each fiscal year (October 1).

In addition, the existing fee schedules and tables in 7 CFR, part 91, § 91.37 will be removed. The analytical tests listed in the tables are not specific to individual commodity testing requirements or stakeholder needs. The current tables do not represent the actual operational costs to perform single tests and newer methodologies. Laboratory services are provided for five types of analytical testing: Microbiological, physical, residue chemistry, proximate analysis for composition, and biomolecular testing. AMS must recover the costs of providing these services. The new hourly fee rates will recover these costs, and none of the fees collected for testing services referenced in this final rule are used for a biotechnology verification program specified in **Federal Register** Notice (67 FR 50853), August 6, 2002.

AMS calculated its actual costs for fiscal years 2001 through 2006 and its projected increases in salaries and inflation in fiscal years 2007 through 2009. The increases in salaries for fiscal year 2006 as the base year and the succeeding out years are from the Office of Management and Budget's (OMB) multi-year ''Economic Assumptions'' tables. The Federal pay raise for calendar years 2002, 2003, and 2004 were 4.6 percent, 4.1 percent and 4.1 percent, respectively. This information comes from Table 11–1, ''Economic Assumptions'', of the Office of Management and Budget's Fiscal Year 2005 Budget which is available at *http://www.whitehouse.gov/omb/budget/fy2005/econ.html*. The average fiscal year pay raise for Federal employees in calendar years 2005 and 2006 was 3.5 percent effective January 2005 and 3.1 percent effective January 2006. The average combined national and locality pay raise is estimated to be 2.2 percent for fiscal years 2007, 2008, and 2009. Inflation for fiscal year 2006 is 2.1 percent. Inflation for fiscal year 2007 is estimated to be 2.2 percent. Inflation for fiscal year 2008 is estimated to be 2.1 percent. Inflation for fiscal year 2009 is estimated to be 2.1 percent. These estimates for inflation percent can be obtained from Table 12–1, ''Economic Assumptions'', of the OMB's Fiscal Year 2007 Budget which is available at *http://www.whitehouse.gov/omb/budget/fy2007/econ.html.*

The Agency will initiate another rulemaking to adjust any fee established, only if estimated increases for pay and inflation do not adequately cover the Agency's costs of providing the services. The cost of providing laboratory services includes both direct and overhead costs. Direct costs include the cost of salaries, employee benefits, operation cost and infrastructure cost. The Agency is able to estimate the employee benefits attributable to overtime work and has included these in the fee calculations.

TABLE 1.—CURRENT AND NEW HOURLY FEE RATES (PER HOUR) BY TYPE OF SERVICE

Service	Current rate	FY 2007 rate [1]	FY 2008 rate [2]	FY 2009 rate [3]
Laboratory	$ 45.00	$ 60.00	$ 63.00	$ 67.00
Appeal	67.50	71.00	74.00	78.00
Overtime	67.50	71.00	74.00	78.00
Legal Holiday	67.50	82.00	85.00	89.00

[1 2 3] Hourly values for FY 2007–FY 2009 are rounded off to nearest whole dollar.

With this action, the AMS will amend its regulations to provide for three annual fee increases in one action. Table 1 shows the summary of the current rates and the new hourly fee rates for fiscal years 2007 through 2009 for the four different types of services (regular laboratory, appeal, overtime, and legal holiday work) that Science and Technology Programs employees perform.

TABLE 2.—CALCULATIONS FOR THE STANDARD HOURLY RATE FOR LABORATORY PROGRAM SERVICES FOR FY 2006

Laboratory services	Apportioned fee rate
Base Time:	
Actual FY 2005 Salaries [1] @ $2,787,474	$20.00
FY 2006 Pay Adjustment [2] = [Actual FY 2005 Salaries ($20.00)] × 0.031 + $0.86 (weighted portion @ $119,500 increase for the FY 2006 period changes with payroll for within-grade pay step increases for General Schedule salaries, promotion pay costs and new employee position pay costs)	1.48
Benefits [3]	6.90
Operational Costs [4]	11.60
Infrastructure Cost [5]	8.78
Program Overhead [6]	3.44
Agency Overhead [7]	3.28
FY 2006 Inflation (2.1%) = [Costs excluding infrastructure and payroll] × .021	0.53
Total Rate Per Hour – Base Time	56.01

[1] Actual cost of FY 2005 salaries ($2,787,474) ÷ (2,080 program hours times 67 program employees) = $20.00 unit cost.
[2] Actual cost of FY 2006 pay adjustment ($205,911) ÷ (2,080 program hours times 67 program employees) = $1.48 unit cost.
[3] Actual cost of benefits ($961,668) ÷ (2,080 program hours times 67 program employees) = $6.90 unit cost.
[4] Actual cost of operational costs ($1,616,645) ÷ (2,080 program hours times 67 program employees) = $11.60 unit cost.
[5] Actual cost of infrastructure ($1,223,570) ÷ (2,080 program hours times 67 program employees) = $8.78 unit cost.
[6] Actual cost of Program overhead ($479,000) ÷ (2,080 program hours times 67 program employees) = $3.44 unit cost.
[7] Actual cost of Agency overhead ($457,000) ÷ (2,080 program hours times 67 program employees) = $3.28 unit cost.

TABLE 3.—CALCULATIONS FOR THE STANDARD HOURLY RATE FOR LABORATORY PROGRAM SERVICES FOR FY 2007

Laboratory services	Apportioned fee rate
Base Time:	
FY 2006 Salaries = Actual FY 2005 Salaries ($20.00) + FY 2006 Pay Adjustment ($1.48)	$21.48
FY 2007 Pay Adjustment = FY 2006 Salaries × 0.022	0.47
Benefits	6.90
Operational Costs	11.60
Infrastructure Cost	11.75
Program Overhead	3.44

TABLE 3.—CALCULATIONS FOR THE STANDARD HOURLY RATE FOR LABORATORY PROGRAM SERVICES FOR FY 2007—Continued

Laboratory services	Apportioned fee rate
Agency Overhead	3.28
FY 2006 Inflation (2.1%) = [Costs excluding infrastructure and payroll] × .021	0.53
FY 2007 Inflation (2.2%) = [Costs excluding infrastructure and payroll] × .022	0.57
Total Rate Per Hour – Base Time	60.02

TABLE 4.— CALCULATIONS FOR THE STANDARD HOURLY RATE FOR LABORATORY PROGRAM SERVICES FOR FY 2008

Laboratory services	Apportioned fee rate
Base Time:	
FY 2007 Salaries = FY 2006 Salaries ($21.48) + FY 2007 Pay Adjustment ($0.47)	$21.95
FY 2008 Pay Adjustment = FY 2007 Salaries × 0.022	0.48
Benefits	6.90
Operational Costs	11.60
Infrastructure Cost	13.47
Program Overhead	3.44
Agency Overhead	3.28
FY 2006 Inflation (2.1%) = [Costs excluding infrastructure and payroll] × .021	0.53
FY 2007 Inflation (2.2%) = [Costs excluding infrastructure and payroll] × .022	0.57
FY 2008 Inflation (2.1%) = [Costs excluding infrastructure and payroll] × .021	0.55
Total Rate Per Hour – Base Time	62.77

TABLE 5.—CALCULATIONS FOR THE STANDARD HOURLY RATE FOR LABORATORY PROGRAM SERVICES FOR FY 2009

Laboratory services	Apportioned fee rate
Base Time:	
FY 2008 Salaries = FY 2007 Salaries ($21.95) + FY 2008 Pay Adjustment ($0.48)	$ 22.43
FY 2009 Pay Adjustment = FY 2008 Salaries x 0.022	0.49
Benefits	6.90
Operational Costs	11.60
Infrastructure Cost	16.15
Program Overhead	3.44
Agency Overhead	3.28
FY 2006 Inflation (2.1%) = [Costs excluding infrastructure and payroll] × .021	0.53
FY 2007 Inflation (2.2%) = [Costs excluding infrastructure and payroll] × .022	0.57
FY 2008 Inflation (2.1%) = [Costs excluding infrastructure and payroll] × .021	0.55
FY 2009 Inflation (2.1%) = [Costs excluding infrastructure and payroll] × .021	0.56
Total Rate Per Hour – Base Time	66.50

In order to project the hourly fee rates for the laboratory program services for fiscal years 2007 through 2009, the current fiscal year 2006 is used as a base. The total base time hourly fee rate calculation (Table 2) for fiscal year 2006 begins with the actual salaries for fiscal year 2005 ($2,787,474) and adds the fiscal year 2006 pay raises (3.1 percent) and add other fiscal year 2006 pay adjustments ($119,500) for within-grade pay step increases for General Schedule (GS) salaries, promotion pay costs, and new employee position pay costs. Table 2 contains footnotes 1–7 that provide the common mathematical formula used to calculate the apportioned rate for each fee charge category for fiscal year 2006. The formula uses the actual cost or projected cost in dollars for the applicable fiscal year for each individual fee charge category divided by the available program hours and further divided by the number of laboratory service program employees. The formula derives the apportioned fee rate for each fee charge category (salaries with pay adjustment, benefits, operational costs, infrastructure cost, program administrative overhead and agency overhead). The same formula that is used in Table 2 and that is indicated in its footnotes is also applied in the other tables to derive each category unit rate with the different actual costs or variable projected costs to be inserted in the formula equation for the applicable fiscal year.

Table 3 through Table 5 show the calculation of the total standard hourly fee rates to be rounded off for fiscal years 2007 through 2009.

TABLE 6.—CALCULATIONS FOR THE APPEAL AND OVERTIME HOURLY RATES FOR LABORATORY PROGRAM SERVICES FOR FY 2006

Laboratory services	Apportioned fee rate
Appeal and Overtime Rates: Actual Salaries @ 1.5 (time and a half)	
FY 2005 Salaries @ 1.5 = [Actual 2005 Salaries ($20.00)] × 1.5	$ 30.00
FY 2006 Pay Adjustment = [Actual FY 2005 Salaries ($20.00) × 0.031 + $0.86 (weighted portion @ $119,500 increase for the FY 2006 period changes with payroll for within-grade pay step increases for General Schedule salaries, promotion pay costs, and new employee position pay costs)] × 1.5	2.22
Benefits	6.90
Operational Costs	11.60
Infrastructure Cost	8.78
Program Overhead	3.44
Agency Overhead	3.28
FY 2006 Inflation (2.1%) = [Costs excluding infrastructure and payroll] × .021	0.53
Total Rate Per Hour – Appeal and Overtime	66.75

TABLE 7.—CALCULATIONS FOR THE APPEAL AND OVERTIME HOURLY RATES FOR LABORATORY PROGRAM SERVICES FOR FY 2007

Laboratory services	Apportioned fee rate
Appeal and Overtime Rates: Actual Salaries @ 1.5 (time and a half)	
FY 2006 Salaries @ 1.5 = [Actual 2005 Salaries ($20.00) + 2006 Pay Adjustment ($1.48)] x 1.5	$32.22
FY 2007 Pay Adjustment = FY 2006 Salaries @ 1.5 x 0.022	0.71
Benefits	6.90
Operational Costs	11.60
Infrastructure Cost	11.75
Program Overhead	3.44
Agency Overhead	3.28
FY 2006 Inflation (2.1%) = [Costs excluding infrastructure and payroll] x .021	0.53
FY 2007 Inflation (2.2%) = [Costs excluding infrastructure and payroll] x .022	0.57
Total Rate Per Hour – Appeal and Overtime	71.00

TABLE 8.—CALCULATIONS FOR THE APPEAL AND OVERTIME HOURLY RATES FOR LABORATORY PROGRAM SERVICES FOR FY 2008

Laboratory services	Apportioned fee rate
Appeal and Overtime Rates: Actual Salaries @ 1.5 (time and a half)	
FY 2007 Salaries @ 1.5 = [FY 2006 Salaries ($21.48) + FY 2007 Pay Adjustment ($0.47)] x 1.5	$32.93
FY 2008 Pay Adjustment = FY 2007 Salaries @ 1.5 x 0.022	0.72
Benefits	6.90
Operational Costs	11.60
Infrastructure Cost	13.47
Program Overhead	3.44
Agency Overhead	3.28
FY 2006 Inflation (2.1%) = [Costs excluding infrastructure and payroll] x .021	0.53
FY 2007 Inflation (2.2%) = [Costs excluding infrastructure and payroll] x .022	0.57
FY 2008 Inflation (2.1%) = [Costs excluding infrastructure and payroll] x .021	0.55
Total Rate Per Hour – Appeal and Overtime	73.99

TABLE 9.—CALCULATIONS FOR THE APPEAL AND OVERTIME HOURLY RATES FOR LABORATORY PROGRAM SERVICES FOR FY 2009

Laboratory services	Apportioned fee rate
Appeal and Overtime Rates: Actual Salaries @ 1.5 (time and a half)	
FY 2008 Salaries @ 1.5 = [FY 2007 Salaries ($21.95) + FY 2008 Pay Adjustment ($0.48)] x 1.5	$33.65
FY 2009 Pay Adjustment = FY 2008 Salaries @ 1.5 x 0.022	0.74
Benefits	6.90
Operational Costs	11.60
Infrastructure Cost	16.15
Program Overhead	3.44
Agency Overhead	3.28

TABLE 9.—CALCULATIONS FOR THE APPEAL AND OVERTIME HOURLY RATES FOR LABORATORY PROGRAM SERVICES FOR FY 2009—Continued

Laboratory services	Apportioned fee rate
FY 2006 Inflation (2.1%) = [Costs excluding infrastructure and payroll] x .021	0.53
FY 2007 Inflation (2.2%) = [Costs excluding infrastructure and payroll] x .022	0.57
FY 2008 Inflation (2.1%) = [Costs excluding infrastructure and payroll] x .021	0.55
FY 2009 Inflation (2.1%) = [Costs excluding infrastructure and payroll] x .021	0.56
Total Rate Per Hour – Appeal and Overtime	77.97

Table 6 through Table 9 show the calculation of the total appeal and total overtime hourly fee rates to be rounded off for fiscal years 2006 through 2009. These tables incorporate the differentials in costs associated with the necessity of laboratory personnel to work extended hours of service at the time and a half pay doing either overtime or appeal sample testing.

TABLE 10.—CALCULATIONS FOR THE FEDERAL HOLIDAY HOURLY RATE FOR LABORATORY PROGRAM SERVICES FOR FY 2006

Laboratory services	Apportioned fee rate
Holiday Rate: Actual Salaries @ 2.0 (double time)	
FY 2005 Salaries @ 2.0 [Actual 2005 Salaries ($20.00)] x 2.0	$40.00
FY 2006 Pay Adjustment = [Actual FY 2005 Salaries ($20.00) x 0.031 +$0.86 (weighted portion @ $119,500 increase for the FY 2006 period changes with payroll for within-grade pay step increases for General Schedule salaries, promotion pay costs, and new employee position pay costs)] x 2.0	2.96
Benefits	6.90
Operational Costs	11.60
Infrastructure Cost	8.78
Program Overhead	3.44
Agency Overhead	3.28
FY 2006 Inflation (2.1%) = [Costs excluding infrastructure and payroll] x .021	0.53
Total Rate Per Hour – Holidays	77.49

TABLE 11.—CALCULATIONS FOR THE FEDERAL HOLIDAY HOURLY RATE FOR LABORATORY PROGRAM SERVICES FOR FY 2007

Laboratory services	Apportioned fee rate
Holiday Rate: Actual Salaries @ 2.0 (double time)	
FY 2006 Salaries @ 2.0 = [Actual 2005 Salaries ($20.00) + 2006 Pay Adjustment ($1.48)] x 2.0	$42.96
FY 2007 Pay Adjustment = FY 2006 Salaries @ 2.0 x 0.022	0.95
Benefits	6.90
Operational Costs	11.60
Infrastructure Cost	11.75
Program Overhead	3.44
Agency Overhead	3.28
FY 2006 Inflation (2.1%) = [Costs excluding infrastructure and payroll] x .021	0.53
FY 2007 Inflation (2.2%) = [Costs excluding infrastructure and payroll] x .022	0.57
Total Rate Per Hour – Holidays	81.98

TABLE 12.—CALCULATIONS FOR THE FEDERAL HOLIDAY HOURLY RATE FOR LABORATORY PROGRAM SERVICES FOR FY 2008

Laboratory services	Apportioned fee rate
Holiday Rate: Actual Salaries @ 2.0 (double time)	
FY 2007 Salaries @ 2.0 = [FY 2006 Salaries ($21.48) + FY 2007 Pay Adjustment ($0.47)] x 2.0	$43.90
FY 2008 Pay Adjustment = FY 2007 Salaries @ 2.0 x 0.022	0.97
Benefits	6.90
Operational Costs	11.60
Infrastructure Cost	13.47
Program Overhead	3.44
Agency Overhead	3.28
FY 2006 Inflation (2.1%) = [Costs excluding infrastructure and payroll] x .021	0.53

TABLE 12.—CALCULATIONS FOR THE FEDERAL HOLIDAY HOURLY RATE FOR LABORATORY PROGRAM SERVICES FOR FY 2008—Continued

Laboratory services	Apportioned fee rate
FY 2007 Inflation (2.2%) = [Costs excluding infrastructure and payroll] x .022	0.57
FY 2008 Inflation (2.1%) = [Costs excluding infrastructure and payroll] x .021	0.55
Total Rate Per Hour – Holidays	85.21

TABLE 13.— CALCULATIONS FOR THE FEDERAL HOLIDAY HOURLY RATE FOR LABORATORY PROGRAM SERVICES FOR FY 2009

Laboratory services	Apportioned fee rate
Holiday Rate: Actual Salaries @ 2.0 (double time)	
FY 2008 Salaries @ 2.0 = [FY 2007 Salaries ($21.95) + FY 2008 Pay Adjustment ($0.48)] x 2.0	$44.86
FY 2009 Pay Adjustment = FY 2008 Salaries @ 2.0 x 0.022	0.99
Benefits	6.90
Operational Costs	11.60
Infrastructure Cost	16.15
Program Overhead	3.44
Agency Overhead	3.28
FY 2006 Inflation (2.1%) = [Costs excluding infrastructure and payroll] x .021	0.53
FY 2007 Inflation (2.2%) = [Costs excluding infrastructure and payroll] x .022	0.57
FY 2008 Inflation (2.1%) = [Costs excluding infrastructure and payroll] x .021	0.55
FY 2009 Inflation (2.1%) = [Costs excluding infrastructure and payroll] x .021	0.56
Total Rate Per Hour – Holidays	89.43

Table 10 through Table 13 show the calculation of the total legal holiday hourly fee rates to be rounded off for fiscal years 2006 through 2009. These tables incorporate the differentials in costs associated with the necessity of laboratory personnel to work extended hours of service at the double hourly pay rate doing sample testing on a Federal holiday or a designated day for the Federal holiday.

The Agency must recover the actual cost of services for multiple fiscal years covered by this rule. These fee increases are essential for the continued sound financial management of the Agency's budget. In order to enhance the transparency of the hourly fee rates in the aforementioned Tables 3 through 13 for fiscal year 2007, fiscal year 2008 and fiscal year 2009, a description is provided of each fee charge category. Federal salaries with national and locality pay adjustments and choices in benefits are made available on an annual basis by the Office of Personnel Management (OPM). Operational costs include expenses for rents, communications, utilities, medical examinations, safety equipment, sample preparation equipment, training, trash and hazardous waste disposal, travel and transportation costs. Communication expenditures include costs for photocopying, printing, e-mailing, Internet services, telephone, and faxing equipment. There have been large capital improvement expenditures in the laboratories in recent years. These expenditures include costs for the Food Emergency Response Network (FERN) and the capital improvements for the Environmental Management Systems (EMS) in accordance with the applicable mandates for Federal laboratories of Executive Order 13148 of April 21, 2000, Greening the Government Through Leadership in Environmental Management (65 FR 24593). These capital improvement costs are included in the normal operations of the Science and Technology field service laboratories. In addition, operational costs include expenses for office and laboratory supplies, chemicals, reagents, security and guard services, waste removal, robots, cleaning and internal building maintenance, billing and collection services, and a Laboratory Information Management System (LIMS). Infrastructure costs are mainly laboratory instruments and capital equipment with service and maintenance contracts and replacement spare parts. Infrastructure expenses include consumable supply costs associated directly with the proper operation of analytical instruments and laboratory equipment. Stakeholders demand that AMS provide cost effective and timely product testing requiring modern and sometimes automated instrumentation. These instruments are expensive and undergo equipment capitalization for determining costs. Equipment capitalization is the determined cost per year to replace the equipment after its useful service life has been established. Infrastructure costs include database acquisitions and maintenance for e-business. Infrastructure costs include large computer hardware and software expenses. Agency and Program overhead is the pro-rated share, attributable to a particular service, of the agency's management and support costs. Management and administrative support costs include the costs of providing budget and accounting services, regulatory services, investigative and enforcement services, debt-management services, personnel services, public information services, legal services, statistical services, and other general program and agency management services of support activities above the local laboratory level. Overhead expenditures are allocated across the Agency for each direct hour of laboratory service.

AMS no longer uses the Billings and Collections System (BLCO) for billings and collections through the National Finance Center (NFC) in New Orleans, LA. The Agency now uses the ''accounts receivable'' functions in Foundation Financial Information System (FFIS) as the document feeder system for customer billings and the collections now come through our lockbox.

Accordingly, § 91.42 will be updated to reflect these changes. The regulations also are updated to identify current facility addresses.

This rule will also remove and reserve 7 CFR Part 92. Part 92 is obsolete because it relates to the mandatory testing of imported tobacco for prohibited pesticide residues and the statutory requirement for such testing has been removed by the Fair and Equitable Tobacco Reform Act of 2004 (7 U.S.C. 518). The tests had been conducted by Science and Technology (S&T) Programs for the AMS Tobacco Program, which sampled imported tobacco and administered the program for imported tobacco.

Proposed Rule and Comments

AMS published a proposed rule on September 22, 2006 (71 FR 55369), stating that it was proposing changing fees for laboratory services for FYs 2007 through 2009. AMS provided for a 30 day comment period, ending October 23, 2006. AMS received no comments.

Executive Order 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

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

An economic analysis follows to review the impacts on laboratory customers of the new revisions in AMS voluntary user fees for laboratory services. The economic analysis provides a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). In accordance with 5 U.S.C. 604, AMS has prepared a final Regulatory Flexibility Analysis for this rule.

Regulations must be designed in the most cost-effective manner possible to obtain the objective of a sustainable cost recovery program while imposing the least burden on society. AMS has prepared a Regulatory Impact Assessment (RIA) consisting of a statement of the need for the rulemaking action, an examination of alternative approaches, and an economic analysis of the benefits and costs.

Need for the Rule

The AMS laboratory testing programs are voluntary, user fee services conducted under the authority of the Agricultural Marketing Act of 1946 (AMA), as amended (7 U.S.C. 1621, *et seq.*). The AMA authorizes the Secretary of Agriculture to provide Federal analytical testing services that facilitate marketing and trade. The AMA also requires that reasonable fees be collected from the users of the services to cover as nearly as practicable the costs of maintaining the programs.

Science and Technology (S&T) Programs of AMS regularly reviews its user-fee-financed laboratory service programs to determine if the fee levels are adequate. The most recent review determined that the existing fee schedule, effective October 27, 2000 (65 FR 64302) will not generate sufficient revenues to recover operating costs. For fiscal year 2005 the Science and Technology program reported a $702,000 deficit at the current fee levels. The Science and Technology program costs and revenues for fiscal year 2005 were $6,393,000 and $5,691,000, respectively. Program costs for fiscal year 2006 were projected at $6,602,000 and revenues were projected at $5,834,000 for a deficit of $768,000. With this action, the Agency expects to collect an estimated $6,521,000, $7,186,000, and $7,553,000 in fiscal years 2007 through 2009 respectively, to cover the cost of routine laboratory services, appeal requests, overtime, and holiday services for Science and Technology customers and other program stakeholders.

Alternatives

Alternatives to the rate increase were considered by the Agency. One alternative to this rule would be to make no changes to the current user fees. As a result, AMS would not recover the full cost of program activities and services would have to be reduced or terminated. Were this to happen, the users of AMS laboratory services would be unable to meet certain AMS program requirements, would find it more difficult to meet foreign government or importer testing requirements, and would lose the opportunity to support their marketing efforts with what they believe to be preferred government laboratory test results. Consequently, AMS does not consider this alternative to be reasonable.

Another alternative considered would be to calculate the fee increases needed over the next three year period and then spread this overall increase evenly in annual increments. Because the increases are necessary to cover on-going costs, *e.g.*, rent, salaries and benefits, and equipment replacement, and financial stability needs to be maintained for this program, adequate funds must be generated immediately, rather than spread over a three year period. Thus, AMS does not consider this alternative to be reasonable.

To ensure full costs are being covered as they are incurred, the preferred alternative is to match fee increases with expected costs on an annual basis over the next three years. This alternative will assure costs are appropriately covered and that laboratory testing services remain available as program customers request them. With this action, the Agency expects to collect an estimated $6,521,000, $7,186,000, and $7,553,000 in fiscal years 2007 through 2009, respectively, to cover the cost of routine laboratory services, appeal requests, overtime, and holiday services.

Summary of Impacts

Under this rule AMS will continue to offer laboratory testing services under the Agricultural Marketing Act of 1946 as amended, to facilitate marketing and allow products to obtain grade designations or meet marketing standards. As such, the program provides a viable option for a wide variety of clients by delivering scientific and analytical support services to the agricultural community and provides a valuable resource for those businesses and industries that wish to use a USDA shield.

Further, by having a three year fee increase instead of a single year fee increase, the Agency will help ensure that the fee increases are effective at the beginning of each fiscal year on October 1. An increase over three fiscal years will permit customers and other program stakeholders an opportunity to plan for annual changes in costs of laboratory service and to incorporate them into their budgetary plans.

For analytical purposes, projected collections are based on calculations using an effective date of January 1, 2007 for the fiscal year 2007 user fees. There are essentially three rate increases being changed for the basic laboratory services—$45 to $60 or 33.3 percent in fiscal year 2007, $60 to $63 or 5.0 percent in fiscal year 2008 and $63 to $67 or 6.4 percent in fiscal year 2009. The rate increases for overtime and appeals are $67.50 to $71 or 5.2 percent, $71 to $74 or 4.2 percent, and $74 to $78 or 5.4 percent in fiscal years 2007, 2008, and 2009, respectively. The rate increases for holiday service are $67.50 to $82 or 21.5 percent, $82 to $85 or 3.7 percent, and $85 to $89 or 4.7 percent in fiscal years 2007, 2008, and 2009, respectively. This is a voluntary program and the costs to each user would be proportional to their use of

laboratory services each year. The increased fees will cover inflation and national and locality pay raises and replacement of equipment and other infrastructure improvements.

Under the Regulatory Flexibility Act, the impact of this rule on small businesses must be analyzed. There are 811 current users of AMS laboratory testing services. Such users of services include food processors, handlers, growers, Federal and State government agencies, and exporters. Many of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). Any decision by stakeholders and customers to discontinue the use of the laboratory services because of increased fees would not hinder food processors or other industry members from marketing their products.

For the following cost analysis, certain assumptions are used. First, base year data is actual fiscal year 2006 amount billed for voluntary services performed for the public. Second, seven percent of the total amount billed represents overtime costs and five percent represents costs related to appeals. Third, the calculated amounts in fiscal year 2007 are using the base year data as if the base year was fiscal year 2006. Fourth, each of the 811 customers had the exact same tests, using the same amount of time, and thus were billed the exact same amount. This customer is the ''average'' laboratory customer.

Table 14 sets the total levels for the dollar ($) amounts billed in the base year (Fiscal Year 2006).

TABLE 14.—BASE YEAR DATA (FISCAL YEAR 2006)

Total Billed	$1,536,688
Basic Laboratory Services	1,352,285
Overtime Costs (7%)	107,568
Appeal Costs (5%)	76,834

Table 15 presents the base year costs and estimates costs in fiscal year 2007, fiscal year 2008, and fiscal year 2009 for the ''average'' laboratory customer. The base year values are derived by dividing basic laboratory services, overtime costs, and appeal costs by 811. The values for fiscal years 2007, 2008, and 2009 are derived multiplying each year by the appropriate percentage rate.

TABLE 15.—COSTS ($) FOR THE ''AVERAGE'' CUSTOMER, BASE YEAR THROUGH FISCAL YEAR 2009

	Base year	FY 2007	FY 2008	FY 2009	Total Diff.[1]
Lab Services	1,667	2,223	2,334	2,483	816
Overtime	133	140	146	154	21
Appeals	95	100	104	110	15
Total	1,895	2,463	2,584	2,747	852

[1] Net difference calculated between costs in dollars ($) between base year and Fiscal Year 2009.

After the third increase, the customer will pay an additional average of $852 for all laboratory services. This is a 44.96 percent increase over the base year. The percentage increase for the basic laboratory services is 49.0 percent, overtime is 15.8 percent, and an appeal sample is 15.8 percent.

TABLE 16.—COSTS ($) FOR A ''LARGE BUSINESS'' CUSTOMER, BASE YEAR THROUGH FISCAL YEAR (FY) 2009

	Base total	FY 2007	FY 2008	FY 2009	Total Diff. [1]
Lab Services	704,000	938,432	985,354	1,048,417	344,417
Overtime	56,000	58,912	61,386	64,701	8,701
Appeals	40,000	42,080	43,847	46,215	6,215
Total	800,000	1,039,424	1,090,587	1,159,333	359,333

[1] Net difference calculated between costs in dollars ($) between base year and Fiscal Year 2009.

Table 16 presents the base year costs and estimates costs in fiscal years 2007, 2008, and 2009 for a ''large business'' laboratory customer. While the numerical values increase significantly, the percentages are the same. Even though the ''large business'' customer is paying $359,333 more then what was paid for the same services in the base year, the increase is still approximately 44.9 percent above what was billed in the base year.

The same is true for a ''small business'' customer. Table 17 presents the costs associated with a customer billed $29,000. Again the total difference between the billing in fiscal year 2009 and the base year is significantly smaller than the billing of an ''average'' customer, but the percentage increase is still near 44.9 percent.

TABLE 17.—COSTS ($) FOR A ''SMALL BUSINESS'' CUSTOMER, BASE YEAR THROUGH FISCAL YEAR (FY) 2009

	Base year	FY 2007	FY 2008	FY 2009	Total Diff. [1]
Lab Services	25,520	34,018	35,719	38,005	12,485
Overtime	2,030	2,136	2,226	2,346	316
Appeals	1,450	1,525	1,589	1,675	225
Total	29,000	37,679	39,534	42,026	13,026

[1] Net difference calculated between costs in dollars ($) between base year and FY 2009.

Under the Regulatory Flexibility Act, the impact of this rule on small businesses must be considered. The Agency estimates that 25 percent of the laboratory fees billed in fiscal year 2006 was to small businesses. Thus, a total of $384,172 was billed to small businesses. If the entire increase had been implemented, small businesses would have been billed $556,665, a 44.9 percent increase.

One question is how each of these customers including small businesses will react to cost increases at these amounts. The increases are spread over a three year period which will mitigate some of the impact. But the focus should be on the reaction to the increase occurring in fiscal year 2007 which is a one third increase over the base year. The answer is dependent on the customer's business, and is proportional to the number of samples involved. The lower the cost per unit of product being sampled, the higher the probability the customer will continue to use AMS laboratory services and pass on some or all of the anticipated additional costs, the exact amount of which is not known. Also, use of AMS laboratory services is voluntary and other private or public laboratory options are available.

This rule contains no new information collection or recordkeeping requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). AMS is committed to implementation of the Government Paperwork Elimination Act which provides for the use of information resources to improve the efficiency and effectiveness of governmental operations, including providing the public with the option of submitting information or transacting business electronically to the extent practicable. USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Unfunded Mandate Analysis

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires that the Department identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of section 202 and 205 of UMRA.

Civil Justice Reform (Executive Order 12988)

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

Civil Rights Review

AMS has considered the potential civil rights implications of this rule on minorities, women, or persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. AMS has included at § 91.7 the provision in the regulation under part 91 to describe in detail the requirements for nondiscrimination when reviewing or granting any person or entity the benefits of Science and Technology Programs laboratory service. This regulation is consistent with USDA regulations which prohibit discrimination in its programs and activities.

This rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Further, this rule does not deny any persons or groups the benefits of the program or subject any persons or groups to discrimination.

AMS has reviewed this rule in accordance with the Department Regulation 4300–4,''Civil Rights Impact Analysis.'' AMS has determined this action ensures the civil rights of all Science and Technology Programs applicants and customers. They represent minorities (24.4%), women (51.1%), and persons with disabilities (14.5%) in the same percent proportions to the entire customer base as their compositions are represented in the total approximate general population (300.2 million) of the United States of America available in descriptive tables at *http://www.census.gov/*. In addition, each and every customer would receive the same user fee for each identical service.

Comments and Effective Date

A thirty day comment period was provided for interested persons to comment on the proposed rule published in **Federal Register** (71 FR 55369) regarding changes in user fees for voluntary laboratory testing services. No comments were received by the end of the comment period on October 23, 2006. The existing fee schedules have been in place since October 2000. AMS regularly reviews its user-fee-supported programs to determine if the fees are adequate to cover expenses. The agency is unable to recover the full cost of its laboratory testing services. With this regulation, AMS is providing for three annual hourly fee rate increases for fiscal years 2007–2009. Accordingly, for these reasons, pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. Therefore, this final rule is effective one day after the date of publication in the **Federal Register**.

List of Subjects

7 CFR Part 91

Administrative practice and procedure, Agricultural commodities, Laboratories, Reporting and recordkeeping requirements.

7 CFR Part 92

Agricultural commodities, Laboratories, Pesticides and pests, Tobacco.

■ For the reasons set forth in the preamble, the Agricultural Marketing Service amends part 91 and under the authority of 7 U.S.C. 1622, 1624 removes part 92 of Title 7, chapter I, subchapter E, of the Code of Federal Regulations as follows:

PART 91—SERVICES AND GENERAL INFORMATION

■ 1. The authority citation part 91 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

■ 2. Section 91.5 is revised to read as follows:

§ 91.5 Where services are offered.

(a) Services are offered to applicants at the Science and Technology laboratories and facilities as listed below.

(1) *Science and Technology Programs National Science Laboratory.* A variety of proximate, chemical, microbiological and biomolecular tests and laboratory analyses performed on fruits and vegetables, poultry, meat and meat products, fiber products and processed foods are performed at the Science and Technology Programs (S&T) laboratory located at: USDA, AMS, Science and Technology Programs, National Science Laboratory (NSL), 801 Summit Crossing Place, Suite B, Gastonia, North Carolina 28054–2193.

(2) *Science and Technology (S&T) Programs Science Satellite Laboratories.* The specialty satellite laboratories performing aflatoxin and other testing on peanuts, peanut products, dried fruits, grains, edible seeds, tree nuts, shelled corn products, oilseed products, vegetable oils, juices, citrus products, and other commodities are located as follows:

(i) USDA, AMS, Science & Technology, Citrus Laboratory, 98 Third Street, SW.,

Winter Haven, Florida 33880–2905.

(ii) USDA, AMS, Science & Technology, 6567 Chancey Mill Road, Blakely, Georgia 39823–2785.

(iii) USDA, AMS, Science & Technology, c/o Golden Peanut Company LLC, (Mail: P.O. Box 272), 715 Martin Luther King Drive, Dawson, Georgia 39842–1002.

(iv) USDA, AMS, Science & Technology, 107 South Fourth Street, Madill, Oklahoma 73446–3431.

(v) USDA, AMS, Science & Technology, (Mail: P.O. Box 1130), 308 Culloden Street, Suffolk, VA 23434–4706.

(3) *Program laboratories.* Laboratory services are available in all areas covered by cooperative agreements providing for this laboratory work and entered on behalf of the Department with cooperating Federal or State laboratory agencies pursuant to authority contained in Act(s) of Congress. Also, services may be provided in other areas not covered by a cooperative agreement if the Administrator determines that it is possible to provide such laboratory services.

(4) *Other alternative laboratories.* Laboratory analyses may be conducted at alternative Science and Technology Programs laboratories and can be reached from any commodity market in which a laboratory facility is located to the extent laboratory personnel are available.

(5) *The Plant Variety Protection (PVP) Office.* The PVP office and plant examination facility of the Science and Technology programs issues certificates of protection to developers of novel varieties of plants which reproduce sexually. The PVP office is located as follows: USDA, AMS, Science & Technology Programs, Plant Variety Protection Office, National Agricultural Library Building, Room 401, 10301 Baltimore Boulevard, Beltsville, MD 20705–2351.

(6) *Science and Technology Programs headquarters offices.* The examination, licensure, quality assurance reviews, laboratory approval/certification and consultation services are provided by headquarters staff located in Washington, DC. The main headquarters office is located as follows: USDA, AMS, Science and Technology Programs, Office of the Deputy Administrator, South Agriculture Bldg., Mail Stop 0270, 1400 Independence Ave., SW., Washington, DC 20250–0270.

(7) *The Information Technology (IT) Group.* The IT office of the Science and Technology Programs is headed by the Associate Deputy Administrator for Technology/Chief Information Officer and provides information technology services and management systems to the Agency and other agencies within the USDA. The main IT office is located as follows: USDA, AMS, Science and Technology, Office of the Associate Deputy Administrator for Technology, 1752 South Agriculture Bldg., Mail Stop 0204, 1400 Independence Ave., SW., Washington, DC 20250–0204.

(8) *Statistics Branch Office.* The Statistics Branch office of Science and Technology Programs (S&T) provides statistical services to the Agency and other agencies within the USDA. In addition, the Statistics Branch office generates sample plans and performs consulting services for research studies in joint efforts with or in a leading role with other program areas of AMS or of the USDA. The Statistics Branch office is located as follows: USDA, AMS, S&T Statistics Branch, 0603 South Agriculture Bldg., Mail Stop 0223, 1400 Independence Ave., SW., Washington, DC 20250–0223.

(9) *Technical Services Branch Office.* The Technical Services Branch office of Science and Technology (S&T) provides technical support services to all Agency programs and other agencies within the USDA. In addition, the Technical Services Branch office provides certification and approval services of private and State government laboratories as well as oversees quality assurance programs; import and export certification of laboratory tested commodities. The Technical Services Branch mailing address is as follows: USDA, AMS, S&T Technical Services Branch, South Agriculture Bldg., Mail Stop 0272, 1400 Independence Ave., SW., Washington, DC 20250–0272. The Technical Services Branch office is located as follows: USDA, AMS, Science and Technology Technical Services Branch, Room 306, Cotton Annex Bldg., 300 12th Street, SW., Washington, DC 20250.

(10) *Monitoring Programs Office.* Services afforded by the Pesticide Data Program (PDP) and Microbiological Data Program (MDP) are provided by USDA, AMS, Science and Technology Monitoring Programs Office 8609 Sudley Road, Suite 206, Manassas, VA 20110–8411.

(11) *Pesticide Records Branch Office.* Services afforded by the Federal Pesticide Record Keeping Program for restricted-use pesticides by private certified applicators are provided by USDA, AMS, Science and Technology, Pesticide Records Branch, 8609 Sudley Road, Suite 203, Manassas, VA 20110–8411.

(b) The addresses of the various laboratories and offices appear in the pertinent parts of this subchapter. A prospective applicant may obtain a current listing of addresses and telephone numbers of Science and Technology Programs laboratories, offices, and facilities by addressing an inquiry to the Administrative Officer, Science and Technology Programs, Agricultural Marketing Service, United States Department of Agriculture (USDA), 1400 Independence Ave., SW., Room 0725 South Agriculture Building, Mail Stop 0271, Washington, DC 20250–0271.

■ 3. Section 91.37 is revised to read as follows:

§ 91.37 Standard hourly fee rate for laboratory testing, analysis, and other services.

(a) The standard hourly fee rate in this section for the individual laboratory analyses cover the costs of Science and Technology laboratory services, including issuance of certificates and personnel and overhead costs other than the commodity inspection fees referred to in 7 CFR 52.42 through 52.46, 52.48 through 52.51, 55.510 through 55.530, 55.560 through 55.570, 58.38 through 58.43, 58.45 through 58.46, 70.71 through 70.72, and 70.75 through 70.78. The hourly fee rates in this part 91 apply to all commodity and processed commodity products. The new fiscal year for Science and Technology

Programs commences on October 1 of each calendar year. The rate for laboratory services is $60.00 per hour in fiscal year 2007, $63.00 per hour in fiscal year 2008, and $67.00 per hour in fiscal year 2009.

(b) Printed updated schedules of the laboratory testing fees for processed fruits and vegetables (7 CFR part 93), poultry and egg products (7 CFR part 94), and meat and meat products (7 CFR part 98) will be available for distribution to Science and Technology's constituents and stakeholders by the individual Laboratory Managers of Science and Technology laboratories listed in § 91.5. These single test laboratory fee schedules are based upon the applicable hourly fee rate stated in § 91.37(a).

(c) Except as otherwise provided in this section, charges will be made at the applicable hourly rate stated in § 91.37(a) for the time required to perform the service. A charge will be made for service pursuant to each request or certificate issued.

(d) When a laboratory test service is provided for AMS by a commercial or State government laboratory, the applicant will be assessed a fee which covers the costs to the Science and Technology program for the service provided.

(e) When Science and Technology staff provides applied and developmental research and training activities for microbiological, physical, chemical, and biomolecular analyses on agricultural commodities the applicant will be charged a fee on a reimbursable cost to AMS basis.

■ 4. Section 91.38 is revised to read as follows:

§ 91.38 Additional fees for appeal of analysis.

(a) The applicant for appeal sample testing will be charged a fee at the hourly rate for laboratory service that appears in this paragraph. The new fiscal year for Science and Technology Programs commences on October 1 of each calendar year. The appeal rate for laboratory service is $71.00 per hour in fiscal year 2007, $74.00 per hour in fiscal year 2008, and $78.00 per hour in fiscal year 2009.

(b) The appeal fee will not be waived for any reason if analytical testing was completed in addition to the original analysis.

■ 5. Section 91.39 is revised to read as follows:

§ 91.39 Premium hourly fee rates for overtime and legal holiday service.

(a) When analytical testing in a Science and Technology facility requires the services of laboratory personnel beyond their regularly assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. When analytical testing in a Science and Technology facility requires the services of laboratory personnel on a Federal holiday or a day designated in lieu of such a holiday, such services are considered holiday work. Laboratory analyses initiated at the request of the applicant to be rendered on Federal holidays, and on an overtime basis will be charged fees at hourly rates for laboratory service that appear in this paragraph. The new fiscal year for Science and Technology Programs commences on October 1 of each calendar year. The laboratory analysis rate for overtime service is $71.00 per hour in fiscal year 2007, $74.00 per hour in fiscal year 2008, and $78.00 per hour in fiscal year 2009. The laboratory analysis rate for Federal holiday or designed holiday service is $82.00 per hour in fiscal year 2007, $85.00 per hour in fiscal year 2008, and $89.00 per hour in fiscal year 2009.

(b) Information on legal holidays or what constitutes overtime service at a particular Science and Technology laboratory is available from the Laboratory Manager or facility supervisor.

■ 6. Section 91.42 is revised to read as follows:

§ 91.42 Billing.

(a) Each billing cycle will end on the 25th of the month. The applicant will be billed by the National Finance Center (NFC) using the Foundation Financial Information System (FFIS) on the 1st day, following the end of the billing cycle in which voluntary laboratory services and other services were rendered at a particular Science and Technology laboratory or office.

(b) The total charge or fee shall normally be stated directly on the analysis report or on a standardized official certificate form for the laboratory analysis of a specific agricultural commodity and related commodity products.

(c) The actual bill for collection will be issued by the USDA, National Finance Center Billings and Collection Branch, (Mail: P.O. Box 60075), 13800 Old Gentilly Road, New Orleans, Louisiana 70160–0001.

PART 92—[REMOVED AND RESERVED]

■ 7. Part 92 is removed and reserved.

Dated: March 23, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–5787 Filed 3–29–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV06–981–1 FR]

Almonds Grown in California; Outgoing Quality Control Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule adds outgoing quality control requirements under the administrative rules and regulations of the California almond marketing order (order). The order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). This rule provides for a mandatory program under the order to reduce the potential for *Salmonella* bacteria in almonds. This action will help ensure that quality almonds are available for human consumption.

DATES: This rule is effective on March 31, 2007. Handler treatment plans for the 2007–08 crop year must be submitted by May 31, 2007. Mandatory compliance with this rule begins September 1, 2007.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Assistant Regional Manager, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Maureen.Pello@usda.gov,* or *Kurt.Kimmel@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred

to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule adds outgoing quality control requirements under the administrative rules and regulations of the order. This rule provides for a mandatory program to reduce the potential for *Salmonella* bacteria in almonds. This action will help ensure that quality almonds are available for human consumption. This action was unanimously recommended by the Board at a meeting on August 22, 2006.

Section 981.42(b) of the order provides authority for the Board to establish, with approval of the Secretary, such minimum quality and inspection requirements applicable to almonds to be handled or to be processed into manufactured products, as will contribute to orderly marketing or be in the public interest. In such crop year, no handler shall handle or process almonds into manufactured items or products unless they meet the applicable requirements as evidenced by certification acceptable to the Board. The Board, with approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this provision.

Salmonella Outbreaks Linked to Almonds

In 2001, a *Salmonella* outbreak was identified in Canada, which was linked to a specific retailer, traced back to raw almonds sold in bulk bins, and ultimately traced back to the handler and the grower. The *Salmonella* strain was extremely unusual and had not previously been associated with contamination in a non-animal product. Three orchards where the almonds were produced were identified, and samples gathered from the orchards contained *Salmonella*. With oversight by the California Department of Health Services (CDHS), procedures were implemented by the grower, huller/sheller, and handler to specify how the almonds from those orchards were to be processed using a treatment to reduce the potential for *Salmonella* before the almonds were moved into commercial channels. The Board initiated an extensive research program to help understand the occurrence of *Salmonella* in almond orchards.

The Board also initiated an education program for the industry regarding Good Agricultural Practices (GAPs), Good Manufacturing Practices (GMPs), and Sanitation Standard Operating Procedures (SSOPs). GAPs provide guidelines to growers on how to minimize potential biological hazards during the production and harvesting of almonds. GMPs define procedures to be used by handlers to allow almonds to be processed, packed, and sold under sanitary conditions. SSOPs help to ensure a clean and sanitary environment in the packing facility. Together, these practices and procedures provide a framework for a Hazard Analysis Critical Control Point (HACCP) program for the industry to proactively eliminate or minimize potential sources of *Salmonella* contamination.

In the spring of 2004, a second *Salmonella* outbreak occurred in Oregon that was linked to raw almonds purchased at a particular retailer. The *Salmonella* strain was very similar to that identified in 2001. One handler had been the supplier to the retailer, and the handler initiated a voluntary recall of 5 million pounds of almonds sold in the U.S. The Food and Drug Administration (FDA) subsequently announced that the almonds had been exported to eight countries. The handler then initiated a full recall of the suspect almonds produced, packed, and shipped, increasing the recall to approximately 15 million pounds.

In the summer of 2004, the Board unanimously approved a voluntary action plan that called for treating all almonds to reduce the potential for *Salmonella*. Handlers were encouraged to treat the almonds prior to shipment, or ship the almonds to a manufacturer who agreed to treat the almonds. The Board continued to fund research on various technologies that could be used to help reduce the potential for *Salmonella* in almonds.

Board Recommendation for a Mandatory Treatment Program

To further its efforts in providing a high quality product to consumers, in August 2006, the Board recommended that a mandatory treatment program be implemented under the order, pursuant to authority provided in § 981.42(b). Specifically, handlers must subject their almonds to a process that achieves a minimum 4-log reduction in *Salmonella* bacteria prior to shipment. The program provides for an exemption for handlers who ship untreated almonds under a direct verifiable (DV) program to manufacturers within the U.S., Canada, or Mexico who agree to treat the almonds accordingly. The program also provides for an exemption for handlers who ship untreated almonds to locations outside of the U.S., Canada, or Mexico. All containers of untreated almonds shipped under the two exemptions must be prominently identified with the term ''unpasteurized.''

Specific Parameters of Mandatory Program

Under the program, handlers must subject their almonds to a treatment process or processes that achieve in total a minimum 4-log reduction of *Salmonella* bacteria, or ship their almonds under one of the two exemptions cited above. The rule only affects those who meet the definition of ''handler'' in § 981.13 of the order (thus exempting growers selling through roadside stands). Log reduction describes how much bacterial contamination is reduced by a treatment process. A 4-log reduction decreases bacteria by a factor of 10,000 (4 zeros). One treatment process that independently achieves a minimum 4-log reduction may be used, or a combination of different treatments may be used that collectively achieve a minimum 4-log reduction (''hurdle'' technologies).

The Board initially supported a 5-log reduction, which is FDA's performance standard. However, the Board subsequently funded research with the University of California, Davis, in conjunction with Rutgers University, whereby a risk assessment model was developed using data from the two

Salmonella outbreaks, as well as data from an industry pathogen survey.[1] The risk assessment model demonstrated that a minimum 4-log reduction provides an appropriate level of consumer protection. Thus, the Board concluded that a 4-log reduction was an appropriate standard for almonds.

Treatment Processes

Treatment processes for handlers must utilize technologies that have been determined to achieve a minimum 4-log reduction of *Salmonella* bacteria in almonds, pursuant to a letter of determination issued by the FDA, or acceptance by a scientific review panel as identified by the Board (known as the Technical Expert Review Panel, or TERP).

The FDA reviews studies utilizing specific protocols and treatment parameters, and issues a letter of determination when it determines that a process has sufficiently demonstrated its effectiveness to achieve a 5-log reduction of *Salmonella* in almonds. To-date, FDA has issued letters of determination for propylene oxide (PPO), oil roasting, blanching, and for a moist heat process.

The TERP will evaluate various treatment technologies against specific criteria, based on recommendations provided by the National Advisory Committee on Microbiological Criteria in Food (NACMCF). The NACMCF was formed in 1988 under Departmental Regulation 1043–28, and provides impartial, scientific advice to Federal food safety agencies for use in the development of an integrated national food safety systems approach from farm to final consumption to assure the safety of domestic, imported, and exported foods. It is co-sponsored by USDA's Food Safety and Inspection Service, the FDA, the Center for Disease Control and Prevention, the National Marine Fisheries Service, and the Department of Defense Veterinary Service Activity.

While the TERP will not ''recommend'' or ''approve'' technologies, its review will ensure that technologies utilized by the industry have been evaluated against specific science-based criteria demonstrating the technology's ability to deliver a lethal treatment for *Salmonella* in almonds. Documentation and data must be provided to the TERP (by a company pursuing TERP acceptance for its technology) for review to ensure that the technologies are consistently achieving the minimum 4-log reduction.

[1] Journal of Food Protection, Vol. 69, No. 7, 2006, Pages 1594–1599.

The TERP, initially formed by the Board in the fall of 2004 to review treatment technologies, consists of four scientists, with a representative from the FDA serving as an ex-officio member. The TERP has been evaluating various technologies and treatments for the almond industry, and to-date, the TERP has accepted steam and moist heat treatments as acceptable for achieving the Board's *Salmonella* reduction goals. Membership on the TERP must be approved annually by the Board prior to the beginning of each crop year, or more frequently if needed during the crop year, for example, to fill a vacancy on the panel.

On-Site Versus Off-Site Treatment

Under the program, unless handlers ship their almonds to a Board-approved DV user (described later in this document), or ship their almonds to locations outside of the U.S., Canada, or Mexico, handlers must subject their almonds to a treatment process or processes prior to shipment either at their handling facility (on-site), or at an off-site treatment facility located within the production area (California). An off-site facility may or may not be affiliated with another handler. Transportation of almonds by a handler to an off-site treatment facility will not be considered a shipment.

Process Authorities

Handlers may only use, or transport their almonds to off-site treatment facilities that use treatment processes that have been ''validated'' by a Board-approved process authority. Validation means that the treatment technology and equipment utilized have been demonstrated to achieve the minimum 4-log reduction. The use of process authorities is modeled after process authorities as cited in the ''Guide to Inspections of Low Acid Canned Food Manufacturers'' (Guide) (*http://www.fda.gov*). Treatment technology and equipment that have been modified to the point where operating parameters such as time, temperature, or volume, change must be revalidated.

For purposes of this document, a process authority is a person that has expert knowledge of appropriate processes for the treatment of almonds as described above, and meets other criteria as specified by the Board. Such criteria include the following: (1) Knowledge about the equipment used for the treatment process; (2) experience in conducting appropriate studies to determine the ability of the equipment to deliver the appropriate treatment (such as heat penetration or heat distribution studies); and (3) the ability to determine that sufficient data has been gathered to identify the critical factors needed to ensure the quality of the final product. Process authorities must submit an application to the Board on ABC Form No. 51, ''Application for Process Authority for Almonds,'' and be approved by the TERP. Should the applicant disagree with the TERP's decision concerning approval, it may appeal the decision in writing to the Board, and ultimately to USDA. Additionally, the TERP may revoke any approval for cause. The TERP must notify the process authority in writing of the reasons for revoking the approval. If the process authority disagrees with the TERP's decision, he/she may appeal the decision in writing to the Board, and ultimately to USDA. A process authority whose approval has been revoked must submit a new application to the TERP and await approval.

As explained later in this document, process authorities may also ''establish'' treatment processes for manufacturers under the DV program. The procedures and criteria for process authorities who establish treatment processes are identical to those for process authorities who validate such processes. ''Establish'' means that the treatment processes and protocols have been evaluated to ensure the technology's ability to deliver a lethal treatment for *Salmonella* in almonds to achieve a minimum 4-log reduction.

Compliance and Verification Program

Treatment Plans

To ensure compliance with the mandatory program, handlers will be subject to verification by the Federal or Federal-State Inspection Service (inspection agency) and review by Board staff. Handlers may use either an on-site (traditional) or an audit-based verification program. Each handler must decide which verification program will be the most cost-effective for his or her operation. All handlers must submit a treatment plan to the Board for the upcoming crop year by May 31. The crop year runs from August 1 through July 31 of the subsequent year. The plan will be reviewed by the Board in conjunction with the inspection agency to ensure such plans are complete and auditable. The plan will be approved by the Board and must address specific parameters for the handler to ship almonds. Such parameters include, but are not limited to, the following: (1) The location of treatment plant; (2) the name and address of off-site treatment facility (custom processor), if appropriate; (3) a statement regarding whether treatment processes have been accepted by the

TERP and/or ''determined'' by the FDA; (4) a statement regarding validation of treatment technology and equipment by a Board-approved process authority; (5) a statement whether untreated almonds will be exported; (6) a statement whether the handler will use the DV program; (7) a description or flow chart explaining how raw, untreated almonds enter and flow through the handler facility, and how the product would flow through the treatment process, including post treatment, packing, and/or storage; (8) a list of all treatments that will be used on the almonds (including, for example, number of blanching lines, etc.); (9) a description of how treated product will be differentiated and segregated from untreated product to ensure maintenance of treated product integrity; (10) a list of procedures regarding how interhandler transfers will be tracked; and (11) an explanation by handlers using a combination of processes to achieve a minimum 4-log reduction, that the processes occur in an appropriate sequence in sufficiently close proximity to ensure that the integrity of the treated product is maintained between processes.

Almonds sent by a handler for treatment to an off-site facility affiliated with another handler will be subject to the approved treatment plan utilized at that off-site facility. Handlers must follow their own approved treatment plans for almonds sent to an off-site facility that is not affiliated with another handler.

Additionally, an off-site treatment facility that does not handle almonds, pursuant to § 981.16, must provide access to the inspection agency and Board staff for verification of treatment and review of treatment records. A treatment process at an off-site facility that has been validated by a Board-approved process authority is deemed to be approved by the Board for handler use. The Board may revoke any such approval for cause. The Board must notify the off-site treatment facility of the reasons for revoking the approval. Should the off-site facility disagree with the Board's decision, it may appeal the decision in writing to USDA. Handlers may treat their almonds only at off-site treatment facilities that have been deemed to be approved by the Board.

On-Site Verification Program

Under an on-site verification program, handlers must cause the inspection agency to verify that their almonds were subjected to a treatment process that was validated by a Board-approved process authority. Such handlers must submit, or cause to be submitted, a verification report to the Board. The inspection agency must physically observe the treatment process to issue such a report. It is the handler's responsibility to arrange for inspection agency verification. An on-site program is comparable to a traditional in-line or lot inspection program.

Audit-Based Verification Program

Under an audit-based verification program, handlers will be subject to periodic audits conducted by the inspection agency. The inspection agency will verify that handlers were following the treatment parameters and protocols specified in their approved treatment plans. Audit frequency will be tied to handler performance. Handlers will be provided with written audit reports specifying deficiencies. Handlers who do not comply with an audit-based verification program will be required to revert to an on-site verification program. Audit reports will be provided to the Board to facilitate program compliance.

Interhandler Transfers

Interhandler transfers of almonds may or may not be treated prior to transfer. Handlers receiving untreated almonds from another handler will be responsible for treating the product. Handlers receiving treated almonds from another handler must have procedures outlined in their treatment plan addressing how the integrity of the treated almonds will be maintained. In all instances involving interhandler transfers, it will be the responsibility of the receiving handler to ensure that the almonds are treated prior to shipment and to maintain documentation to that effect. As provided in § 981.455, handlers must submit an ABC Form No. 7, ''Interhandler Transfer of Almonds,'' to the Board when they are involved in interhandler transfers.

Records

Handlers will be required to maintain records and documentation that will be subject to audit by the inspection agency and the Board for the purpose of verifying compliance with the regulation. Consistent with § 981.70 of the order regarding handler records and verification, records must be maintained for 2 full years following the end of a crop year. Such records must identify lots from the point of treatment forward to the point of shipment by the handler. Lot identification must also provide the ability to differentiate treated from untreated product. Additionally, off-site treatment facilities located within the production area that provide the service of treating almonds for handlers, but are not handlers themselves, must maintain treatment records for 2 full years following the end of a crop year and make such records available to the Board.

Exemptions

Direct Verifiable Program

Handlers may ship untreated almonds directly to Board-approved manufacturers (DV users) within the U.S., Canada, or Mexico for further processing under the Direct Verifiable or DV program. The Board will issue a DV user code to an approved manufacturer. Handlers must reference this code on all documentation accompanying the lot. This will help the Board track DV shipments and facilitate compliance with the program. Handlers must also identify each container of such almonds with the term ''unpasteurized.'' Container means a box, bin, bag, carton, or any other type of receptacle used in the packaging or handling of bulk almonds. The lettering must be on one outside principal display panel, at least ½ inch in height, clear and legible. If a third party is involved in the transaction, the handler must provide sufficient documentation to the Board to track the shipment from the handler's facility directly to the approved DV user. While a third party may be involved in such transactions, shipments to a third party and then to a manufacturing location are not permitted under the DV program. Almonds under the DV program must be shipped directly from handlers to approved manufacturing locations.

Manufacturers wanting to participate in the DV program must submit an application to the Board on ABC Form No. 52, ''Application for Direct Verifiable (DV) Program for Further Processing of Untreated Almonds,'' and be approved by the TERP. Should the applicant disagree with the TERP's decision concerning approval, it may appeal the decision in writing to the Board, and ultimately to USDA. Additionally, the TERP may revoke any approval for cause. The TERP must notify the manufacturer in writing of the reasons for revoking the approval. If the manufacturer disagrees with the TERP's decision, it may appeal the decision in writing to the Board, and ultimately to USDA. A manufacturer whose approval has been revoked must submit a new application to the TERP and await approval.

Similar to handlers, manufacturers must subject the almonds to a treatment process or processes using technologies that achieve in total a minimum 4-log reduction of *Salmonella* bacteria as determined by the FDA or accepted by

the TERP. Additionally, manufacturers may use treatment processes that have been ''established'' by a Board-approved process authority. As previously stated, ''established'' means that the process authority has evaluated the treatment processes and protocols to ensure the technology's ability to deliver a lethal treatment for *Salmonella* in almonds to achieve a minimum 4-log reduction. The Board recommended this option to address manufacturers' concern regarding the process to seek TERP acceptance of their treatments, which could involve providing data on their proprietary processes to the TERP (i.e., specific time and temperature data for special equipment). DV users must submit with their application to the TERP documentation to verify that their treatment technology and equipment have been validated by a Board-approved process authority. Such documentation may include, but not be limited to, a letter from a process authority certifying the validation. The documentation must be sufficient to demonstrate that the treatment processes and equipment achieve a 4-log reduction in *Salmonella* bacteria.

Manufacturers must also do the following: (1) Identify the manufacturing locations where treatment will occur; (2) have their treatment technology and equipment validated by a Board-approved process authority. Treatment technology and equipment that have been modified to the point where operating parameters such as time, temperature, or volume, change must be revalidated; (3) maintain all records regarding validation and verification of treatment methods, processing, and product traceability for 2 years, and make such records available for review by the Board; and (4) ship untreated almonds (due, for example, to a manufacturer overbuying) to a handler, to another approved DV user, to locations outside the U.S., Canada, or Mexico (containers must remain identified with the term unpasteurized), or dispose of such almonds in non-edible channels.

Further, DV users will be audited by a Board-approved auditor within 1–2 months after the start of treatments, and at least once every 12 months thereafter. The cost of the DV audit shall be borne by the manufacturer. Such audits will determine if: (1) The DV user utilized appropriate treatment processes; (2) the DV user has a letter issued by a Board-approved process authority that validated that the treatment achieves a 4-log reduction of *Salmonella;* (3) personnel and procedures used at the facility ensure that treatment parameters were followed; and (4) records are retained for two years that document the treatment of almonds, or that any untreated almonds were properly disposed of as outlined above. A summary audit report of the DV user will be sent to the Board within 10 days of the audit. DV user auditors must submit an application to the Board on ABC Form No. 53, ''Application for Direct Verifiable (DV) Program Auditors,'' and be approved by the TERP. Should the applicant disagree with the TERP's decision concerning approval, it may appeal the decision in writing to the Board, and ultimately to USDA. Additionally, the TERP may revoke any approval for cause. The TERP must notify the DV auditor in writing of the reasons for revoking the approval. If the DV auditor disagrees with the TERP's decision, it may appeal the decision in writing to the Board, and ultimately to USDA. A DV auditor whose approval has been revoked must submit a new application to the TERP and await approval.

The Board recommended including Mexico and Canada as part of the DV program for compliance purposes. The Board was concerned that handlers could circumvent the regulation by shipping untreated almonds to Mexico or Canada, then, bring them back into the U.S. and sell them in normal market channels.

Shipments Outside of the U.S., Canada, or Mexico

Handlers may also ship untreated almonds directly to locations outside the U.S., Canada, or Mexico, provided that each container of such almonds is prominently identified with the term unpasteurized. The lettering must be on one outside principal display panel, at least ½ inch in height, clear and legible. Again, if a third party is involved in the transaction, the handler must provide sufficient documentation to the Board to track the shipment from the handler's facility directly to the importer in the foreign country.

Accordingly, a new paragraph (b) regarding outgoing quality control and a mandatory program to reduce the potential for *Salmonella* bacteria contamination in almonds is added to § 981.442 of the order's administrative rules and regulations.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis. Comments concerning the impact of the rule on small entities are discussed in the **Analysis of Comments** section below.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 6,000 producers of almonds in the production area and approximately 115 handlers subject to regulation under the marketing order. Additionally, the Board estimates there will be about 25 process authorities, 53 almond manufacturers, 50 DV program auditors, and 20 off-site California treatment facilities (non-handlers) impacted by this rule. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,500,000.

Data for the most recently completed crop year indicate that about 52 percent of the handlers shipped under $6,500,000 worth of almonds. Dividing average almond crop value for 2003–2005 reported by the National Agricultural Statistics Service (NASS) ($2.043 billion) by the number of producers (6,000) yields an average annual producer revenue estimate of about $340,000. Based on the foregoing, about half of the handlers and a majority of almond producers may be classified as small entities. While data regarding the size of process authorities, almond manufacturers, DV program auditors, and off-site treatment facilities (non-handlers) is not available, it may be assumed that some process authorities, almond manufacturers, DV program auditors, and off-site California treatment facilities (non-handlers) may be classified as small entities.

The almond industry's 6,000 growers produce approximately 1 billion pounds annually (kernel weight basis). Industry members expect production to increase by 50 percent in the next 3–5 years, due to a significant amount of newly planted acreage that will come into production.

Although the Board currently projects that that there are about 115 handlers, handler number estimates can vary over time. Recent surveys have yielded estimates ranging from 112 (see Table 1) to 117 (see Table 2). Handlers ultimately market their almonds to customers in the U.S. and abroad. As shown in Table

1, the Board estimates that about 27 of 112 handlers handle more than 10 million pounds each, and cumulatively handle 82 percent of the crop.

TABLE 1.—NUMBER OF HANDLERS CATEGORIZED BY SIZE

	Less than 1 million lbs.	Between 1 and 5 million lbs.	Between 5 and 10 million lbs.	More than 10 million lbs.
No. of handlers	41	28	16	27
Percent of crop handled	1	6	11	82

According to data provided by the Board, about 30 percent of California almonds are sold domestically (about 300 million pounds). An estimated 20 percent of the domestic shipments are in the form of manufactured product—blanched, sliced, diced, or otherwise further processed using thermal treatments. About 70 percent of California almond production is exported to more than 80 countries worldwide. Mexico and Canada account for approximately 5 percent of export shipments. The quantities shipped by companies handling almonds vary considerably. However, a limited number of handlers are responsible for the majority of domestic and export shipments as shown in Table 2 below. Table 2 shows that 16 handlers are responsible for 90 percent of domestic shipments. Many of the same handlers are among the 38 that are responsible for 90 percent of exports. About 79 of an estimated 117 handlers are responsible for the remaining 10 percent of export shipments.

TABLE 2.—HANDLER SHIPMENT SUMMARY

	Domestic (U.S.) 300,000,000 pounds	Export to Canada and Mexico 37,600,000 pounds	All export (includes Canada and Mexico) 700,000,000 pounds
No. of handlers responsible for 50 percent of shipments	3	4	9
No. of handlers responsible for 80 percent of shipments	12	16	26
No. of handlers responsible for 90 percent of shipments	16	26	38

This rule adds a new paragraph (b) for outgoing quality control under § 981.442 of the order's administrative rules and regulations, whereby a mandatory program to reduce the potential for *Salmonella* bacteria in almonds will be implemented under the order. Specifically, handlers must subject their almonds to a treatment process that achieves a minimum 4-log reduction in *Salmonella* bacteria prior to shipment. The program exempts handlers who ship untreated almonds under a direct verifiable (DV) program to manufacturers within the U.S., Canada, or Mexico who agree to treat the almonds accordingly. The program also exempts handlers who ship untreated almonds to locations outside of the U.S., Canada, or Mexico. All containers of untreated almonds shipped under the exemptions must be prominently identified with the term ''unpasteurized.'' Authority for the program is provided in § 981.42(b) of the order.

According to the Board, the costs to individual handlers to comply with the program will vary considerably depending on their markets and treatment method(s) chosen. Handlers may: (1) Install new equipment in their processing lines to treat the almonds prior to shipment into commercial channels; (2) outsource to another handler or an off-site facility within California for treatment; (3) transfer their untreated product to another handler who will treat the almonds prior to shipment; (4) ship their untreated almonds to Board-approved DV users or to locations outside of the U.S., Canada, or Mexico; or (5) use a combination of these approaches.

In a handler survey conducted by the Board in March 2005 (to which 116 handlers handling almonds at that time responded), 86 handlers (74 percent) have their own facilities and/or equipment to process almonds; the remainder have almonds processed on their behalf. Of those handlers with their own facilities and/or equipment, 66 (77 percent of 86) indicated they planned to install equipment to treat almonds while the remaining 20 indicated they would outsource to a third party, or custom processor. Again, the overall economic impact of the program will vary based on the approach selected. Smaller handlers may choose to defer purchasing equipment and send their almonds to an off-site facility for treatment until more cost effective technologies are available.

Costs will also vary by treatment method. Some handlers may choose to install PPO chambers at their facilities. Handler sources estimate that typical installation costs for a PPO chamber range from $500,000 to $1,250,000. As with other technologies, overall cost will depend upon how much infrastructure is in place in the processing facility as well as the desired capacity of the chambers. Actual treatment cost for handlers treating their own product is approximately $0.03 per pound, varying with volume and efficiencies. PPO treatment is currently available in the industry on a contract basis at $0.04–$0.05 per pound (including transportation to the facility).

Regarding steam technologies, handler sources estimate the following equipment costs for in-line steam systems designed to treat almonds at varying capacities from 1,000 pounds to over 30,000 pounds of almonds per hour:

TABLE 3.—ESTIMATED EQUIPMENT COSTS FOR STEAM UNITS FOR DIFFERING LEVELS OF TREATMENT CAPACITY

Capacity (pounds per hour)	Equipment costs
1,000	$100,000–$200,000
5,000	300,000–325,000
7,500–15,000	370,000–470,000
20,000–30,000	525,000–800,000
Over 30,000	600,000–1,000,000

While treatment equipment costs will be the most significant outlay, there will also be capital expenditures associated with additional conveyance equipment, boilers, cooling systems, bins, and possible expansion or construction of new buildings. Handler sources estimate these costs to be an additional 50 percent of the treatment equipment costs cited in Table 3, depending on capacity needs, and assuming maximum throughput.

A typical system of 10 million pound annual capacity will be equivalent to 22,000 pounds per hour, which falls in the 20,000 to 30,000 pound per hour range in Table 3. The treatment equipment costs for that capacity range from $525,000 to $800,000. With an additional 50 percent for cost of other related equipment and facility expansion, the costs range from $787,500 to $1,200,000. Handler sources suggest that a figure near the upper end of that range, $1,125,000, is a good point estimate of the cost for a 10,000,000 pound per year treatment line.

An important step in assessing the financial impact of the mandatory treatment program on handlers is to estimate the annualized equipment cost and operating cost of treating the almonds to prevent *Salmonella* contamination. This can be illustrated by additional computations, with 10,000,000 pounds per year serving as a representative level of treatment capacity, as shown in Table 4, third line of column A. Table 4 also shows a range of costs across different levels of handler treatment capacity.

TABLE 4.—ESTIMATE OF AVERAGE ANNUAL EQUIPMENT AND OPERATING COSTS AT VARYING LEVELS OF HANDLER TREATMENT CAPACITY

A Handler annual capacity (Pounds)	B Total equipment cost*	C Annual use cost of equipment, 5 year life**	D Unit Cost of Equipment at: 50% of capacity (C/50% of A)	E Unit Cost of Equipment at: Full capacity (C/A)	F Average operating cost	G Equipment plus operating cost at: 50% of capacity (D + F)	H Equipment plus operating cost at: Full capacity (E + F)
			Cents per pound				
2,000,000	$300,000	$69,292	$0.069	$0.035	$0.0035	$0.0725	$0.0385
5,000,000	487,500	112,600	0.045	0.023	0.0035	0.0485	0.0265
10,000,000	1,125,000	259,845	0.052	0.026	0.0035	0.0555	0.0295
15,000,000	1,500,000	346,460	0.046	0.023	0.0035	0.0495	0.0265
20,000,000	1,650,000	381,106	0.038	0.019	0.0035	0.0415	0.0225

* Equipment cost estimates at varying capacity levels, including treatment chambers, plus an additional 50 percent for conveyors, other equipment and extension of facilities.

** Annualized equipment cost is computed by dividing the equipment purchase cost by 4.3295, which is the Present Value of a $1 annuity for 5 Years (estimated life of the equipment) at a 5 percent interest rate (estimated cost of capital).

Source for equipment and operating costs: Almond handlers.

To obtain the annual unit cost for installing a 10 million pound capacity treatment line (an expenditure of $1,125,000 in column B), the first step is to obtain the annualized equipment cost. The parameters recommended by the handlers were a 5 year equipment life and a 5 percent cost of capital. The annual equipment use factor (4.3295) is the present value of a $1 annuity for 5 years at 5 percent. Dividing the total equipment expenditure of $1,125,000 by 4.3295 yields an annualized equipment cost estimate of $259,845 (column C). Dividing this figure by the annual 10,000,000 pound capacity yields a cost per pound estimate of 2.6 cents (column E). If the treatment line ran at half capacity, the equipment costs per pound would double to 5.2 cents (column D).

This method of computing annualized equipment cost does not account for the tax implications of annual equipment depreciation or for the salvage value at the end of the equipment's useful life. In addition, the useful life of many pieces of equipment may well be over 5 years.

Ongoing operational costs (electricity, etc.) are estimated by handlers to range from $0.0027 to $0.0043 per pound, depending on the system. The midpoint of this range ($0.0035) appears in column F.

The key results from Table 4 are the cost estimates per pound of almonds treated, including both annualized equipment costs and operating costs. The highest cost is 7.25 cents per pound for the smallest handler (2 million pounds treated annually) operating at 50 percent capacity (column G). The lowest cost estimate is 2.25 cents per pound for a handler treating 20 million pounds per year operating at full capacity (column H). These costs can be put in context by comparing them to almond grower prices as reported each year by the NASS. For 2003 to 2005, grower prices averaged $2.07 per pound, computed by dividing the value of production for those three years by the three-year quantity of production. The treatment cost estimates per pound in Table 4 range from 3 percent to 1 percent of the 2003–2005 average grower price, and represent an even smaller proportion of the prices paid to handlers when selling to almond users further down the marketing chain.

A key aspect of handler costs is the proportion of total capacity at which a new production line will operate. Operating at higher capacity spreads the equipment cost across a wider base. For a small handler, investing in equipment with this level of capacity may only be viable economically if the costs are spread over their entire production run, rather than only applying costs to a small portion of their production run. If they do not intend to run their entire production through the treatment process, it may be more viable to outsource the treatment. Costs of contract processing (*i.e.*, batch operations for steam processes or PPO treatment) are estimated to range from $0.04 to $0.05 per pound. This estimate includes additional costs associated

with transporting almonds to a custom facility ($0.01 to $0.015 per pound). For medium-sized and larger handlers, it may be more cost effective to construct a treatment processing line, particularly if they intend to immediately put a significant portion of their production through the process.

Handler sources estimate that the cost of setting up a new oil roast line is $300,000 to $600,000, with operating costs of $0.06 to $0.10 per pound. A blanching line may cost upward of $1,500,000 to $2,500,000 with an operating cost of approximately $0.12 to $0.22 per pound. It is unlikely that handlers will select these technologies unless they are already providing custom processed, value-added products to their customers.

Regarding compliance and oversight costs, it is anticipated that handlers who do not currently have thorough recordkeeping procedures in place will likely have to invest approximately 40–80 person-hours to develop their treatment plan. However, once this document has been created, it will be updated on an annual basis, which will likely involve less time. Validation of treatment systems is estimated to cost from $1,000 to $3,000 per line, depending upon the complexity of the equipment utilized. Treatment technology and equipment that have been modified to the point where operating parameters such as time, temperature, or volume, change must be revalidated. Validation costs are expected to be borne by handlers, as well as DV users and off-site treatment facilities (non-handler). DV audit costs will be borne by DV users.

Handler verification costs may vary, depending on whether the handler is under an on-site program or an audit-based program. The fee for an on-site program will be a minimum charge of $44.00 per hour (with 1 hour required to treat 44,000 pounds), or $0.204 per hundredweight, whichever is greater. The former is equivalent to $1.00 per thousand pounds treated. For an audit-based program, the fee will be a minimum $78.00 per hour. Travel time for both programs will be charged at $44.00 per hour and $0.34 per mile. Verification costs may also be charged to off-site treatment facilities (non-handler); however, such costs may be passed on to the respective handlers using the facility.

Examples of estimated handler verification costs are provided in Tables 5 and 6 below:

TABLE 5.—ANNUAL HANDLER VERIFICATION COSTS: ON-SITE PROGRAM

Audit cost by type	Volume of almonds treated per year				
	100,000 lbs.	2 mill. lbs.	40 mill. lbs.	100 mill. lbs.	250 mill. lbs.
Hourly rate*	$100	$2,000	$40,000	$100,000	$250,000
Per Cwt=$.204	204	4,080	81,600	204,000	510,000

*Hourly rate of $44/hour, with 1 hour required per 44,000 lbs of volume treated (equivalent to $1.00 per thousand pounds treated).

TABLE 6.—ANNUAL HANDLER VERIFICATION COSTS: AUDIT-BASED PROGRAM

	Audit cost by hours required to complete audit*							
	1	2	3	4	5	6	7	8
Audit hourly cost=$78	$78	$156	$234	$312	$390	$468	$546	$624
Auditor Transportation Cost**	32	32	32	32	32	32	32	32
Cost per individual audit	110	188	266	344	422	500	578	656

*Estimated hours per audit varies by volume treated annually: (up to 2 million pounds: 1–3 hours); (more than 2 but less than 40 million pounds: 2–5 hours); (40 million pounds or more: 3–8 hours).

**Estimated auditor transportation cost to each facility is approximately $32: $22 for travel time (1/2 hour @ $44/hour) plus mileage reimbursement of $10 (30 miles @ $0.34 per mile).

The benefits associated with the mandatory program are the avoided costs of a *Salmonella* outbreak. These costs may vary depending on several factors, including the quantity of product recalled, impact on consumer sales, lost customer confidence, insurance costs, and possible litigation. Using 2003–2005 average almond crop value as the basis, a loss of 5 percent would be equal to approximately $102 million.

The Board considered various alternatives and options to a mandatory treatment program. One option was to take no action. However, the Board concluded that this was not in the best interest of the industry nor consumers. The Board believes that the industry should provide consumers with a quality product. Taking no action when there are viable alternatives could be significant in terms of the financial well being of the industry should another outbreak occur that was linked to almonds.

The Board also considered continuing its voluntary action plan alone, without proposing a mandatory program. However, surveys conducted by the Board indicate that not all handlers are implementing the action plan. Thus, the Board concluded that a mandatory program is in the best interest of the industry and consumers.

The Board also considered the effectiveness of testing for *Salmonella* prior to shipment. During the 2001 and 2004 outbreaks, significant amounts of testing occurred at the orchard level, in hulling and shelling facilities, and at retail. However, it was determined by the CDHS, University of California, Davis, and other pathogen experts that testing cannot be relied upon as the only measure to ensure that almonds are *Salmonella* free. Thus, the Board concluded that testing alone was not a viable alternative.

The Board also explored the merits of requiring alternative log reductions. As previously mentioned, the Board initially supported a 5-log reduction, which was FDA's performance standard. However, a risk assessment model demonstrated that a minimum 4-log reduction could provide an appropriate level of consumer protection compared to a 5-log reduction. Thus, the Board concluded that a minimum 4-log reduction was an appropriate standard for almonds.

The Board also explored the merits of whether the DV program should be temporary, whereby all almonds would be treated at the handler level prior to shipment. The Board submitted an initial proposal to USDA in February 2006 that would have ultimately required handlers to treat all almonds prior to shipment, with the DV program being temporary. However, concerns were raised by various parties, including manufacturers, handlers, and foreign countries, regarding the temporary nature of the DV program, and the requirement that all exported almonds be treated prior to shipment. The Board ultimately revised its proposal to remove the proviso regarding discontinuance of the DV program, to allow untreated almonds to be shipped to locations outside the U.S., Canada, or Mexico, and to require that all containers of untreated almonds be prominently identified with the term ''unpasteurized.''

This action imposes additional reporting and recordkeeping burden on California almond handlers, process authorities, almond manufacturers, DV program auditors, and off-site treatment facilities. Process authorities, manufacturers, and DV auditors must submit respective applications to the Board. Almond handlers must submit treatment plans to the Board. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), these new forms and a sample ''Handler Treatment Plan'' were submitted to the Office of Management and Budget (OMB) and have been approved under OMB Control No. 0581–0242, Almonds Grown in California. Specific burdens for the three new applications and handler treatment plan are addressed in the section below titled **Paperwork Reduction Act**. ABC Form No. 7, ''Interhandler Transfer of Almonds,'' has previously been approved by OMB under OMB Control No. 0581–0178, ''Vegetable and Specialty Crop Marketing Orders. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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

Additionally, the meetings were widely publicized throughout the California almond industry and all interested persons were invited to attend the meetings and participate in deliberations on all issues. Between the summer of 2004 and the Board's August 2006, meeting, this issue was addressed at an estimated 12 Board meetings, 18 Food Quality and Safety Committee meetings, and well over 20 task force meetings. All of these meetings were public meetings and all entities, both large and small, were able to express views on this issue. Additionally, the Board issued about 35 updates to handlers regarding its voluntary action plan and progress towards its recommended mandatory program.

Analysis of Comments

A proposed rule concerning this action was published in the **Federal Register** on December 6, 2006 (71 FR 70683). Copies of the rule were also mailed or sent via facsimile to all almond handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 45-day comment period ending January 22, 2007, was provided for interested persons to respond to the proposal. Eighteen comments were received. Of the 18 comments, 3 supported the rule with no changes, 7 supported the rule with modification, 3 were opposed, and the remaining 5 comments raised other issues. The comments are addressed in the following paragraphs.

Comments in Full Support

The three comments which supported the rule with no changes were submitted by a grower cooperative/handler/marketer; a grower/handler; and a trade association representing almond hullers and shellers. One commenter believes the rule is necessary to prevent *Salmonella* from reaching the consuming public via California almonds. Another of the commenters summarized his company's experience in a *Salmonella* outbreak and recall. He contends that, based on his company's experience with treatments, there has been no noticeable impact on product shelf-life, roasting, or flavor to consumers. He added that his raw almond business has increased since implementing 100 percent treatment with no increase in quality complaints. The third commenter believes that the livelihood of the industry is at risk if it does not proceed immediately to mitigate the presence of *Salmonella* in its product. All of the commenters supported implementation of the rule as soon as possible.

Comments in Support, With Modification

The seven comments which supported the rule with modification were submitted by the Board; a trade association representing food, beverage, and consumer product companies; a trade association representing confectionary manufacturers, suppliers, buyers, and brokers; a chocolate and confectionary manufacturer; a processor/marketer of nut products; a handler; and a grower/handler.

Four of the commenters addressed the proposed reporting requirements. Three of these comments expressed concern with an annual submission of an application for DV users. Two suggested that, once the DV user has been approved by the Board and is on an approved list, there is no reason to remove the entity except for cause, or at the request of the DV user. Another suggested that, if a DV user does not change its treatment technology, and if a problem has not been identified by the DV auditor, there is no reason for DV users to reapply annually to the Board. Two commenters suggested that the initial approval for process authorities and DV auditors should be sufficient, adding that agency approval is not required under regulations governing production of low-acid canned foods, which is the source of the process authority concept.

The Board commented that the DV user and auditor applications were designed so that once the entity is originally approved, it would only have to reconfirm participation in subsequent years. A new or modified application would only be necessary in cases where new procedures, equipment, or processing locations have been introduced.

Based on the comments received, USDA has determined that modifications to the proposed rule regarding reporting requirements are warranted. Process authorities, DV users, and DV auditors must submit an initial application to the Board. For subsequent crop years, such approved entities with changes in the information contained in their initial application must submit a new, revised application to the Board for review and approval prior to the start of the crop year. Approved applicants with no changes to their initial application must send the Board a letter, signed and dated, indicating that there are no changes to the application the Board has on file. In the new § 981.442(b)(3) regarding the application for process authorities, § 981.442(b)(6)(i) regarding the application for DV users, and

§ 981.442(b)(6)(i)(D) regarding the application for DV auditors are revised accordingly. The revised reporting burdens are addressed in the section below titled **Paperwork Reduction Act**.

Three of the comments raised various issues regarding process authorities. One issue concerned the release of proprietary information regarding manufacturers' processes. Two commenters suggested adding language to the regulatory text that clarifies, as the preamble does, the role of process authorities in establishing technologies for manufacturers, in particular, the protection this option provides regarding proprietary data under the DV program. The commenters want to ensure that disclosure of data on manufacturers' proprietary processes is not required for determination of acceptance by the TERP of manufacturers' treatment processes. The Board commented that process authorities for DV users must provide reports to the Board that contain sufficient content to describe the verification methodologies that were used to establish that the treatment processes and technologies achieve a minimum 4-log reduction in *Salmonella* bacteria. The Board contends that the TERP would not require information regarding manufacturers' proprietary manufacturing processes.

As previously stated, manufacturers' use of treatment processes established by process authorities was included in the regulation to address concerns regarding the release of data on manufacturers' proprietary processes to the TERP. Modification of the regulatory text to address this is not warranted. However, USDA concurs that the Board needs documentation to ensure that processes established by process authorities achieve a 4-log reduction in *Salmonella* bacteria. Accordingly, § 981.442(b)(6)(i)(C) is revised to specify that DV users must provide documentation with their DV application to the TERP to verify that their treatment technology and equipment have been validated by a Board-approved process authority. Such documentation may include, but not be limited to, a letter from such process authority certifying the validation. Finally, such documentation must be sufficient to demonstrate that the treatment processes and equipment achieve a 4-log reduction in *Salmonella* bacteria. The revised reporting burden regarding DV users is addressed in the section below titled **Paperwork Reduction Act**.

Two commenters requested that the rule be clarified to specify that process authorities may be employees of a manufacturer, which is similar to process authorities for low-acid canned foods. USDA concurs, but notes that it is essential to ensure that process authorities act in a neutral, unbiased manner for both manufacturers and handlers. Accordingly, paragraph (b)(3) in § 981.442 has been modified to specify that process authorities may be employees of the entity for which they are conducting validation.

The rule has also been clarified to specify that DV auditors may not be employees of manufacturers they are auditing. It is important that a third party perform the audit to ensure the integrity of the DV program. Accordingly, paragraph (b)(6)(i)(D) in § 981.442 has been modified to specify that DV auditors may not be employees of the entity for which they are conducting an audit.

Two commenters also suggested adding language to the regulatory text that clarifies, as the preamble does, the criteria that process authorities must meet in order to be approved by the TERP. This criteria includes the following: (1) Knowledge about the equipment used for the treatment process; (2) experience in conducting appropriate studies to determine the ability of the equipment to deliver the appropriate treatment (such as heat penetration or heat distribution); and (3) able to determine that sufficient data has been gathered to identify the critical factors needed to ensure the quality of the final product. Accordingly, paragraph (3) in the new § 981.442(b) has been modified accordingly.

The Board commented that the rule be clarified to specify that persons, not an organization, must submit applications for approval as process authorities. It is the Board's intent that persons, not organizations, be approved process authorities. The Board wants to ensure that persons conducting validation are qualified to do so. USDA concurs with the comment. Paragraph (3) in the new § 981.442(b) has been modified accordingly.

The Board also commented that the rule be clarified to specify that, under the DV program, almonds must be shipped by handlers directly to approved manufacturer locations where such almonds will be treated. The Board contends that, without direct shipment, it would be impossible to ensure that almonds were being shipped to a facility where treatment would occur. Indirect shipments to third parties could lose identity and be difficult to track. USDA concurs with the comment. While a third party may be involved in the transaction, shipments to a third party and then to a manufacturing location are not permitted under the DV program. Paragraph (b)(6)(i) of § 981.442 has been modified accordingly.

Related to the issue of direct DV shipments, one commenter stated that two small roasters indicated to him they would like to see the rule revised to allow use of a custom vendor under the DV program. USDA assumes this means that the almonds would be shipped outside the production area to a non-manufacturing entity or third party for treatment. Based on the reasons stated in the preceding paragraph regarding the need to track shipments to approved manufacturer locations, the comment is denied.

Two commenters provided recommendations regarding the frequency of USDA audits for handlers under the audit-based verification program. In its comment, the Board agreed that audit frequency be tied to handler performance, and suggested that, during the first year, audits be conducted during month 1, 3, 6, and 12. If all procedures are in place and documentation is accurate, in the second year, audits should only be conducted once every 6 months. Another commenter suggested that two audits be conducted for the first year, but less frequently in subsequent years when the program is ongoing unless equipment changes are made to the technology used by the handler; the commenter suggested audits every 24 months in subsequent years.

USDA has taken these suggestions under consideration in development of its handler audit plan. However, handler audit frequency is not a part of the regulatory text of this rule. Accordingly, no changes have been made to the proposed rule based on these comments.

One commenter requested that the Board (TERP) provide process authorities critical ranges, or minimum standards, for variables and conditions that are critical to PPO and other treatment processes. USDA understands that it is the Board's intent to make this information available to process authorities and other interested parties (*i.e.*, equipment manufacturers, handlers, or scientists). Paragraph (b)(3) of § 981.442 is modified accordingly.

Related to validation, one commenter stated that, to-date, there is no surrogate organism for validating dry roasting processes. This is correct. USDA understands that the Board continues to fund research for non-pathogenic surrogates that could be used for validating both moist and dry heat treatment processes. Until these are available, validation for moist and dry heat processes must be done with

Salmonella bacteria. Validation with live *Salmonella* is not necessary for PPO, blanching, or oil roasting because the Board has developed specific protocols and parameters for these processes.

Two commenters suggested that the rule be modified to specify time frames for the approval of process authorities; one suggested a 45-day time frame for approval, and one suggested a 30-day time frame for approval, and 2 weeks for appeals. One of the commenters also suggested time frames for approval of applications for DV users and DV auditors—30 day time frame for approval, and 2 weeks for appeals.

Timely review of these applications is important. USDA will work with the Board to ensure quick review and response. However, it is not necessary to specify time frames within the regulation. Thus, these comments are denied.

One commenter suggested that DV users be audited no more than once every 2 years. Although not specified in the regulatory language, the preamble indicates that DV users will be audited within 1–2 months after the start of treatments, and at least once every 12 months thereafter. An annual audit of DV users is appropriate to maintain the integrity of the mandatory program. Thus, the comment is denied.

Three commenters expressed concern with the impact of treatments on the quality, shelf-life, and/or sensory characteristics of almonds. One contends that the Board's quality research is still ongoing. Another contends that treated and untreated almonds should be comparable in terms of taste, nutritional composition, product performance, color, appearance, and shelf-life; the commenter requested that the Board or TERP require extensive product testing of any potential new technology to assure the consuming public that such almonds are materially unchanged in regard to their eating quality.

In early 2006, the Board allocated $1 million towards a project to ensure that appropriate treatment resulted in no significant degradation of the almonds. The Board formed a team comprised of manufacturers, handlers, technical experts, and Board staff to develop the parameters of the research project and evaluate the results. Control almonds were compared with almonds that were subjected to PPO and two different moist heat treatments. Control and treated almonds were also roasted. The Board indicated it its comments that the team met in January 2007 and reviewed the following findings. There were no indications to-date of significant degradation or product deterioration when comparing treated samples with control samples. Data presented by a confectionary manufacturer regarding a pilot trial with treated, consumer ready product indicated that the product chemistry does not present any evidence of degradation in raw or roasted almonds. Also, as mentioned earlier, one commenter who was involved in a recall contends that, based on his company's experience with treatments, there has been no noticeable impact on product shelf-life, roasting, or flavor to consumers. No changes have been made to the proposed rule based on these comments.

One commenter expressed concern with the treatment cost estimates in the proposed rule. Costs for steam and PPO treatments were estimated between $0.02—$0.07 per pound. The commenter represents confectionary companies and contends that costs to its members would be slightly higher, depending on broker fees and the volume of almonds purchased. The commenter estimates that there could be an additional cost of $0.05 to $0.10 per pound for treated almonds purchased by small and medium confectionary companies that purchase lesser volumes of almonds through brokers.

While costs to these buyers could be slightly higher if they purchased treated almonds, the benefits of this rulemaking action outweigh the costs. Additionally, confectionary companies will still be able to purchase untreated almonds. No changes have been made to the proposed rule based on this comment.

Several of the comments addressed PPO. One commenter contends that PPO is not permitted to-date in Canada, the European Union (EU), or Mexico. While it is true that PPO is not permitted in the EU and Canada, it is permitted in Mexico. Regarding shipments to the EU, under the mandatory program, handlers may ship almonds untreated to the EU, provided such almonds are labeled ''unpasteurized.'' Almonds shipped to Canada can be treated with one of the other available technologies, or can be shipped untreated to DV users in that country. No changes have been made to the proposed rule based on these comments.

One of the commenters stated that they support pasteurization, but believe it should not be at the handler level, and questioned the authority to impose such a requirement through this rulemaking. The commenter contends that the safety of almond-containing products can be assured by treating almonds after they leave control of the handler, and that later treatment furthers food safety objectives by affording less opportunity for re-contamination of almonds. The commenter argues that only treated almonds should be sold to those who plan to sell them to consumers as raw or natural almonds.

USDA is implementing this rulemaking action under the quality control authority contained in the almond marketing order. Under the Act, the authorizing statute for all marketing orders, regulations may only be implemented at the handler level. Thus, no changes have been made to the proposed rule based on this comment.

One of the commenters indicated his support for 100 percent pasteurization for all almonds. He stated that, given the food safety risks, available control technologies and protocols, he strongly encourages USDA to make almond pasteurization mandatory for all almonds.

As stated earlier in this rule, the Board's initial proposal to USDA in February 2006 would have ultimately required handlers to treat all almonds prior to shipment. However, concerns were raised by various parties, including manufacturers, handlers, and foreign countries, regarding the temporary nature of the DV program, and the requirement that all exported almonds be treated prior to shipment. The Board ultimately revised its proposal to remove the proviso regarding discontinuance of the DV program, to allow untreated almonds to be shipped to locations outside the U.S., Canada, or Mexico, and to require that all containers of untreated almonds be prominently identified with the term ''unpasteurized.''

Although this rule does not mandate treatment for all California almonds, it will help to ensure consumers receive a good quality product, while at the same time addressing global customer needs. No changes will be made to the rule based on this comment.

One commenter asked for USDA's assistance in getting PPO approved for use in all export markets. The commenter also asked USDA to pursue avenues to provide $3–$5 million to the almond industry over the next 5 years for research to continue development of additional food safety issues, including aflatoxin and pasteurization. These requests are outside the scope of this rulemaking action. Thus, no changes have been made to the proposed rule based on this comment.

Comments Opposed or Raising Other Issues

The three comments opposed to the rule were submitted by small handlers and one was submitted by an agricultural consultant. All of the

commenters contend that the rule will put small handlers out of business. One small handler said that 40 percent of his shipments are brown skin, and 60 percent are manufacturered. Almost all of his sales are domestic, with some product shipped to Canada and Mexico. Two commenters said that their businesses were geared toward providing product to buyers and consumers quickly. Both of these commenters contend that the technologies are too expensive for small handlers. Both also expressed concern with the cost of contracting out for treatment. One stated that having product treated ahead of time is problematic because one may not know the container-size that buyers want prior to treatment. Concern was also expressed with the quality of treated almonds, stating that there are only two methods of treatment to-date—PPO and steam (moist heat). One commenter also contends that consumers should have a choice to buy raw or processed almonds, and that labeling almonds as non-pasteurized would be acceptable to many.

USDA has evaluated the impact of this rulemaking action on small handlers. There is an added expense for handlers who ship primarily domestic to entities that are not DV users. Their almonds must be treated prior to shipment. Such handlers must evaluate their own business situation to determine the merits of investing in treatment equipment or contracting out for treatment. As previously stated, PPO treatment is currently available on a contract basis at $0.04–$0.05 per pound (including transportation to the facility). Also, the Board continues to fund research projects to develop additional treatment methods. USDA understands the challenges facing small handlers; however, USDA is also concerned about the impact of another *Salmonella* outbreak linked to almonds on the industry as a whole. USDA supports the Board's proposal for a mandatory treatment program for almonds.

The concern raised regarding the impact of treatments on the quality of almonds was addressed earlier in this document. Preliminary results of a comprehensive study conducted by the Board in conjunction with manufacturers and handlers, has shown no significant degradation in the quality or shelf-life of almonds. Again, no changes have been made to the proposed rule based on concerns regarding quality.

In response to the comment that consumers should have a choice to buy raw or processed almonds, and the suggestion that almonds be labeled as non-pasteurized, USDA assumes that the commenter means labeling at the consumer level. The Act provides authority for requirements under a marketing order at the handler level, not the consumer level. Thus, no changes have been made to the proposed rule based on this comment.

Two comments were submitted by a small handler and a collective group of three handlers/growers requesting delayed implementation of the rule. The proposed rule stated that the mandatory program would take effect on August 1, 2007, the start of the 2007–08 crop year, with handlers submitting their treatment plans for 2007–08 by May 1, 2007. The three growers/handlers raised concerns about available treatment capacity, and contend that it is logistically impossible to implement the program by August 1, 2007. They expressed concern with potentially only a 3-month lag between publication of the final rule and implementation of the program. The small handler requested delayed implementation until issues for small handlers are addressed guaranteeing that they will not be forced out of business.

Regarding capacity, the commenters contend that more technologies are needed and believe that, once the rule becomes mandatory, more companies will likely submit protocols to TERP for review acceptance. The commenters summarized their understanding of available technologies, and contend that the mandatory program would restrict commerce due to insufficient capacity. The comment contends the following. There are three moist heat processes accepted by the TERP. The latest process (A) recently received ''approval'' for one chamber, and is operating at one facility in central California. Another process (B) has been TERP-accepted with no systems built, and the third (C) has three systems in place primarily for private use, and limited capacity for outside custom volume. Regarding PPO, the commenters contend there are limited facilities in California. The largest facility available is in Nevada, outside the production area of California. They contend that, due to capacity constraints, only a fraction of the needed PPO space is available. The comment also raises concerns regarding fees and availability for custom treatment, particularly if the time frame between publication of the final rule and implementation of the program is only 3 months. If a handler were going to build his/her own facility, the comment estimates that construction and validation could take more than 1 year.

In response to concerns regarding technology and available capacity, the comment is correct in that there are three moist heat processes accepted to-date by the TERP. However, as shown below in Table 7, moist heat capacity is estimated at a minimum 652 million pounds. The comment is correct that one chamber for Process A in central California has been validated and is in operation (100 million pound capacity). However, that machine has two other chambers to be validated. Once validation is completed, an additional 200 million pounds of capacity will be available. Regarding process B, the comment is incorrect that a machine has not yet been built. In fact, a machine has been built and is being installed (88 million pound capacity). For process C, one machine is operational, and in-plant validation is starting on two additional machines (another 176 million pounds in capacity).

TABLE 7.—MOIST HEAT CAPACITY

Moist heat process	Status	Capacity (pounds)
A	—3 chambers for one machine in one plant, 1 chamber validated and operational.	[1] 100
	—Other 2 chambers to be validated.	[1] 200
B	—1 machine being installed (validated in industrial warehouse).	[1] 88
C	—1 machine validated and operational.	[1] 88
	—2 machines in process of in-plant validation.	[1] 176

Total capacity 652 million.
[1] In millions.

Regarding PPO, the comment is correct in that handlers must treat their almonds within the production area of California. However, the comment is incorrect that PPO capacity in California is limited. Board data indicates available PPO capacity within California of at least 250 million pounds. Thus, total capacity from moist heat and PPO is estimated at over 800 million pounds. Additional machines and equipment are likely to be built in the future. Raw domestic almond shipments (240 million pounds) and shipments to Canada and Mexico (36.7 million pounds) total about 276 million pounds. Thus, there will be more than sufficient capacity to treat all of this production.

No changes have been made to the proposed rule due to concerns regarding capacity.

In response to the suggestion that implementation of the program be delayed, USDA believes this has merit. USDA concurs that sufficient time is needed between publication of the final rule and implementation of the mandatory program. Once the final rule is published, the Board must circulate applications to prospective process authorities, DV users, and DV auditors. Time is needed for application submission, review, and approval. Treatment technology and equipment must be validated by Board-approved process authorities. Handlers must develop and submit treatment plans to USDA and the Board for review and approval. Small handlers without treatment equipment must arrange for outsourcing treatment and may have to make adjustments in their business practices. For example, they may have to treat their almonds ahead of time, work with their customers to assess their needs regarding container size, etc. earlier than in the past, or perhaps try to develop new customers that could qualify as DV users.

USDA has determined that about a 5-month lag time between publication of the final rule and implementation of the program is appropriate. USDA assessed the merits of waiting another complete crop year for implementation, August 2008, and believes that such a delay would not be warranted. USDA considered a September 1, 2007, date for implementation. New crop shipments begin September 1, so this date would ensure that 2007–08 crop almonds are covered under the program. Accordingly, in the new § 981.442(b), the introductory text in paragraph (b) is modified to specify a September 1, 2007, implementation date, and paragraph (b)(4)(i) is modified to specify that, for the 2007–08 crop year, handler treatment plans must be submitted by May 31, 2007, rather than May 1, 2007.

Another commenter contends that the DV program is the only viable and rational option to adopt and maintain, and supports the labeling of untreated product shipped to approved DV users within the U.S., Canada, and Mexico, and outside these areas, provided product is labeled. The commenter does not support 100 percent treatment for all almonds when only 5 percent of almonds are consumed raw. In response, the rule provides for a DV program, labeling of untreated product, and does not require all almonds to be treated prior to shipment.

Another commenter suggested that the word ''pasteurized'' or ''unpasteurized'' on containers be both in English and in the language used by the receiving country. The Board addressed this concern in its comment. The Board contends that translating the word ''unpasteurized'' on containers is not feasible because it is not always clear what the final destination will be. The Board suggests that all markings on containers be in English for ease of translation if so required by the country into which the goods will enter. USDA concurs with the Board. Regarding the word ''pasteurized,'' the regulation does not require treated containers of almonds to be labeled. No changes have been made to the proposed rule based on this comment.

Another commenter contends that the industry's concern regarding California almonds being shipped back into the U.S. from Canada and Mexico is unfounded. He contends that freight costs and difficulties with getting the goods through customs would prohibit transshipments. The Board discussed this issue in depth prior to making its recommendation to treat Canada and Mexico similar to the U.S. under the mandatory program. The Board concluded that transshipments could be a problem. USDA concurs with the Board. The comment is denied.

Paperwork Reduction Act

The proposed rule published on December 6, 2006, provided for a 60-day comment period on the reporting requirements contained in the rule. That period ended on February 5, 2007. Four comments were received that concern reporting requirements and are addressed in the *Analysis of Comments* section above. Based on these comments, the reporting burdens were revised for the applications for process authorities, DV users, and DV program auditors. These entities must submit an initial application to the Board. For subsequent years, rather than submitting new applications, approved applicants with no changes to their initial applications must send the Board a letter, signed and dated, indicating there are no changes to the application the Board has on file. Additionally, DV users must submit with their application documentation to verify that their treatment technology and equipment were validated by a Board-approved process authority, and to demonstrate appropriate treatment processes. The revised reporting burdens are as follows.

Regarding ABC Form No. 51, ''Application for Process Authority for Almonds,'' it is estimated that it will take a process authority about 2 hours per response (same as proposal) for the first year of regulation, but only .25 hours per response each year thereafter (a reduction of 1.75 hours), and that 25 process authorities will respond. Thus, the total annual reporting burden for the form is estimated at 50 hours (same as proposal) for the first year of regulation, and 6.25 hours for each year thereafter (a reduction of 43.75 hours).

Regarding ABC Form No. 52, ''Application for Direct Verifiable (DV) Program for Further Processing of Untreated Almonds,'' it is estimated it will take a manufacturer about 1.5 hours per response (.5 hours more than initially proposed) for the first year of regulation. The additional .5 hours addresses the time for DV users to include documentation with their application to verify that their treatment technology and equipment were validated by a Board-approved process authority. It is estimated that it will take a manufacturer only .25 hours per response each year thereafter, and that 53 manufacturers will respond each year. Thus, the total annual reporting burden for the form is estimated at 79.5 hours (26.5 hours more than initially proposed) for the first year of regulation, and 13.25 hours for each year thereafter (a reduction of 66.25 hours).

Regarding ABC Form No. 53, ''Application for Direct Verifiable (DV) Program Auditors,'' it is estimated it will take a DV auditor about 1 hour per response for the first year of regulation, but only .25 hours per response (a reduction of .75 hours) each year thereafter, and that 50 auditors will respond. Thus, the total annual reporting burden for the form is estimated at 50 hours for the first year of regulation, and 12.5 hours for each year thereafter (a reduction of 37.5 hours).

As previously stated, in accordance with the PRA, the information collection was submitted to the OMB and was approved under OMB Control No. 0581–0242, Almonds Grown in California.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matters presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because handler treatment plans for the 2007–08 crop year are due to the Board and USDA by May 31, 2007, and mandatory compliance with this rule begins September 1, 2007. Handlers are aware of this action which was unanimously recommended at a public meeting. Additionally, a 45-day comment period was provided for in the proposed rule, and all comments received were addressed herein.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 981.442 is amended by redesignating the undesignated text following paragraph (a)(7)(iv) as paragraph (a)(7)(v) and by adding paragraph (b) to read as follows:

§ 981.442 Quality control.

* * * * *

(b) *Outgoing.* Pursuant to § 981.42(b), beginning September 1, 2007, and except as provided in § 981.13 and in paragraph (b)(6) of this section, handlers shall subject their almonds to a treatment process or processes prior to shipment to reduce potential *Salmonella* bacteria contamination in accordance with the provisions of this section.

(1) *Treatment process.* Treatment processes shall utilize technologies that have been determined to achieve in total a minimum 4-log reduction of *Salmonella* bacteria in almonds, pursuant to a letter of determination issued by the Food and Drug Administration (FDA), or acceptance by a scientific review panel as identified by the Board (Technical Expert Review Panel or ''TERP''). Such panel shall be approved at least annually by the Board prior to the beginning of each crop year, or as needed during the crop year.

(2) *On-site versus off-site treatment.* Handlers shall subject almonds to a treatment process or processes prior to shipment either at their handling facility (on-site), or at an off-site treatment facility located within the production area. Transportation of almonds by a handler to an off-site treatment facility shall not be deemed a shipment.

(3) *Validation by process authorities.* Handlers shall only use, or transport their almonds to off-site treatment facilities that use treatment processes that have been validated by a Board-approved process authority. Treatment technology and equipment that have been modified to a point where operating parameters such as time, temperature, or volume change, shall be revalidated.

(i) Validation means that the treatment technology and equipment have been demonstrated to achieve in total a minimum 4-log reduction of *Salmonella* bacteria in almonds.

(ii) A process authority is a person that has expert knowledge of appropriate processes for the treatment of almonds as defined in paragraph (b)(1) of this section, and meets the following criteria:

(A) Knowledge about the equipment used for the treatment process;

(B) Experience in conducting appropriate studies to determine the ability of the equipment to deliver the appropriate treatment (such as heat penetration or heat distribution); and

(C) Able to determine that sufficient data has been gathered to identify the critical factors needed to ensure the quality of the final product.

(iii) Process authorities may be employees of the entity for which they are conducting validation. The Board shall provide process authorities specific protocols and parameters for treatment processes that are FDA determined or TERP accepted.

(iv) Process authorities must submit an initial application to the Board on ABC Form No. 51, ''Application for Process Authority for Almonds,'' and be approved by the TERP. Should the applicant disagree with the TERP's decision concerning approval, the applicant may appeal the decision in writing to the Board, and ultimately to USDA. For subsequent crop years, approved applicants with no changes to their initial application must send the Board a letter, signed and dated, indicating that there are no changes to the application the Board has on file.

(v) The TERP may revoke any approval for cause. The TERP shall notify the process authority in writing of the reasons for revoking the approval. Should the process authority disagree with the TERP's decision, he/she may appeal the decision in writing to the Board, and ultimately to USDA. A process authority whose approval has been revoked must submit a new application to the TERP and await approval.

(4) *Compliance and verification.* In accordance with the requirements of this paragraph, handlers shall utilize either an on-site verification program (traditional), or an audit-based verification program to ensure that their almonds have been subjected to a treatment process to reduce *Salmonella* bacteria prior to shipment. Each handler may decide which verification program would be the most cost-effective for his or her operation.

(i) By May 31, each handler shall submit to the Board a Treatment Plan for the upcoming crop year. A Treatment Plan shall describe how a handler plans to treat his or her almonds, and must address specific parameters as outlined by the Board for the handler to ship almonds. Such plan shall be reviewed by the Board, in conjunction with the inspection agency, to ensure it is complete and can be verified, and be approved by the Board. Almonds sent by a handler for treatment to an off-site facility affiliated with another handler shall be subject to the approved Treatment Plan utilized at that facility. Handlers shall follow their own approved Treatment Plans for almonds sent to an off-site facility that is not affiliated with another handler.

(ii) Handlers utilizing an on-site verification program shall cause the inspection agency to verify that their Treatment Plans have been followed, and that their almonds have been subjected to a treatment process that has been validated by a Board-approved process authority. Such handlers shall submit, or cause to be submitted, a verification report to the Board. The inspection agency must physically observe the treatment process to issue such report.

(iii) Handlers utilizing an audit-based verification program shall be subject to periodic audits conducted by the inspection agency. The inspection agency shall provide copies of the audit report to the Board. Handlers who do not comply with an audit-based verification program shall be required to revert to an on-site verification program.

(iv) Interhandler transfers of almonds may or may not be treated prior to transfer. Handlers receiving untreated almonds from another handler shall be responsible for treating the product. Handlers receiving treated almonds from another handler must have procedures outlined in their Treatment Plan addressing how the integrity of the treated almonds will be maintained. In all instances involving interhandler transfers, the receiving handler shall be

responsible for ensuring that the almonds are treated prior to shipment and maintaining documentation to that effect.

(v) An off-site treatment facility that does not handle almonds, pursuant to § 981.16, shall provide access to the inspection agency and Board staff for verification of treatment and review of treatment records. A treatment process at an off-site treatment facility that has been validated by a Board approved process authority is deemed to be approved by the Board for handler use. The Board may revoke any such approval for cause. The Board shall notify the off-site treatment facility of the reasons for revoking the approval. Should the off-site facility disagree with the Board's decision, it may appeal the decision in writing to USDA. Handlers may treat their almonds only at off-site treatment facilities that have been deemed to be approved by the Board.

(5) *Records.* Handlers shall maintain records and documentation that will be subject to audit by the Board for the purpose of verifying compliance with this section. Records must be maintained for two full years following the end of the crop year, and must identify lots from the point of treatment forward to the point of shipment by the handler. Lot identification shall also provide the ability to differentiate treated from untreated product. Off-site treatment facilities that do not handle almonds pursuant to § 981.16, shall maintain treatment records for 2 full years following the end of a crop year and make such records available to the Board.

(6) *Exemptions.* Handlers may ship untreated almonds under the following conditions. For purposes of this section, container means a box, bin, bag, carton, or any other type of receptacle used in the packaging of bulk almonds.

(i) Handlers may ship untreated almonds for further processing directly to manufacturers located within the U.S., Canada or Mexico. This program shall be termed the Direct Verifiable (DV) program. Handlers may only ship untreated almonds to manufacturers who have submitted ABC Form No. 52, ''Application for Direct Verifiable (DV) Program for Further Processing of Untreated Almonds,'' and have been approved by the TERP. Such almonds must be shipped directly to approved manufacturing locations, as specified on Form No. 52. Such manufacturers DV users must submit an initial Form No. 52 to the Board and be approved by the TERP. Should the applicant disagree with the TERP's decision concerning approval, it may appeal the decision in writing to the Board, and ultimately to USDA. For subsequent crop years, approved applicants with no changes to their initial application must send the Board a letter, signed and dated, indicating that there are no changes to the application the Board has on file. The TERP may revoke any approval for cause. The TERP shall notify the manufacturer in writing of the reasons for revoking the approval. Should the manufacturer disagree with the TERP's decision, it may appeal the decision in writing to the Board, and ultimately to USDA. A manufacturer whose approval has been revoked must submit a new application to the TERP and await approval. The Board shall issue a DV User code to an approved manufacturer. Handlers must reference such code in all documentation accompanying the lot and identify each container of such almonds with the term ''unpasteurized.'' Such lettering shall be on one outside principal display panel, at least ½ inch in height, clear and legible. If a third party is involved in the transaction, the handler must provide sufficient documentation to the Board to track the shipment from the handler's facility to the approved DV user. While a third party may be involved in such transactions, shipments to a third party and then to a manufacturing location are not permitted under the DV program. Approved DV Users shall:

(A) Subject such almonds to a treatment process or processes using technologies that achieve in total a minimum 4-log reduction of *Salmonella* bacteria as determined by the FDA, accepted by the TERP, or established by a process authority approved in accordance with and subject to the provisions and procedures of paragraph (b)(6) of this section. Establish means that the treatment process and protocol have been evaluated to ensure the technology's ability to deliver a lethal treatment for *Salmonella* bacteria in almonds to achieve a minimum 4-log reduction;

(B) Identify the manufacturing locations where treatment will occur;

(C) Have their treatment technology and equipment validated by a Board-approved process authority, and provide documentation with their DV application to verify that their treatment technology and equipment have been validated by a Board-approved process authority. Such documentation may include, but not be limited to, a letter from such process authority certifying the validation. Such documentation shall be sufficient to demonstrate that the treatment processes and equipment achieve a 4-log reduction in *Salmonella* bacteria. Treatment technology and equipment that have been modified to a point where operating parameters such as time, temperature, or volume change, shall be revalidated;

(D) Have their technology and procedures verified by a Board-approved DV auditor to ensure they are being applied appropriately. A DV auditor may not be an employee of the manufacturer that he/she is auditing. DV auditors must submit a report to the Board after conducting each audit. DV auditors must submit an initial application to the Board on ABC Form No. 53, ''Application for Direct Verifiable (DV) Program Auditors,'' and be approved by the TERP. Should the applicant disagree with the TERP's decision concerning approval, it may appeal the decision in writing to the Board, and ultimately to USDA. For subsequent crop years, approved DV auditors with no changes to their initial application must send the Board a letter, signed and dated, indicating that there are no changes to the application the Board has on file. The TERP may revoke any approval for cause. The TERP shall notify the DV auditor in writing of the reasons for revoking the approval. Should the DV auditor disagree with the TERP's decision, it may appeal the decision in writing to the Board, and ultimately to USDA. A DV auditor whose approval has been revoked must submit a new application to the TERP and await approval;

(E) Maintain all records regarding validation and verification of treatment methods, processing, and product traceability. Such records shall be retained for two years and shall be made available for review by the Board; and,

(F) Ship any almonds which will not be treated to a handler, to another approved DV user, to locations outside the U.S., Canada, and Mexico (containers must remain identified with the term ''unpasteurized''), as specified in § 981.442(b)(6)(i), or dispose of such almonds in non-edible channels.

(ii) Handlers may ship untreated almonds directly or through a third party to locations outside the U.S., Canada, and Mexico, provided that each container of such almonds is identified with the term ''unpasteurized.'' Such lettering shall be on one outside principal display panel, at least ½ inch in height, clear and legible. If a third party is involved in the transaction, the handler must provide sufficient documentation to the Board to track the shipment from the handler's facility to the importer in the foreign country.

(7) *Other restrictions.* The provisions of this section do not supersede any restrictions or prohibitions regarding almonds grown in California under the Federal Food, Drug and Cosmetic Act,

or any other applicable laws or regulations or the need to comply with applicable food and sanitary regulations of city, county, State or Federal agencies.

Dated: March 26, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07–1557 Filed 3–27–07; 10:50 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE255; Special Conditions No. 23–195A–SC]

Special Conditions: Aviation Technology Group (ATG), Inc., Javelin Model 100 Series Airplane; Flight Performance, Flight Characteristics, and Operating Limitations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Amended final special conditions.

SUMMARY: These amended special conditions are issued for the Aviation Technology Group (ATG), Inc., Javelin Model 100 Series airplane. This is an amendment to special condition 23–195–SC, which was published on February 1, 2007 (72 FR 4618), for certain novel or unusual design features associated with engine location, certain performance, flight characteristics and operating limitations. The original final special conditions were more generic and contained requirement language that was not necessary for jet airplanes. This amendment also corrects several references to part 23 sections to be consistent with these special conditions.

This airplane will have a novel or unusual design feature(s) associated with engine location, certain performance, flight characteristics and operating limitations necessary for this type of airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is March 23, 2007.

FOR FURTHER INFORMATION CONTACT: J. Lowell Foster, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Room 301, Kansas City, Missouri, 816–329–4125, fax 816–329–4090.

SUPPLEMENTARY INFORMATION: The final special conditions with a request for comments were published on February 1, 2007 (72 FR 4618). No comments were received. These amended final special conditions remove requirement language that is not necessary for jet airplanes.

Background

On February 15, 2005, Aviation Technology Group (ATG); 8001 South InterPort Boulevard, Suite 310; Englewood, Colorado 80112–5951, applied for a type certificate for their new Model 100 Javelin airplane in accordance with the airworthiness standards in 14 CFR, part 23. The Javelin is a two-place, twin engine, turbofan-powered light jet airplane with a planned maximum operating altitude of 45,000 feet. Part 23 regulations in effect on the date of ATG's application do not contain adequate or appropriate safety standards for a small, high performance jet airplane such as the Javelin. In accordance with Small Airplane Directorate policy, the safety standards for flight performance, flight characteristics and operational limitations that the Federal Aviation Administration (FAA) finds necessary to establish an acceptable level of safety for this type of airplane are presented in this special condition.

Final special conditions with request for comments were issued on January 24, 2007, and were published on February 1, 2007. The comment period closed March 5, 2007, and no comments were received. However, the original issue contained requirement language that is not necessary for jet airplanes, and this amendment removes that language.

Type Certification Basis

Under the provisions of 14 CFR, part 21, § 21.17, ATG must show that the Model 100 meets the applicable provisions of part 23, as amended by Amendment 23–1 through 23–55 thereto. If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR, part 23) do not contain adequate or appropriate safety standards for the ATG Model 100 series because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

In addition to the applicable airworthiness regulations and special conditions, the Model 100 must comply with the part 23 fuel vent and exhaust emission requirements of 14 CFR, part 34 and the part 23 noise certification requirements of 14 CFR, part 36; and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Novel or Unusual Design Features

ATG intends to certificate the Javelin in both utility and acrobatic categories. The ATG Javelin Model 100 will incorporate the following novel or unusual design features:

- Two-place, tandem configuration.
- Maximum takeoff weight of approximately 6,900 pounds.
- Design cruise speed of 500 knots calibrated airspeed.
- Two Williams FJ33–4A–18M turbofan engines with dual channel FADEC controls.
- Major airframe components constructed of carbon fiber composite materials.
- Hydraulically boosted flight control system with floor-mounted control sticks.
- Integrated avionics including Avidyne displays, autopilot, and flight management system.

Novel features on the ATG Model 100 include rear mounted turbine engines embedded in the fuselage, boosted controls, and high-speed, high-altitude acrobatic capability.

Applicability

As discussed above, these special conditions are applicable to the ATG Model 100 series. Should ATG apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on ATG Model 100 series airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

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

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

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

The Special Conditions

Several 14 CFR, part 23 paragraphs have been replaced by or supplemented with special conditions. These special conditions have been numbered to match the 14 CFR, part 23 paragraphs they replace or supplement. Additionally, many of the other applicable part 23 paragraphs cross-reference paragraphs that are replaced by or supplemented with special conditions. It is implied that the special conditions associated with these paragraphs must be applied. This principal applies to all part 23 paragraphs that cross-reference paragraphs associated with special conditions.

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the ATG Model 100 series airplanes.

1. SC 23.45 General

Instead of compliance with § 23.45, the following apply:

(a) Unless otherwise prescribed, the performance requirements of this part must be met for—

(1) Still air and standard atmosphere; and

(2) Ambient atmospheric conditions.

(b) Performance data must be determined over not less than the following ranges of conditions—

(1) Airport altitudes from sea level to 10,000 feet; and

(2) Temperature from standard to 30° C above standard, or the maximum ambient atmospheric temperature at which compliance with the cooling provisions of § 23.1041 to § 23.1047 is shown, if lower.

(c) Performance data must be determined with the cowl flaps or other means for controlling the engine cooling air supply in the position used in the cooling tests required by § 23.1041 to § 23.1047.

(d) The available propulsive thrust must correspond to engine power, not exceeding the approved power, less—

(1) Installation losses; and

(2) The power absorbed by the accessories and services appropriate to the particular ambient atmospheric conditions and the particular flight condition.

(e) The performance, as affected by engine power or thrust, must be based on a relative humidity:

(1) Of 80 percent at and below standard temperature; and

(2) From 80 percent, at the standard temperature, varying linearly down to 34 percent at the standard temperature plus 50 °F.

(f) Unless otherwise prescribed, in determining the takeoff and landing distances, changes in the airplane's configuration, speed, and power must be made in accordance with procedures established by the applicant for operation in service. These procedures must be able to be executed consistently by pilots of average skill in atmospheric conditions reasonably expected to be encountered in service.

(g) The following, as applicable, must be determined on a smooth, dry, hard-surfaced runway—

(1) Not applicable;

(2) Accelerate-stop distance of SC 23.55;

(3) Takeoff distance and takeoff run of SC 23.59; and

(4) Landing distance of SC 23.75.

Note: The effect on these distances of operation on other types of surfaces (for example, grass, gravel) when dry, may be determined or derived and these surfaces listed in the Airplane Flight Manual in accordance with SC 23.1583(p).

(h) The following also apply:

(1) Unless otherwise prescribed, the applicant must select the takeoff, enroute, approach, and landing configurations for the airplane.

(2) The airplane configuration may vary with weight, altitude, and temperature, to the extent that they are compatible with the operating procedures required by paragraph (h)(3) of this section.

(3) Unless otherwise prescribed, in determining the critical-engine-inoperative takeoff performance, takeoff flight path, and accelerate-stop distance, changes in the airplane's configuration, speed, and power must be made in accordance with procedures established by the applicant for operation in service.

(4) Procedures for the execution of discontinued approaches and balked landings associated with the conditions prescribed in SC 23.67(c)(4) and SC 23.77(c) must be established.

(5) The procedures established under paragraphs (h)(3) and (h)(4) of this section must—

(i) Be able to be consistently executed by a crew of average skill in atmospheric conditions reasonably expected to be encountered in service;

(ii) Use methods or devices that are safe and reliable; and

(iii) Include allowance for any reasonably expected time delays in the execution of the procedures.

2. SC 23.51 Takeoff Speeds

Instead of compliance with § 23.51, the following apply:

(a) Not applicable.

(b) Not applicable.

(c) The following apply:

(l) V_1 must be established in relation to V_{EF} as follows:

(i) V_{EF} is the calibrated airspeed at which the critical engine is assumed to fail. V_{EF} must be selected by the applicant but must not be less than 1.05 V_{MC} determined under § 23.149(b) or, at the option of the applicant, not less than V_{MCG} determined under § 23.149(f).

(ii) The takeoff decision speed, V_1, is the calibrated airspeed on the ground at which, as a result of engine failure or other reasons, the pilot is assumed to have made a decision to continue or discontinue the takeoff. The takeoff decision speed, V_1, must be selected by the applicant but must not be less than V_{EF} plus the speed gained with the critical engine inoperative during the time interval between the instant at which the critical engine is failed and the instant at which the pilot recognizes and reacts to the engine failure, as indicated by the pilot's application of the first retarding means during the accelerate-stop determination of SC 23.55.

(2) The rotation speed, V_R, in terms of calibrated airspeed, must be selected by the applicant and must not be less than the greatest of the following:

(i) V_1;

(ii) 1.05 V_{MC} determined under § 23.149(b);

(iii) 1.10 V_{S1}; or

(iv) The speed that allows attaining the initial climb-out speed, V_2, before

reaching a height of 35 feet above the takeoff surface in accordance with SC 23.57(c)(2).

(3) For any given set of conditions, such as weight, altitude, temperature, and configuration, a single value of V_R must be used to show compliance with both the one-engine-inoperative takeoff and all-engines-operating takeoff requirements.

(4) The takeoff safety speed, V_2, in terms of calibrated airspeed, must be selected by the applicant so as to allow the gradient of climb required in SC 23.67(c)(1) and (c)(2) but must not be less than 1.10 V_{MC} or less than 1.20 V_{S1}.

(5) The one-engine-inoperative takeoff distance, using a normal rotation rate at a speed 5 knots less than V_R, established in accordance with paragraph (c)(2) of this section, must be shown not to exceed the corresponding one-engine-inoperative takeoff distance, determined in accordance with SC 23.57 and SC 23.59(a)(1), using the established V_R. The takeoff, otherwise performed in accordance with SC 23.57, must be continued safely from the point at which the airplane is 35 feet above the takeoff surface and at a speed not less than the established V_2 minus 5 knots.

(6) The applicant must show, with all engines operating, that marked increases in the scheduled takeoff distances, determined in accordance with SC 23.59(a)(2), do not result from over-rotation of the airplane or out-of-trim conditions.

3. SC 23.53 Takeoff Performance

Instead of compliance with § 23.53, the following apply:

(a) Not applicable.

(b) Not applicable.

(c) Takeoff performance, as required by SC 23.55 through SC 23.59, must be determined with the operating engine(s) within approved operating limitations.

4. SC 23.55 Accelerate-Stop Distance

Instead of compliance with § 23.55, the following apply:

The accelerate-stop distance must be determined as follows:

(a) The accelerate-stop distance is the sum of the distances necessary to—

(1) Accelerate the airplane from a standing start to V_{EF} with all engines operating;

(2) Accelerate the airplane from V_{EF} to V_1, assuming the critical engine fails at V_{EF}; and

(3) Come to a full stop from the point at which V_1 is reached.

(b) Means other than wheel brakes may be used to determine the accelerate-stop distances if that means—

(1) Is safe and reliable;

(2) Is used so that consistent results can be expected under normal operating conditions; and

(3) Is such that exceptional skill is not required to control the airplane.

5. SC 23.57 Takeoff Path

Instead of compliance with § 23.57, the following apply:

The takeoff path is as follows:

(a) The takeoff path extends from a standing start to a point in the takeoff at which the airplane is 1,500 feet above the takeoff surface at or below which height the transition from the takeoff to the enroute configuration must be completed; and

(1) The takeoff path must be based on the procedures prescribed in SC 23.45;

(2) The airplane must be accelerated on the ground to V_{EF} at which point the critical engine must be made inoperative and remain inoperative for the rest of the takeoff; and

(3) After reaching V_{EF}, the airplane must be accelerated to V_2.

(b) During the acceleration to speed V_2, the nose gear may be raised off the ground at a speed not less than V_R. However, landing gear retraction must not be initiated until the airplane is airborne.

(c) During the takeoff path determination, in accordance with paragraphs (a) and (b) of this section—

(1) The slope of the airborne part of the takeoff path must not be negative at any point;

(2) The airplane must reach V_2 before it is 35 feet above the takeoff surface, and must continue at a speed as close as practical to, but not less than V_2, until it is 400 feet above the takeoff surface;

(3) At each point along the takeoff path, starting at the point at which the airplane reaches 400 feet above the takeoff surface, the available gradient of climb must not be less than 1.2 percent for two-engine airplanes; and

(4) Except for gear retraction and automatic propeller feathering, the airplane configuration must not be changed, and no change in power that requires action by the pilot may be made, until the airplane is 400 feet above the takeoff surface.

(d) The takeoff path to 35 feet above the takeoff surface must be determined by a continuous demonstrated takeoff.

(e) The takeoff path from 35 feet above the takeoff surface must be determined by synthesis from segments; and

(1) The segments must be clearly defined and must be related to distinct changes in configuration, power, and speed;

(2) The weight of the airplane, the configuration, and the power must be assumed constant throughout each segment and must correspond to the most critical condition prevailing in the segment; and

(3) The takeoff flight path must be based on the airplane's performance without utilizing ground effect.

6. SC 23.59 Takeoff Distance and Takeoff Run

Instead of compliance with § 23.59, the following apply:

The takeoff distance and, at the option of the applicant, the takeoff run, must be determined.

(a) Takeoff distance is the greater of—

(1) The horizontal distance along the takeoff path from the start of the takeoff to the point at which the airplane is 35 feet above the takeoff surface as determined under SC 23.57; or

(2) With all engines operating, 115 percent of the horizontal distance from the start of the takeoff to the point at which the airplane is 35 feet above the takeoff surface, determined by a procedure consistent with SC 23.57.

(b) If the takeoff distance includes a clearway, the takeoff run is the greater of—

(1) The horizontal distance along the takeoff path from the start of the takeoff to a point equidistant between the liftoff point and the point at which the airplane is 35 feet above the takeoff surface as determined under SC 23.57; or

(2) With all engines operating, 115 percent of the horizontal distance from the start of the takeoff to a point equidistant between the liftoff point and the point at which the airplane is 35 feet above the takeoff surface, determined by a procedure consistent with SC 23.57.

7. SC 23.61 Takeoff Flight Path

Instead of compliance with § 23.61, the following apply:

The takeoff flight path must be determined as follows:

(a) The takeoff flight path begins 35 feet above the takeoff surface at the end of the takeoff distance determined in accordance with SC 23.59.

(b) The net takeoff flight path data must be determined so that they represent the actual takeoff flight paths, as determined in accordance with SC 23.57 and with paragraph (a) of this section, reduced at each point by a gradient of climb equal to 0.8 percent for two-engine airplanes.

(c) The prescribed reduction in climb gradient may be applied as an equivalent reduction in acceleration along that part of the takeoff flight path at which the airplane is accelerated in level flight.

8. SC 23.63 Climb: General

Instead of compliance with § 23.63, the following apply:

(a) Compliance with the requirements of §§ 23.65, SC 23.67, 23.69, and SC 23.77 must be shown—

(1) Out of ground effect; and

(2) At speeds that are not less than those at which compliance with the powerplant cooling requirements of §§ 23.1041 to 23.1047 has been demonstrated; and

(3) Unless otherwise specified, with one engine inoperative, at a bank angle not exceeding 5 degrees.

(b) Not applicable.

(c) Not applicable.

(d) Compliance must be shown at weights as a function of airport altitude and ambient temperature within the operational limits established for takeoff and landing, respectively, with—

(1) SC 23.67(c)(1), SC 23.67(c)(2), and SC 23.67(c)(3) for takeoff; and

(2) SC 23.67(c)(3), SC 23.67(c)(4), and SC 23.77(c) for landing.

9. SC 23.66 Takeoff Climb: One-Engine Inoperative

Instead of compliance with § 23.66, see SC 23.67.

10. SC 23.67 Climb: One Engine Inoperative

Instead of compliance with § 23.67, the following apply:

(a) Not applicable.

(b) Not applicable.

(c) The following apply:

(1) *Takeoff; landing gear extended.* The steady gradient of climb at the altitude of the takeoff surface must be measurably positive for two-engine airplanes with—

(i) The critical engine inoperative;

(ii) The remaining engine(s) at takeoff power;

(iii) The landing gear extended, and all landing gear doors open;

(iv) The wing flaps in the takeoff position(s);

(v) The wings level; and

(vi) A climb speed equal to V_2.

(2) *Takeoff; landing gear retracted.* The steady gradient of climb at an altitude of 400 feet above the takeoff surface must be not less than 2.0 percent of two-engine airplanes with—

(i) The critical engine inoperative;

(ii) The remaining engine(s) at takeoff power;

(iii) The landing gear retracted;

(iv) The wing flaps in the takeoff position(s);

(v) A climb speed equal to V_2.

(3) *Enroute.* The steady gradient of climb at an altitude of 1,500 feet above the takeoff or landing surface, as appropriate, must be not less than 1.2 percent for two-engine airplanes with—

(i) The critical engine inoperative;

(ii) The remaining engine(s) at not more than maximum continuous power;

(iii) The landing gear retracted;

(iv) The wing flaps retracted; and

(v) A climb speed not less than 1.2 V_{S1}.

(4) *Discontinued approach.* The steady gradient of climb at an altitude of 400 feet above the landing surface must be not less than 2.1 percent for two-engine airplanes with—

(i) The critical engine inoperative;

(ii) The remaining engine(s) at takeoff power;

(iii) Landing gear retracted;

(iv) Wing flaps in the approach position(s) in which V_{S1} for these position(s) does not exceed 110 percent of the V_{S1} for the related all-engines-operating landing position(s); and

(v) A climb speed established in connection with normal landing procedures but not exceeding 1.5 V_{S1}.

11. SC 23.73 Reference Landing Approach Speed

Instead of compliance with § 23.73, the following apply:

(a) Not applicable.

(b) Not applicable.

(c) The reference landing approach speed, V_{REF}, must not be less than the greater of 1.05 V_{MC}, determined in § 23.149(c), and 1.3 V_{SO}.

12. SC 23.77 Balked Landing

Instead of compliance with § 23.77, the following apply:

(a) Not applicable.

(b) Not applicable.

(c) Each airplane must be able to maintain a steady gradient of climb of at least 3.2 percent with—

(1) Not more than the power that is available on each engine eight seconds after initiation of movement of the power controls from the minimum flight idle position;

(2) Landing gear extended;

(3) Wing flaps in the landing position; and

(4) A climb speed equal to V_{REF}, as defined in SC 23.73(c).

13. SC 23.177 Static Directional and Lateral Stability

Instead of compliance with § 23.177, the following apply:

(a) The static directional stability, as shown by the tendency to recover from a wings-level sideslip with the rudder free, must be positive for any landing gear and flap position appropriate to the takeoff, climb, cruise, approach, and landing configurations. This must be shown with symmetrical power up to maximum continuous power, and at speeds from 1.2 V_{S1} up to V_{FE}, V_{LE}, or V_{FC}/M_{FC} (as appropriate). The angle of sideslip for these tests must be appropriate to the type of airplane. At larger angles of sideslip, up to that at which full rudder is used or a control force limit in § 23.143 is reached, whichever occurs first, and at speeds from 1.2 V_{S1} to V_O, the rudder pedal force must not reverse.

(b) The static lateral stability, as shown by the tendency to raise the low wing in a sideslip, must be positive for all landing gear and flap positions. This must be shown with symmetrical power up to 75 percent of maximum continuous power at speeds above 1.2 V_{S1} in the takeoff configuration(s) and at speeds above 1.3 V_{S1} in other configurations, up to V_{FE}, V_{LE}, or V_{FC}/M_{FC} (as appropriate) for the configuration being investigated, in the takeoff, climb, cruise, and approach configurations. For the landing configuration, the power must be that necessary to maintain a 3 degree angle of descent in coordinated flight. The static lateral stability must not be negative at 1.2 V_{S1} in the takeoff configuration, or at 1.3 V_{S1} in other configurations. The angle of sideslip for these tests must be appropriate to the type of airplane, but in no case may the constant heading sideslip angle be less than that obtainable with a 10 degree bank or, if less, the maximum bank angle obtainable with full rudder deflection or 150 pound rudder force.

(c) Paragraph (b) of this section does not apply to acrobatic category airplanes certificated for inverted flight.

(d) In straight, steady slips at 1.2 V_{S1} for any landing gear and flap positions, and for any symmetrical power conditions up to 50 percent of maximum continuous power, the aileron and rudder control movements and forces must increase steadily, but not necessarily in constant proportion, as the angle of sideslip is increased up to the maximum appropriate to the type of airplane. At larger slip angles, up to the angle at which the full rudder or aileron control is used or a control force limit contained in § 23.143 is reached, the aileron and rudder control movements and forces must not reverse as the angle of sideslip is increased. Rapid entry into, and recovery from, a maximum sideslip considered appropriate for the airplane must not result in uncontrollable flight characteristics.

14. SC 23.201(e) Wings Level Stall

Instead of compliance with § 23.201(e), the following apply:

(e) Compliance with the requirements of this section must be shown under the following conditions:

(1) The flaps, landing gear, and speedbrakes in any likely combination of positions and altitudes appropriate for the various positions.

(2) Thrust—

(i) Idle; and

(ii) The thrust necessary to maintain level flight at 1.6 V_{S1} (where V_{S1} corresponds to the stalling speed with flaps in the approach position, the landing gear retracted, and maximum landing weight).

(3) Trim at 1.4 V_{S1} or the minimum trim speed, whichever is higher.

15. SC 23.203(c) Turning Flight and Accelerated Turning Stalls

Instead of compliance with § 23.203(c), the following apply:

(c) Compliance with the requirements of this section must be shown under the following conditions:

(1) The flaps, landing gear, and speedbrakes in any likely combination of positions and altitudes appropriate for the various positions.

(2) Thrust—

(i) Idle; and

(ii) The thrust necessary to maintain level flight at 1.6 V_{S1} (where V_{S1} corresponds to the stalling speed with flaps in the approach position, the landing gear retracted, and maximum landing weight).

(3) Trim at 1.4 V_{S1} or the minimum trim speed, whichever is higher.

16. SC 23.251 Vibration and Buffeting

Instead of compliance with § 23.251, the following apply:

(a) The airplane must be demonstrated in flight to be free from any vibration and buffeting that would prevent continued safe flight in any likely operating condition.

(b) Each part of the airplane must be shown in flight to be free from excessive vibration under any appropriate speed and thrust conditions up to V_{DF}/M_{DF}. The maximum speeds shown must be used in establishing the operating limitations of the airplane in accordance with special condition SC 23.1505.

(c) Except as provided in paragraph (d) of this special condition, there may be no buffeting condition, in normal flight, including configuration changes during cruise, severe enough to interfere with the control of the airplane, to cause excessive fatigue to the crew, or to cause structural damage. Stall warning buffeting within these limits is allowable.

(d) There may be no perceptible buffeting condition in the cruise configuration in straight flight at any speed up to V_{MO}/M_{MO}, except that stall warning buffeting is allowable.

(e) With the airplane in the cruise configuration, the positive maneuvering load factors at which the onset of perceptible buffeting occurs must be determined for the ranges of airspeed or Mach number, weight, and altitude for which the airplane is to be certified. The envelopes of load factor, speed, altitude, and weight must provide a sufficient range of speeds and load factors for normal operations. Probable inadvertent excursions beyond the boundaries of the buffet onset envelopes may not result in unsafe conditions.

17. SC 23.253 High Speed Characteristics

Instead of compliance with § 23.253, the following apply:

(a) *Speed increase and recovery characteristics.* The following speed increase and recovery characteristics must be met:

(1) Operating conditions and characteristics likely to cause inadvertent speed increases (including upsets in pitch and roll) must be simulated with the airplane trimmed at any likely cruise speed up to V_{MO}/M_{MO}. These conditions and characteristics include gust upsets, inadvertent control movements, low stick force gradient in relation to control friction, passenger movement, leveling off from climb, and descent from Mach to airspeed limit altitudes.

(2) Allowing for pilot reaction time after effective inherent or artificial speed warning occurs, it must be shown that the airplane can be recovered to a normal altitude and its speed reduced to V_{MO}/M_{MO}, without:

(i) Exceptional piloting strength or skill;

(ii) Exceeding V_D/M_D, V_{DF}/M_{DF}, or the structural limitations; and

(iii) Buffeting that would impair the pilot's ability to read the instruments or control the airplane for recovery.

(3) There may be no control reversal about any axis at any speed up to V_{DF}/M_{DF}. Any reversal of elevator control force or tendency of the airplane to pitch, roll, or yaw must be mild and readily controllable, using normal piloting techniques.

(b) *Maximum speed for stability characteristics*, V_{FC}/M_{FC}. V_{FC}/M_{FC} is the maximum speed at which the requirements of § 23.175(b)(1), special condition SC 23.177, and 23.181 must be met with flaps and landing gear retracted. It may not be less than a speed midway between V_{MO}/M_{MO} and V_{DF}/M_{DF} except that, for altitudes where Mach number is the limiting factor, M_{FC} need not exceed the Mach number at which effective speed warning occurs.

18. SC 23.255 Out of Trim Characteristics

In the absence of specific requirements for out-of-trim characteristics, apply the following:

(a) From an initial condition with the airplane trimmed at cruise speeds up to V_{MO}/M_{MO}, the airplane must have satisfactory maneuvering stability and controllability with the degree of out-of-trim in both the airplane nose-up and nose-down directions, which results from the greater of the following:

(1) A three-second movement of the longitudinal trim system at its normal rate for the particular flight condition with no aerodynamic load (or an equivalent degree of trim for airplanes that do not have a power-operated trim system), except as limited by stops in the trim system, including those required by § 23.655(b) for adjustable stabilizers; or

(2) The maximum mis-trim that can be sustained by the autopilot while maintaining level flight in the high speed cruising condition.

(b) In the out-of-trim condition specified in paragraph (a) of this special condition, when the normal acceleration is varied from +1 g to the positive and negative values specified in paragraph (c) of this special condition, the following apply:

(1) The stick force versus g curve must have a positive slope at any speed up to and including V_{FC}/M_{FC}; and

(2) At speeds between V_{FC}/M_{FC} and V_{DF}/M_{DF}, the direction of the primary longitudinal control force may not reverse.

(c) Except as provided in paragraph (d) and (e) of this special condition, compliance with the provisions of paragraph (a) of this special condition must be demonstrated in flight over the acceleration range as follows:

(1) -1 g to +2.5 g; or

(2) 0 g to 2.0 g, and extrapolating by an acceptable method to -1 g and +2.5 g.

(d) If the procedure set forth in paragraph (c)(2) of this special condition is used to demonstrate compliance and marginal conditions exist during flight test with regard to reversal of primary longitudinal control force, flight tests must be accomplished from the normal acceleration at which a marginal condition is found to exist to the applicable limit specified in paragraph (b)(1) of this special condition.

(e) During flight tests required by paragraph (a) of this special condition, the limit maneuvering load factors, prescribed in §§ 23.333(b) and 23.337,

need not be exceeded. Also, the maneuvering load factors associated with probable inadvertent excursions beyond the boundaries of the buffet onset envelopes determined under SC 23.251(e), need not be exceeded. In addition, the entry speeds for flight test demonstrations at normal acceleration values less than 1 g must be limited to the extent necessary to accomplish a recovery without exceeding V_{DF}/M_{DF}.

(f) In the out-of-trim condition specified in paragraph (a) of this special condition, it must be possible from an overspeed condition at V_{DF}/M_{DF} to produce at least 1.5 g for recovery by applying not more than 125 pounds of longitudinal control force using either the primary longitudinal control alone or the primary longitudinal control and the longitudinal trim system. If the longitudinal trim is used to assist in producing the required load factor, it must be shown at V_{DF}/M_{DF} that the longitudinal trim can be actuated in the airplane nose-up direction with the primary surface loaded to correspond to the least of the following airplane nose-up control forces:

(1) The maximum control forces expected in service, as specified in §§ 23.301 and 23.397.

(2) The control force required to produce 1.5 g.

(3) The control force corresponding to buffeting or other phenomena of such intensity that is a strong deterrent to further application of primary longitudinal control force.

19. SC 23.703 Takeoff Warning System

Unless it can be shown that a lift or longitudinal trim device that affects the takeoff performance of the aircraft would not give an unsafe takeoff configuration when selected out of an approved takeoff position, a takeoff warning system must be installed and meet the following requirements:

(a) The system must provide to the pilots an aural warning that is automatically activated during the initial portion of the takeoff roll if the airplane is in a configuration that would not allow a safe takeoff. The warning must continue until—

(1) The configuration is changed to allow safe takeoff, or

(2) Action is taken by the pilot to abandon the takeoff roll.

(b) The means used to activate the system must function properly for all authorized takeoff power settings and procedures and throughout the ranges of takeoff weights, altitudes, and temperatures for which certification is requested.

20. SC 23.735 Brakes

In addition to paragraphs (a), (b), (c), and (d), the following apply:

(e) The rejected takeoff brake kinetic energy capacity rating of each main wheel brake assembly must not be less than the kinetic energy absorption requirements determined under either of the following methods—

(1) The brake kinetic energy absorption requirements must be based on a conservative rational analysis of the sequence of events expected during a rejected takeoff at the design takeoff weight.

(2) Instead of a rational analysis, the kinetic energy absorption requirements for each main wheel brake assembly may be derived from the following formula—

$$KE = 0.0443 \frac{WV^2}{N}$$

Where:

KE=Kinetic energy per wheel (ft.-lbs.);
W=Design takeoff weight (lbs.);
V=Ground speed, in knots, associated with the maximum value of V_1 selected in accordance with SC 23.51(c)(1);
N=Number of main wheels with brakes.

21. SC 23.1323 Airspeed Indicating System

In addition to paragraphs (a), (b), (c), and (d), the following apply:

(e) In addition, the airspeed indicating system must be calibrated to determine the system error during the accelerate-takeoff ground run. The ground run calibration must be obtained between 0.8 of the minimum value of V_1, and 1.2 times the maximum value of V_1 considering the approved ranges of altitude and weight. The ground run calibration must be determined assuming an engine failure at the minimum value of V_1.

(f) Where duplicate airspeed indicators are required, their respective pitot tubes must be far enough apart to avoid damage to both tubes in a collision with a bird.

22. SC 23.1505 Airspeed limitations

Instead of compliance with § 23.1505(a), the following apply:

(a) The maximum operating limit speed (V_{MO}/M_{MO}-airspeed or Mach number, whichever is critical at a particular altitude) is a speed that may not be deliberately exceeded in any regime of flight (climb, cruise, or descent), unless a higher speed is authorized for flight test or pilot training operations. V_{MO}/M_{MO} must be established so that it is not greater than the design cruising speed V_C/M_C and so that it is sufficiently below V_D/M_D or V_{DF}/M_{DF}, to make it highly improbable that the latter speeds will be inadvertently exceeded in operations. The speed margin between V_{MO}/M_{MO} and V_D/M_D or V_{DF}/M_{DF} may not be less than that determined under § 23.335(b) or found necessary in the flight test conducted under SC 23.253.

23. SC 23.1583 Operating Limitations

Instead of compliance with § 23.1583, the following apply:

The Airplane Flight Manual must contain operating limitations determined under this part 23, including the following—

(a) *Airspeed limitations.* The following information must be furnished:

(1) Information necessary for the marking of the airspeed limits on the indicator as required in § 23.1545, and the significance of each of those limits and of the color coding used on the indicator.

(2) The speeds V_{MC}, V_O, V_{LE}, and V_{LO}, if established, and their significance.

(3) In addition, for turbine powered airplanes—

(i) The maximum operating limit speed, V_{MO}/M_{MO} and a statement that this speed must not be deliberately exceeded in any regime of flight (climb, cruise or descent) unless a higher speed is authorized for flight test or pilot training;

(ii) If an airspeed limitation is based upon compressibility effects, a statement to this effect and information as to any symptoms, the probable behavior of the airplane, and the recommended recovery procedures; and

(iii) The airspeed limits must be shown in terms of V_{MO}/M_{MO} instead of V_{NO} and V_{NE}.

(b) *Powerplant limitations.* The following information must be furnished:

(1) Limitations required by § 23.1521.

(2) Explanation of the limitations, when appropriate.

(3) Information necessary for marking the instruments required by § 23.1549 through § 23.1553.

(c) *Weight.* The airplane flight manual must include—

(1) The maximum weight; and

(2) The maximum landing weight, if the design landing weight selected by the applicant is less than the maximum weight.

(3) Not applicable.

(4) The maximum takeoff weight for each airport altitude and ambient temperature within the range selected by the applicant at which—

(i) The airplane complies with the climb requirements of SC 23.63(d)(1); and

(ii) The accelerate-stop distance determined under SC 23.55 is equal to the available runway length plus the length of any stopway, if utilized; and either:

(iii) The takeoff distance determined under SC 23.59(a) is equal to the available runway length; or

(iv) At the option of the applicant, the takeoff distance determined under SC 23.59(a) is equal to the available runway length plus the length of any clearway and the takeoff run determined under SC 23.59(b) is equal to the available runway length.

(5) The maximum landing weight for each airport altitude within the range selected by the applicant at which—

(i) The airplane complies with the climb requirements of § 23.63(d)(2) for ambient temperatures within the range selected by the applicant; and

(ii) The landing distance determined under § 23.75 for standard temperatures is equal to the available runway length.

(6) The maximum zero wing fuel weight, where relevant, as established in accordance with § 23.343.

(d) *Center of gravity.* The established center of gravity limits.

(e) *Maneuvers.* The following authorized maneuvers, appropriate airspeed limitations, and unauthorized maneuvers, as prescribed in this section.

(1) Not applicable.

(2) Not applicable.

(3) *Acrobatic category airplanes.* A list of approved flight maneuvers demonstrated in type flight tests, together with recommended entry speeds and any other associated limitations.

(4) Not applicable.

(5) Not applicable.

(f) *Maneuver load factor.* The positive limit load factors in g's, and, in addition, the negative limit load factor for acrobatic category airplanes.

(g) *Minimum flight crew.* The number and functions of the minimum flight crew determined under § 23.1523.

(h) *Kinds of operation.* A list of the kinds of operation to which the airplane is limited or from which it is prohibited under § 23.1525, and also a list of installed equipment that affects any operating limitation and identification as to the equipment's required operational status for the kinds of operation for which approval has been given.

(i) *Maximum operating altitude.* The maximum altitude established under § 23.1527.

(j) *Maximum passenger seating configuration.* The maximum passenger seating configuration.

(k) *Allowable lateral fuel loading.* The maximum allowable lateral fuel loading differential, if less than the maximum possible.

(l) *Baggage and cargo loading.* The following information for each baggage and cargo compartment or zone—

(1) The maximum allowable load; and

(2) The maximum intensity of loading.

(m) *Systems.* Any limitations on the use of airplane systems and equipment.

(n) *Ambient temperatures.* Where appropriate, maximum and minimum ambient air temperatures for operation.

(o) *Smoking.* Any restrictions on smoking in the airplane.

(p) *Types of surface.* A statement of the types of surface on which operations may be conducted. (See SC 23.45(g) and SC 23.1587(a)(4) and (d)(4)).

24. SC 23.1585 Operating Procedures

Instead of compliance with § 23.1585, the following apply:

(a) For all airplanes, information concerning normal, abnormal (if applicable), and emergency procedures and other pertinent information necessary for safe operation and the achievement of the scheduled performance must be furnished, including—

(1) An explanation of significant or unusual flight or ground handling characteristics;

(2) The maximum demonstrated values of crosswind for takeoff and landing, and procedures and information pertinent to operations in crosswinds;

(3) A recommended speed for flight in rough air. This speed must be chosen to protect against the occurrence, as a result of gusts, of structural damage to the airplane and loss of control (for example, stalling);

(4) Procedures for restarting any turbine engine in flight, including the effects of altitude; and

(5) Procedures, speeds, and configuration(s) for making a normal approach and landing, in accordance with SC 23.73 and § 23.75, and a transition to the balked landing condition.

(6) Not applicable.

(b) Not applicable.

(c) In addition to paragraph (a) of this section, for all multiengine airplanes, the following information must be furnished:

(1) Procedures, speeds, and configuration(s) for making an approach and landing with one engine inoperative;

(2) Procedures, speeds, and configuration(s) for making a balked landing with one engine inoperative and the conditions under which a balked landing can be performed safely, or a warning against attempting a balked landing;

(3) The VSSE determined in § 23.149; and

(4) Procedures for restarting any engine in flight including the effects of altitude.

(d) Not applicable.

(e) Not applicable.

(f) In addition to paragraphs (a) and (c) of this section, the information must include the following:

(1) Procedures, speeds, and configuration(s) for making a normal takeoff.

(2) Procedures and speeds for carrying out an accelerate-stop in accordance with SC 23.55.

(3) Procedures and speeds for continuing a takeoff following engine failure in accordance with SC 23.59(a)(1) and for following the flight path determined under SC 23.57 and SC 23.61(a).

(g) Information identifying each operating condition in which the fuel system independence prescribed in § 23.953 is necessary for safety must be furnished, together with instructions for placing the fuel system in a configuration used to show compliance with that section.

(h) For each airplane showing compliance with § 23.1353(g)(2) or (g)(3), the operating procedures for disconnecting the battery from its charging source must be furnished.

(i) Information on the total quantity of usable fuel for each fuel tank, and the effect on the usable fuel quantity, as a result of a failure of any pump, must be furnished.

(j) Procedures for the safe operation of the airplane's systems and equipment, both in normal use and in the event of malfunction, must be furnished.

25. SC 23.1587 Performance Information

Instead of compliance with § 23.1587, the following apply:

Unless otherwise prescribed, performance information must be provided over the altitude and temperature ranges required by SC 23.45(b).

(a) For all airplanes, the following information must be furnished—

(1) The stalling speeds V_{SO} and V_{S1} with the landing gear and wing flaps retracted, determined at maximum weight under § 23.49, and the effect on these stalling speeds of angles of bank up to 60 degrees;

(2) The steady rate and gradient of climb with all engines operating, determined under § 23.69(a);

(3) The landing distance, determined under § 23.75 for each airport altitude

and standard temperature, and the type of surface for which it is valid;

(4) The effect on landing distances of operation on other than smooth hard surfaces, when dry, determined under SC 23.45(g); and

(5) The effect on landing distances of runway slope and 50 percent of the headwind component and 150 percent of the tailwind component.

(b) Not applicable.

(c) Not applicable.

(d) In addition to paragraph (a) of this section the following information must be furnished—

(1) The accelerate-stop distance determined under SC 23.55;

(2) The takeoff distance determined under SC 23.59(a);

(3) At the option of the applicant, the takeoff run determined under SC 23.59(b);

(4) The effect on accelerate-stop distance, takeoff distance and, if determined, takeoff run, of operation on other than smooth hard surfaces, when dry, determined under SC 23.45(g);

(5) The effect on accelerate-stop distance, takeoff distance, and if determined, takeoff run, of runway slope and 50 percent of the headwind component and 150 percent of the tailwind component;

(6) The net takeoff flight path determined under SC 23.61(b);

(7) The enroute gradient of climb/descent with one engine inoperative, determined under § 23.69(b);

(8) The effect, on the net takeoff flight path and on the enroute gradient of climb/descent with one engine inoperative, of 50 percent of the headwind component and 150 percent of the tailwind component;

(9) Overweight landing performance information (determined by extrapolation and computed for the range of weights between the maximum landing and maximum takeoff weights) as follows—

(i) The maximum weight for each airport altitude and ambient temperature at which the airplane complies with the climb requirements of SC 23.63(d)(2); and

(ii) The landing distance determined under § 23.75 for each airport altitude and standard temperature.

(10) The relationship between IAS and CAS determined in accordance with § 23.1323 (b) and (c).

(11) The altimeter system calibration required by § 23.1325(e).

Issued in Kansas City, Missouri on March 23, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–5951 Filed 3–29–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 2007N–0099]

New Drugs Exempted From Prescription-Dispensing Requirements; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: Amendments to the Federal Food, Drug, and Cosmetic Act (the act) necessitate several changes to the citations used in Food and Drug Administration (FDA) regulations regarding the prescription-exemption procedure and the list of new drugs that are exempted from the prescription-dispensing requirements. These changes are editorial, pertaining only to citations, and do not constitute a change in FDA regulation.

DATES: This rule is effective March 30, 2007.

FOR FURTHER INFORMATION CONTACT: Gerald M. Rachanow, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 5496, Silver Spring, MD 20993, 301–796–2090.

SUPPLEMENTARY INFORMATION: Section 126 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115) amended section 503(b)(1) of the act (21 U.S.C. 353(b)(1)). Specifically, the previous paragraph (b)(1)(A) of the act was stricken from the act and paragraphs (b)(1)(B) and (b)(1)(C) were redesignated as paragraphs (b)(1)(A) and (b)(1)(B), respectively. This amendment to the act necessitates that FDA revise the corresponding citations in its regulations. FDA is making this change in 21 CFR part 310 (§§ 310.200 and 310.201). These changes are editorial, pertaining only to citations, and do not constitute a change in FDA regulation.

Publication of this document constitutes final action on this change under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedures are unnecessary because FDA is merely implementing a change in citation to a section of the act as a result of amendment of the act.

List of Subjects in 21 CFR Part 310

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

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

PART 310—NEW DRUGS

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

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

§ 310.200 [Amended]

■ 2. In § 310.200(a), (b), and (e) remove ''503(b)(1)(C)'' wherever it appears and add in its place ''503(b)(1)(B)''.

§ 310.201 [Amended]

■ 3. In § 310.201(a) remove ''503(b)(1)(C)'' and add in its place ''503(b)(1)(B)''.

Dated: March 22, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–5895 Filed 3–29–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9320]

RIN 1545-BF67

United States Dollar Approximate Separate Transactions Method

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations which provide the translation rates that must be used when translating into dollars certain items and amounts transferred by a qualified business unit (QBU) to its home office or parent corporation for purposes of computing dollar approximate separate transactions method (DASTM) gain or loss. This regulation is necessary to provide guidance under section 985

regarding the proper translation rates that must be used under the DASTM method. Taxpayers affected by these regulations are taxpayers with QBUs required to use the DASTM method of accounting described in § 1.985–3.

DATES: *Effective Date:* This regulation is effective March 30, 2007.

Applicability Date: This regulation is applicable to any transfer, dividend, or distribution that is a return of capital that is made after March 8, 2005, and that gives rise to an adjustment under § 1.985–3(d)(3).

FOR FURTHER INFORMATION CONTACT: Sheila Ramaswamy, at (202) 622–3870.

SUPPLEMENTARY INFORMATION:

Background

On July 13, 2006, a notice of proposed rulemaking (REG–118897–06), United States Dollar Approximate Separate Transactions Method, was published in the **Federal Register** (71 FR 39604). The notice of proposed rulemaking proposed to amend § 1.985–3(d)(3). No requests for a public hearing were received, and no public hearing was held. The IRS received no comments in response to the notice of proposed rulemaking. The proposed regulation is adopted without change by this Treasury decision.

Explanation of Provisions

For taxable years beginning after August 24, 1994, a U.S. taxpayer's QBU that would otherwise be required to use a hyperinflationary currency as its functional currency generally must use the dollar as its functional currency and must compute income or loss under the DASTM method of accounting described in § 1.985–3. See § 1.985–1(b)(2)(ii). Under the DASTM method of accounting, a QBU's income or loss for a taxable year is computed in U.S. dollars and adjusted to account for its DASTM gain or loss. See § 1.985–3(b). A QBU's DASTM gain or loss for a taxable year is determined under § 1.985–3(d) by first computing the QBU's change in net worth from the prior year. In computing the QBU's change in net worth, items whose dollar value fluctuates with changes in exchange rates are translated using the year-end exchange rate while items whose dollar value does not change with exchange rate fluctuations are translated using the exchange rate for the translation period in which the cost of the item was incurred. Specified adjustments are made to the QBU's change in net worth. Under § 1.985–3(d)(3), one of the adjustments requires adding back to the change in net worth transactions that decrease the QBU's net worth without affecting the QBU's income or loss including dividend distributions, certain transfers, and returns of capital from the QBU to its home office or parent corporation. This final regulation provides the translation rate to be used in translating these items into dollars for purposes of computing DASTM gain or loss.

Under § 1.985–3(d)(3), the applicable translation rate to be used generally depends upon whether the dollar value of the item transferred changes with fluctuations in exchange rates. Accordingly, the regulation provides that if the item giving rise to the adjustment is an asset which would be translated under § 1.985–3(d)(5) at the exchange rate for the last translation period of the taxable year if it were on the QBU's year-end balance sheet, the item will be translated at the exchange rate on the date the item is transferred. However, if the item giving rise to the adjustment is an asset which would be translated under § 1.985–3(d)(5) at the exchange rate for the translation period in which the cost of the item was incurred if it were on the QBU's year-end balance sheet, the item will be translated at the same historical rate.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined that sections 553 (b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) do not apply to this regulation, and because this regulation does not impose a collection of information on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Sheila Ramaswamy, Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendment to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1**. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2**. Section 1.985–3 is amended by revising paragraph (d)(3) to read as follows:

§ 1.985–3 United States dollar approximate separate transactions method.

* * * * *

(d) * * *

(3) *Positive adjustments*—(i) *In general.* The items described in this paragraph (d)(3) are dividend distributions for the taxable year and any items that decrease net worth for the taxable year but that generally do not affect income or loss or earnings and profits (or a deficit in earnings and profits). Such items include a transfer to the home office of a QBU branch and a return of capital.

(ii) *Translation.* Except as provided by ruling or administrative pronouncement, items described in paragraph (d)(3)(i) of this section shall be translated into dollars as follows:

(A) If the item giving rise to the adjustment would be translated under paragraph (d)(5) of this section at the exchange rate for the last translation period of the taxable year if it were shown on the QBU's year-end balance sheet, such item shall be translated at the exchange rate on the date the item is transferred.

(B) If the item giving rise to the adjustment would be translated under paragraph (d)(5) of this section at the exchange rate for the translation period in which the cost of the item was incurred if it were shown on the QBU's year-end balance sheet, such item shall be translated at the same historical rate.

(iii) *Effective date.* Paragraph (d)(3)(ii) of this section is applicable for any transfer, dividend, or distribution that is a return of capital that is made after March 8, 2005, and that gives rise to an adjustment under this paragraph (d)(3).

* * * * *

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

Approved: March 20, 2007.

Eric Solomon,

Assistant Secretary for Tax Policy.

[FR Doc. E7–5857 Filed 3–29–07; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0545; FRL–8292–3]

Approval and Promulgation of Implementation Plans; Ohio; Volatile Organic Compound Emission Control Measures for Cincinnati and Dayton

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving several volatile organic compound (VOC) rules, that were submitted on May 9, 2006, into the Ohio State Implementation Plan (SIP). These rules would partially replace the VOC reductions from Ohio's vehicle inspection and maintenance (E-Check) program (which ended on December 31, 2005) in the Cincinnati and Dayton areas. These rules include a provision requiring the use of lower emitting solvents in cold cleaner degreasers, the use of more efficient auto refinishing painting application techniques and a rule requiring the use of lower emitting portable fuel containers. These rules are approvable because they contain more stringent requirements than Ohio's existing rules and they are enforceable. Ohio has correctly calculated their VOC emission reduction impact. EPA is also approving several other rule revisions, all of which meet EPA requirements, including an exemption for Ohio's printing rules, a site-specific rule for an aerosol can filling facility, elimination of the fluid catalytic cracking unit limitations for a Marathon Petroleum LLC facility, and an alternative leak detection and repair program for the Premcor Lima Refinery. These rules were proposed for approval on December 6, 2006, and no adverse comments were received.

DATES: This final rule is effective on April 30, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2006–0545. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Steven Rosenthal, Environmental Engineer, at (312) 886–6052 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052, *rosenthal.steven@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What Public Comments Were Received on the Proposed Approval and What Is EPA's Response.
II. What Action Is EPA Taking?
III. What Is the Purpose of This Action?
IV. Statutory and Executive Order Reviews.

I. What Public Comments Were Received on the Proposed Approval and What Is EPA's Response?

No adverse comments were received. The Sherwin-Williams Company submitted a comment supporting approval of paragraph 3745–21–09 (RR) pertaining to the site specific reasonably available control technology requirements for the Sherwin-Williams aerosol can filling facility in Bedford Heights, Ohio.

Since this comment was supportive of the action being taken there is no need to respond to it.

II. What Action Is EPA Taking?

EPA is approving several VOC rules into the Ohio SIP. These include more stringent solvent degreasing rules, an exemption for its printing rules, a site-specific rule for an aerosol can filling facility, elimination of the fluid catalytic cracking unit limitations for a Marathon Petroleum Company LLC facility, an alternative leak detection and repair program for the Premcor Lima Refinery, a rule requiring the marketing and sale of only low-emitting portable fuel containers, and a rule including the use of high efficiency paint application equipment at auto body refinishing operations.

III. What Is the Purpose of This Action?

The primary purpose of the rules that Ohio submitted is to obtain VOC emission reductions. These reductions would partially offset the increase in VOC emissions resulting from elimination of its E-Check program in the Cincinnati and Dayton areas. Ohio EPA has submitted additional VOC and nitrogen oxide emission reduction measures to fully compensate for the resulting increase in emissions. These additional emission reduction measures, as well as other demonstrations needed to remove the E-Check program from the Ohio SIP, will be the subject of future rulemaking actions. This notice also approves several site-specific rule revisions that have been requested by emission sources in Ohio.

IV. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant regulatory action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more

Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

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

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

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

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 29, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 6, 2007.

Mary A. Gade,

Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart KK—Ohio

■ 2. Section 52.1870 is amended by adding paragraph (c)(135) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(135) On May 9, 2006, the Ohio Environmental Protection Agency submitted several volatile organic compound rules for approval into the Ohio State Implementation Plan.

(i) Incorporation by reference.

(A) Ohio Administrative Code Chapter 3745–21–01 Definitions: Paragraphs (D) and (Z), adopted 1/31/2006, effective 2/10/2006.

(B) Ohio Administrative Code Chapter 3745–21–04 Attainment dates and compliance time schedules: Paragraph (C)(16)(c), adopted 1/31/2006, effective 2/10/2006.

(C) Ohio Administrative Code Chapter 3745–21–09 Control of emissions of volatile organic compounds from stationary sources and perchloroethylene from dry cleaning facilities: Paragraphs (O)(2)(e),(O)(6)(b),(T)(4),(Y), (HH), (RR), and (VV), adopted 3/2/2006, effective 3/12/2006.

(D) Ohio Administrative Code Chapter 3745–21–17: Portable Fuel Containers, adopted 1/31/2006, effective 2/10/2006.

(E) Ohio Administrative Code Chapter 3745–21–18: Commercial Motor Vehicle and Mobile Equipment Refinishing Operations, adopted 1/31/2006, effective 2/10/2006.

[FR Doc. E7–5800 Filed 3–29–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2005–AZ–0009; FRL–8284–2]

Approval and Promulgation of Implementation Plans; Arizona; Motor Vehicle Inspection and Maintenance Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving two revisions to the Arizona State Implementation Plan submitted by the Arizona Department of Environmental Quality. These revisions consist of: changes to Arizona's Basic and Enhanced Vehicle Emissions Inspection Programs to exempt collectible vehicles in the Phoenix metropolitan area, and collectible vehicles and motorcycles in the Tucson metropolitan area, from emissions testing requirements; an updated performance standard evaluation for the vehicle emissions inspection program in the Phoenix area; and new contingency measures. EPA is approving these two state implementation plan revisions because they meet all applicable requirements of the Clean Air Act and EPA's regulations and because the exemptions will not interfere with attainment or maintenance of the national ambient air quality standards in the two affected areas. EPA is finalizing this action

under the Clean Air Act obligation to take action on State submittals of revisions to state implementation plans. The intended effect is to exempt these vehicle categories from the emissions testing requirements of the State's vehicle emissions inspection programs as approved for the Phoenix and Tucson areas but also to provide a mechanism to reinstate the requirements in the event of a violation of the carbon monoxide national ambient air quality standard in the Phoenix or Tucson area.

DATES: *Effective Date:* This rule is effective on April 30, 2007.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at EPA Region 9's Air Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, CA, 94105–3901. Due to increased security, we suggest that you call at least 24 hours prior to visiting the Regional Office so that we can make arrangements to have someone meet you.

Electronic Availability

This document and our proposed rule which was published in the **Federal Register** on December 28, 2006 are also available as electronic files on EPA's Region 9 webpage at *http://www.epa.gov/region09/air/actions/az.html.*

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Office of Air Planning, U.S. Environmental Protection Agency, Region 9, (520) 622–1622, e-mail: *tax.wienke@epa.gov,* or refer to *http://www.epa.gov/region09/air/actions/az.html.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''we'', ''us'', and ''our'' refer to EPA.

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I. Background
II. Response to Comments
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I. Background

On December 28, 2006 (71 FR 78115), we proposed to approve, under the Clean Air Act (CAA or ''Act''), two revisions submitted by the Arizona Department of Environmental Quality (ADEQ) of the Arizona State Implementation Plan (SIP). Both SIP revisions relate to Arizona's Basic and Enhanced Vehicle Emissions Inspection/Maintenance (VEI) Programs implemented in the Tucson and Phoenix areas, respectively.

ADEQ submitted the first VEI SIP revision on December 23, 2005 (''VEI SIP Revision''). The VEI SIP Revision submittal includes the SIP revision itself, divided into a non-regulatory portion, ''Final Arizona State Implementation Plan Revision, Basic and Enhanced Vehicle Emissions Inspection/Maintenance Programs'' (December 2005), and a regulatory portion, House Bill (HB) 2357, as well as supporting materials related to legal authority, adoption, public process and technical analysis.

HB 2357 amends Arizona Revised Statutes (ARS) Section 49–542 by exempting vehicles that are at least 15 years old or are of a unique and rare design and that carry collectible vehicle insurance that restricts the mileage and/or use of the vehicle (''collectible vehicles'') from emission testing in both Area A (i.e., the Phoenix area) and Area B (i.e., the Tucson area). In addition, HB 2357 exempts motorcycles in the Tucson area from emissions testing. Specifically, the amendments to ARS 49–542 are found in paragraphs or subparagraphs (J)(2)(k), (J)(2)(l), (Y), and (Z) of that section of code. The changes to ARS Section 49–542 are self-implementing, which means that they become effective upon EPA approval as a revision to the Arizona SIP.

Among the technical materials included in the VEI SIP Revision submittal package is a report [1] prepared by ADEQ that evaluates the impacts of exempting three vehicle categories (vehicles 25 model years old and older, motorcycles, and collectible vehicles) from the emissions testing requirements on ambient air quality and on the ability of Areas A and B (i.e., Phoenix and Tucson, respectively) to maintain or attain the national ambient air quality standards (NAAQS). The report concluded that the testing and repair of these vehicle categories as a whole does provide a significant air quality benefit. The analysis, however, also identified a subset of vehicle categories (collectible vehicles in Phoenix and Tucson plus motorcycles in Tucson) for which the emissions testing requirement does not provide a significant air quality benefit and for which exemption would not interfere with continued maintenance of the CO NAAQS or progress towards the 8-hour ozone NAAQS. HB 2357 was a Legislative response to the findings in this report.

In consultation with EPA concerning the VEI SIP Revision, ADEQ prepared an updated performance standard evaluation for the VEI program in the Phoenix area to reflect the new exemption for collectible vehicles, and developed new contingency measures that are intended to provide for reinstatement of emissions testing for the newly exempt vehicle categories in the event that a violation of the carbon monoxide NAAQS were to be recorded in the Phoenix or Tucson area. On October 3, 2006, ADEQ adopted and submitted the updated performance standard evaluation and new contingency measures in a second SIP revision, entitled, ''Supplement to Final Arizona State Implementation Plan Revision, Basic and Enhanced Vehicle Emissions Inspection/Maintenance Programs, December 2005'' (September 2006) (''VEI SIP Supplement''). As part of the submittal of the VEI SIP Supplement, ADEQ documented the public participation process that was conducted by ADEQ prior to adoption and submittal to EPA.

Our December 28, 2006 proposed rule provides our evaluation of these two SIP submittals and our rationale for concluding that the submittals meet all relevant CAA requirements including SIP revision procedural requirements, vehicle inspection and maintenance program requirements, requirements under CAA section 110(l) related to non-interference with attainment and maintenance of the NAAQS, and contingency provision requirements under CAA section 175A(d). Please see our December 28, 2006 proposed rule for more information concerning the SIP revision submittals, our evaluation of them, and our rationale for proposing approval.

II. Response to Comments

Our December 28, 2006 proposed rule provided a 30-day public comment period. We received comments from 40 commenters on our proposed rule during the public comment period. Most were supportive of our proposed action. We are responding to the five commenters who disagreed with our action.

Comment. One commenter agrees with the proposal but states that vehicles 25 years old or older should also be exempt.

Response. Arizona House Bill (HB) 2501, as amended by HB 2294, required ADEQ to evaluate whether vehicles 25 years old and older in combination with collectible vehicles or motorcycles could be exempt from emissions testing. The report concluded that the testing and repair of these vehicle categories as a whole does provide significant air quality benefit. The analysis, however, also identified a subset of vehicle categories (collectible vehicles in Phoenix and Tucson and motorcycles in

[1] ''Report on Potential Exemptions from Vehicle Emissions Testing for Motorcycles, Collectible Vehicles, and Vehicles 25 Model Years Old and Older'' (December 2004).

Tucson) for which the emissions testing requirement does not provide a significant air quality benefit and for which exemption would not interfere with continued maintenance of the CO NAAQS or progress towards the 8-hour ozone NAAQS. HB 2357 (i.e., the regulatory portion of the VEI SIP Revision) was a Legislative response to the findings in this report.

Comment. One commenter suggests various changes to the new statutory exemption for collectible vehicles that would make the exemption less restrictive and thereby allow a greater number of collectors to fall within the exemption.

Response. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet minimum criteria set by the Clean Air Act or any applicable EPA regulations. Any changes to Arizona law expanding the exemption for collectible vehicles would need first to be introduced as a new bill in the Arizona Legislature. If passed and approved by the Governor, such a statutory change would then need to be submitted by ADEQ to EPA for approval with documentation showing continued compliance with all relevant CAA and EPA requirements including a demonstration of non-interference with the ambient air quality standards under section 110(l) of the CAA.

Comment. One commenter states that motorcycles should not be exempt from the vehicle emissions inspection program in Tucson, unless EPA has solid evidence that very few, if any, motorcycles pose a pollution problem, or that the Tucson inspection program passes essentially all motorcycles, so providing little environmental benefit.

Response. ADEQ's statistics about the VEI program indicate that between 2003 and 2006, from 91.3 to 94.9 percent of motorcycles in the Tucson area passed the vehicle emissions test on their initial pass on an annual basis . These statistics provide further support for our conclusion that exemption of motorcycles from emissions testing requirements of the VEI program would not interfere with attainment or maintenance of the NAAQS in the Tucson area.

Comment. The fourth commenter states that he opposes this type of ''reverse regulation'' (removing of grandfathering) of old, collectible cars. He states that making people retrofit emissions equipment on older vehicles is infeasible, costly, and that owners are unlikely to comply.

Response. This commenter appears to have misunderstood EPA's action. We are approving an exemption to Arizona's vehicle inspection program for owners of collectible vehicles which meet certain requirements, including collectible insurance which limits the use or annual mileage of the collectible vehicle. We are not requiring existing older vehicles to be retrofit with emissions control technology.

Comment. The fifth commenter states that the law establishing the new exemption for collectible vehicles is poorly crafted in that the requirements of the law, as written by the Arizona legislature, are both vague and do not have sufficient enforcement methods to insure that the net result falls within the assumptions that were made by the ADEQ to validate this exemption. Specifically, the commenter questions the estimate of the number of collectible vehicles used by ADEQ in estimating the emissions impact of the exemption and also questions the methods that will be relied upon to limit the exemption only to qualifying vehicles. Furthermore, the commenter requests additional requirements in the law to limit the possible abuse of the exemption.

Response. As noted above, EPA's role in reviewing SIP submissions is to approve state choices, provided that they meet minimum criteria of the Clean Air Act and EPA's regulations. EPA is not responsible for drafting changes to state laws. Nonetheless, this comment raises questions about the validity of the assumptions underlying the emissions impact analysis and the enforcement methods that will be relied upon to limit the exemptions to qualifying vehicles.

ADEQ estimates that collectible vehicles represent 0.4% to 0.5% of the total tested fleet of vehicles in the Tucson and Phoenix areas, respectively. ADEQ developed these estimates on the basis of a survey conducted by ADEQ in coordination with car clubs in Arizona and information received from two of the four major insurance companies specializing in selling collectible car insurance in Arizona, taking into account the number of such vehicles that are already exempt (i.e., pre-1967 model year vehicles) from emission testing requirements. See appendix 2b (''Technical Support Document, Evaluating Emissions Impacts of Exempting Collectible Vehicles from Vehicle Emissions Inspections'') of Appendix B (''Report on Potential Exemptions from Vehicle Emissions Testing for Motorcycles, Collectible Vehicles and Vehicles 25 Model Years Old and Older'') of the VEI SIP revision. We believe that ADEQ's methods provide a reasonable basis for estimating the number of vehicles that would be newly exempt as ''collectible vehicles'' under HB 2357 and the corresponding emissions impact from exemption of those vehicles from VEI emissions testing requirements.

We also continue to believe that the compliance enforcement methods, including the collectible vehicle insurance and registration procedures, that will be relied upon to limit the exemption to qualifying vehicles are reasonably calculated to do so. See pages 4–5 and appendix C (''Collectible Vehicle Insurance and Registration Procedures'') of the VEI SIP Revision and our discussion of the compliance enforcement issue in our proposed rule at 71 FR at 78118.

III. EPA's Final Action

No comments were submitted that change our assessment of the VEI SIP revisions as set forth in our proposed rule. Therefore, pursuant to section 110(k)(3) of the CAA and for the reasons set forth in the proposed rule, EPA is approving the revisions to the Arizona SIP submitted by the State of Arizona on December 23, 2005 and October 3, 2006 concerning the Arizona VEI programs implemented in the Phoenix and Tucson areas because we find that the revisions are consistent with the requirements of the CAA and EPA's regulations.

Specifically, we are approving exemptions from emissions testing requirements for collectible vehicles in the Phoenix area and collectible vehicles and motorcycles in the Tucson area as set forth in the ''Arizona State Implementation Plan Revision, Basic and Enhanced Vehicle Emissions Inspection/Maintenance Programs'' (December 2005) and ARS Section 49–542 as amended in section 1 of Arizona House Bill 2357, 47th Legislature, 1st Regular Session (2005) and approved by the Governor on April 13, 2005; and the updated performance standard evaluation for the Phoenix area and new contingency measures as set forth in the ''Supplement to Final Arizona State Implementation Plan Revision, Basic and Enhanced Vehicle Emissions Inspection/Maintenance Programs, December 2005'' (September 2006).

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply,

Distribution, or Use'' (66 FR 28355 (May 22, 2001)). This action merely approves changes to state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves changes to state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves changes to state law implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19885, April 23, 1997), because it finalizes approval of a state rule implementing a Federal Standard.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 29, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: March 20, 2007.

Wayne Nastri,

Regional Administrator, Region 9.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

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

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

Subpart D—Arizona

■ 2. Section 52.120 is amended by adding paragraphs (c)(133) and (c)(134) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(133) The following statute and plan were submitted on December 23, 2005 by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Revised Statutes.

(*1*) Section 49–542 as amended in section 1 of the Arizona House Bill 2357, 47th Legislature, 1st Regular Session (2005) and approved by the Governor on April 13, 2005.

(ii) Additional material.

(A) Arizona Department of Environmental Quality.

(*1*) Final Arizona State Implementation Plan Revision, Basic and Enhanced Vehicle Emissions Inspection/Maintenance Programs (December 2005), adopted by the Arizona Department of Environmental Quality on December 23, 2005, excluding appendices.

(134) The following plan was submitted on October 3, 2006 by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Department of Environmental Quality.

(*1*) September 2006 Supplement to Final Arizona State Implementation Plan Revision, Basic and Enhanced Vehicle Emissions Inspection/ Maintenance Programs, December 2005, adopted by the Arizona Department of Environmental Quality on October 3, 2006, excluding appendices.

[FR Doc. E7–5558 Filed 3–29–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 624

[Docket No. FTA–2006–24708]

RIN 2132–AA91

Clean Fuels Grant Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Final rule.

SUMMARY: On June 9, 1998, the Transportation Equity Act for the 21st Century (TEA–21) was enacted requiring the Federal Transit Administration (FTA) to establish the Clean Fuels Formula Grant Program (the program). The program was developed to assist non-attainment and maintenance areas in achieving or maintaining the National Ambient Air Quality Standards for ozone and carbon monoxide (CO). Additionally, the program supports emerging clean fuel and advanced propulsion technologies

for transit buses and markets for those technologies. Although the program was authorized as a formula grant program from its inception, Congress did not fund the program. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) changed the grant program from a formula-based to a discretionary grant program. The program, however, retains its initial purpose. FTA is publishing this final rule to revise the existing regulations to reflect the amendments made by SAFETEA–LU.

DATES: This rule is effective April 30, 2007.

FOR FURTHER INFORMATION CONTACT: For program issues, Kimberly Sledge, Office of Program Management, (202) 366–2053 (telephone); (202) 366–7951 (fax); or *Kimberly.Sledge@dot.gov* (e-mail). For legal issues, Scheryl Portee, Office of the Chief Counsel, (202) 366–4011 (telephone); (202) 366–3809 (fax); or *Scheryl.Portee@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Availability of the Final Rule

You may download this rule from the Department's Docket Management System (*https://dms.dot.gov*) by entering docket number 24708 in the search field or from the Government Printing Office's **Federal Register** Main Page at *http://www.gpoaccess.gov/fr/index.html.* Users may also download an electronic copy of this document using a modem and suitable communications software from the GPO Electronic Bulletin Board Service at (202) 512–1661.

I. Background

The Clean Fuels Formula Grant Program is a transit grant program established pursuant to Section 3008 of the Transportation Equity Act for the 21st Century (TEA–21) as amended, Public Law 105–178, and codified at 49 U.S.C. 5308. This legislation established the basic parameters of the program. Section 3010 of SAFTEA–LU, Public Law 109–59, (2005) changed the grant program from a formula-based to a discretionary grant program.

In SAFETEA–LU, Congress earmarked approximately $18 million in FY 2006 graduating to approximately $22 million in FY 2009 for specific projects. However, during the FY 2006 and FY 2007 appropriations process, Congress transferred the remaining clean fuels program funds not earmarked pursuant to SAFETEA–LU to the Bus and Bus Facilities Program. Thus, there are no discretionary funds available for the Clean Fuels Program to date. The focus of this rulemaking is to revise 49 CFR Part 624 to reflect the amendments made by SAFETEA–LU establishing a discretionary program and ensuring procedures are in place when funding is provided for the program. This final rule also addresses criteria for the allocation of discretionary program funds, issues raised in the NPRM and the comments made in response to the NPRM.

II. Discussion of Comments

FTA received a total of two comments to this rulemaking. We discuss the comments received and explain any changes made to the regulations in the following paragraphs. FTA considered all comments filed. Each commenter expressed support for the rulemaking while offering recommendations to improve this statutory program. A written copy of each comment is available at the DOT Docket Manager's Web site: *http://www.dms.dot.gov.*

1. American Public Transportation Association (APTA) indicates that it agrees with FTA's approach to flexible eligibility and selection criteria for implementation of the regulation. APTA suggested that FTA publish proposed annual criteria in conjunction with the annual ''apportionment and allowances notice,'' which includes FTA programmatic changes. APTA believed that such a procedure would allow public comment on the criteria prior to the **Federal Register** Notice of Funding Availability, thus permitting the latter announcement to be limited to solicitation of grant applications based on already publicly vetted criteria.

2. Metro Regional Transit Authority of Akron, Ohio (Metro) expresses support for the majority of the proposed changes to the Clean Fuels Grant Program as an improvement to the overall initiative. Metro recommends that the total project cost should be an eligible federal expense for those projects that have an evaluation and dissemination component, in order to encourage additional research and development of alternative fuels. Metro recommends that FTA only fund truly alternative energy sources such as hydrogen fuel cells stating that other projects will continue dependence on fossil fuel and foreign oil.

Metro believes that ''clean diesel buses'' are not an appropriate expenditure for this program and that these buses should be purchased with Congestion Mitigation Air Quality or section 5307 funds. The Clean Fuels program should focus its limited resources on projects that can be replicated or advance the technology for buses. Another recommendation by Metro is that FTA consider the reporting evaluation proposal as part of the grant process, including a pure science component for each funded project.

III. Section by Section Analysis

In this section, FTA provides a section by section analysis and comments in response where applicable.

A. Eligible Recipients

As noted in the NPRM, SAFETEA–LU amended the term ''recipient'' to now include smaller urbanized areas with populations of less than 200,000. Accordingly, we are amending section 624.1 to define eligible applicants as (1) designated recipients, as defined in 49 U.S.C. 5307(a)(2); and (2) recipients in urbanized areas with populations of less than 200,000.

A ''designated recipient'' is an entity designated to receive Federal urbanized formula funds under 49 U.S.C. 5307, in accordance with the applicable metropolitan and statewide transportation planning processes, by the chief executive officer of a State, responsible local officials, and publicly owned operators of public transportation. For an urbanized area with a population of less than 200,000, however, SAFETEA–LU requires the smaller urbanized area's respective State to act as the recipient.

Further, all recipients must meet one of the following criteria: (1) Be designated as an ozone or carbon monoxide (CO) nonattainment area as established by section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)); or (2) be designated as a maintenance area for ozone or CO. A maintenance area is a previously designated nonattainment area that has been redesignated to attainment status by the U.S. Environmental Protection Agency (EPA).

B. Eligible Activity

A commenter indicated that additional criteria not found in the statute should also be considered. FTA is not permitted to expand the selection criteria beyond that found in the statute. For similar reasons, FTA may not restrict vehicles that use clean diesel as an eligible activity as recommended by the commenter. Further, a commenter suggested that an experimental project should receive Federal funds at the 100% level. FTA has no statutory authority to support 100% funding of total project costs of eligible activities. The final rule contains the funding share for eligible projects that complies with the requirements of 49 U.S.C. 5308 and the Clean Air Act.

FTA is amending section 624.3 in paragraph (a) and removes paragraphs (c)(4) and (c)(5) to exclude repowering and retrofitting of pre-1993 buses. Both activities were specifically authorized as eligible projects under TEA–21; however, SAFETEA–LU repealed those provisions. Accordingly, we have determined that such activities cannot be authorized under this program. In addition, we amend paragraph (c) by renumbering the current paragraph (c)(6) as a new (c)(3), and adding new paragraphs (c)(4), (5), and (6) to reflect SAFETEA–LU amendments applicable to eligible projects.

a. We are amending paragraph (a) to reflect the provisions in 49 U.S.C. 5323(i), which SAFETEA–LU amended to include facilities as well as vehicles. Accordingly, the Federal share for eligible projects cannot exceed 90 percent of the net cost to comply with or maintain compliance with the Clean Air Act. Further, the Administrator is authorized to administratively determine the net cost of such equipment or facilities attributable to compliance with the Clean Air Act. FTA has administratively determined that the composite Federal share for vehicles and vehicle related equipment shall be 83 percent. For facilities, however, the 90 percent share would apply to the actual incremental costs of improvements for compliance with the Clean Air Act and recipients would be requested to provide supporting documentation.

We noted in the NPRM that the President's Budget for Fiscal Year 2007 proposed that FTA grants awarded during Fiscal Years 2007 and 2008 should reflect 100 percent of the net capital costs of factory-installed or retrofitted hybrid-electric propulsion systems and any equipment related to such systems. This budget proposal provided for administrative discretion to determine costs attributable to such systems and related-equipment. This provision was not included in the FY 2007 appropriations legislation, and therefore not authorized.

Paragraph (c)(5) of section 624.3 is amended to reflect the statutory mandate under section 5308(c) that not more than 25 percent of the funds available to carry out the clean fuels program each fiscal year may be made available to fund clean diesel buses. On January 18, 2001, EPA published a final rule establishing a comprehensive national control program to regulate heavy-duty vehicles and its fuel as a single system. As part of this program, new emission standards will start to take effect in model year 2007, and will apply to heavy-duty highway engines and vehicles. These standards are based on the use of high-efficiency catalytic exhaust emission control devices or comparably effective advanced technologies. The EPA standards are codified at 40 CFR Parts 69, 80, and 86. (See 66 FR 5001 (January 18, 2001).). Accordingly, FTA interprets ''clean diesel'' to mean diesel engines certified to meet EPA's heavy-duty engine emissions standards for model-years 2007 and later.

The final rule amends paragraph (c)(6) of section 624.3 to reflect that funds designated for eligible projects will remain available for obligation for three fiscal years, which includes the year of appropriation plus two additional fiscal years.

C. Application Process

Since the program is now a discretionary grant program, the pre-application included in Appendix A no longer applies. Accordingly, we are removing Appendix A from Part 624 and revising section 624.5 to reflect that applications will be requested in a **Federal Register** notice each fiscal year that discretionary funds are provided by Congress for the program. FTA considered a comment to change the procedures but determined that since technological innovations continue to evolve, we believe the criteria for selecting eligible projects should be flexible. Accordingly, we are revising section 624.5 to reflect general criteria for selection of eligible projects. More specific selection criteria may be published in the **Federal Register** with a Notice of Funding Availability each fiscal year that discretionary funding is provided by Congress for the program.

D. Certifications

We retain the current certification process in section 624.7. Each vehicle purchased with a grant under this program will be operated by the grantee using only clean fuels. The certification will be included with the **Federal Register** notice announcing our annual certifications and assurances. This is consistent with our policy of one-stop filing for all required certifications and assurances. Transit operators planning to apply for the Clean Fuels Grant Program would indicate compliance with this certification when submitting the annual certifications and assurances. Additionally, grantees purchasing or leasing ''clean diesel'' buses must certify that the buses would be operated using only ultra-low-sulfur diesel fuel.

E. Statutory Cross-Cutting Requirements

Since the program is now a discretionary grant program, we are amending section 624.9 by removing the grant formula because it no longer applies. Section 5308, as amended by SAFETEA–LU, requires that a grant under this program be subject to the applicable requirements of 49 U.S.C. 5307. Accordingly, we are amending section 624.9 by inserting the applicable statutory requirements from 49 U.S.C. 5307. Many of these requirements are also contained in FTA Circular 9030.1C, which is available on the FTA website at (*http://www.fta.dot.gov*).

Further, all FTA grants provided under chapter 53 of title 49 of the United States Code are subject to applicable requirements of the FTA Master Agreement (MA), which is incorporated by reference in the grant agreement. Additional project management guidelines and requirements may also be found in FTA Circular 5010.1C. This Circular and the MA are also available on the FTA Web site at (*http://www.fta.dot.gov*).

F. Reporting

With respect to the comment on reporting as part of the grant process, FTA is interested in program level evaluation. We will use these reporting components to analyze national programmatic effects. However, we encourage local areas to use criteria that best suits their local needs.

As FTA supports the development and deployment of clean fuel and advanced propulsion technologies for transit buses, we remain interested in collecting relevant information on the operations and performance of these clean fuel technology buses to help assess the reliability, benefits, and costs of certain technologies compared to conventional vehicle technologies. Accordingly, FTA retains the reporting requirements in section 624.11, which require grantees receiving program funds for hybrid electric, battery electric, and fuel cell vehicles to provide information to us on the operations, performance, and maintenance of those vehicles purchased or leased with program funds.

We have determined, however, that semiannual instead of quarterly reporting for the first three years of the useful life of the vehicle is sufficient for this objective; thus, we are providing administrative relief by extending the reporting requirements in section 624.11 from quarterly to semiannually. Submission of data on the operation of the vehicle beyond the three-year period would continue to be voluntary.

Likewise, we encourage transit agencies acquiring other types of alternative fuel buses (*e.g.*, compressed

natural gas (CNG), liquefied natural gas (LNG), liquefied petroleum gas (LPG), etc.) to voluntarily report similar information. However, recipients acquiring clean diesel vehicles are not required to report the data requested under section 624.11 because we believe that sufficient information about this technology has been compiled.

FTA will be requesting from the Office of Management and Budget (OMB) under the Paperwork Reduction Act approval to collect information from recipients receiving Federal financial assistance under the Clean Fuels program. We intend to collect information such as vehicle miles traveled, fuel costs, vehicle fuel/energy consumption and oil consumption, road calls or breakdowns resulting from clean fuel and advanced propulsion technology systems, and maintenance costs associated with these systems. Data collected will be used to provide more accurate information to transit agencies for future clean fuel and advanced propulsion vehicle acquisitions.

IV. Regulatory Analyses and Notices

Executive Order 12866

Under Executive Order 12866, the Department of Transportation (DOT) must examine whether this rule is a ''significant regulatory action.'' A significant regulatory action is subject to OMB review and the requirements of the Executive Order (E.O.). E.O. 12866 defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $120 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

This rule amends an existing grant program and is not expected to impose any new compliance costs. Specifically, we are amending the existing program from a formula program to a discretionary grant program in accordance with section 3010 of SAFETEA–LU. We believe that the industry costs and benefits of the Clean Fuels Grant Program do not warrant designating this as a significant rule under E.O. 12866 because it involves grant application procedures and will not cost more than $120 million annually. Additionally, we provide administrative relief in the reporting criteria by decreasing the reporting period from quarterly to semiannually. For these reasons, we have determined that this rule is a no significant regulatory action under section 3(f) of E.O. 12866. Accordingly, it has not been reviewed by OMB.

Executive Order 13132

This rule has been analyzed in accordance with the principles and criteria contained in E.O. 13132 (Federalism). This rule does not include any provisions that have substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of E.O. 13132 do not apply because this rule only sets forth application procedures for an existing formula grant program that has been statutorily amended to a discretionary grant program.

Executive Order 13175

This rule has been analyzed in accordance with the principles and criteria of E.O. 13175 (Consultation and Coordination with Indian Tribal Governments). Because the proposal does not have tribal implications and does not impose direct compliance costs, the funding and consultation requirements of E.O. 13175 do not apply.

Executive Order 13272 and the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), requires each agency to analyze regulations and proposals to assess their impact on small businesses and other small entities to determine whether the rule or proposal will have a significant economic impact on a substantial number of small entities.

We evaluated the effects of this rule on small entities and determined that it will not have a significant effect on a substantial number of small entities. This rule imposes no new costs because it merely modifies the application procedures for an existing grant program.

Paperwork Reduction Act

This rule includes information collection requirements subject to the Paperwork Reduction Act. OMB previously approved our information collection request under the Clean Fuels Formula Grant Program, 2132–0560. However, that approval expired on August 31, 2003, because funding was not allocated for the program.

Since Congress may provide funding in future fiscal years, we will submit a new information collection request to OMB. The affected public under this rulemaking remains public transportation providers who apply for Federal funds under this program. Our new information collection request will not include any new reporting requirements. In fact, the rule decreases reporting because we modify the reporting period from quarterly to semiannually.

Unfunded Mandates Reform Act of 1995

This rule does not propose unfunded mandates under the Unfunded Mandates Reform Act of 1995. The rule will not result in costs of $100 million or more (adjusted for inflation), in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

National Environmental Policy Act

The National Environmental Policy Act of 1969, (42 U.S.C. 4321–4347), requires Federal agencies to consider the consequences of major federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. Since this rule promotes the use of clean fuels in vehicles used for public transportation, it potentially may have a positive impact on the environment. Alternatively, there are no significant environmental impacts associated with this proposed rule.

List of Subjects in 49 CFR Part 624

Grant Programs—Transportation, Public transportation, Reporting and record keeping requirements.

■ For the reasons set forth in the preamble, FTA amends 49 CFR part 624 as follows:

PART 624—CLEAN FUELS GRANT PROGRAM

■ 1. The authority citation for part 624 is revised to read as follows:

Authority: 49 U.S.C. 5308; 49 U.S.C. 5334(a); 49 CFR 1.51.

■ 2. The heading to part 624 is revised to read as set forth above.

■ 3. Revise § 624.1 to read as follows:

§ 624.1 Eligible applicant.

(a) An eligible applicant is:

(1) A designated recipient (designated recipient has the same meaning as in 49 U.S.C. 5307(a)(2)); or

(2) A recipient for an urbanized area with a population of less than 200,000 (smaller urbanized area). The State in which the smaller urbanized area is located shall act as the recipient.

(b) An eligible applicant, as defined in paragraph (a) of this section, shall operate in an area that is either:

(1) An ozone or carbon monoxide nonattainment area as specified under section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)); or

(2) A maintenance area for ozone or carbon monoxide.

■ 4. Amend § 624.3 by revising paragraph (a) and (c) (3) through (6) to read as follows:

§ 624.3 Eligible activities.

(a) Eligible activities include purchasing or leasing clean fuel buses and constructing new or improving existing public transportation facilities to accommodate clean fuel buses.

* * * * *

(c) * * *

(3) At the discretion of the Administrator, projects relating to clean fuel, biodiesel, hybrid electric, or zero emissions technology buses that exhibit equivalent or superior emissions reductions to existing clean fuel or hybrid electric technologies.

(4) The Federal share for eligible activities undertaken for the purpose of complying with or maintaining compliance with the Clean Air Act under this program shall be limited to 90 percent of the net (incremental) cost of the activity.

(i) The Administrator may exercise discretion and determine the percentage of the Federal share for eligible activities to be less than 90 percent.

(ii) An administrative determination per this subsection will be published in accordance with § 624.5(a).

(5) Funding for clean diesel buses shall be limited to not more than 25 percent of the amount made available each fiscal year to carry out the program.

(6) Any amount made available for this section shall remain available to an eligible activity for two years after the fiscal year for which the amount is provided. Any amount that remains unobligated at the end of the three-year-period shall be added to the amount made available to carry out the program in the following fiscal year.

■ 5. Revise § 624.5 to read as follows:

§ 624.5 Application process.

(a) FTA shall publish a Notice of Funding Availability in the **Federal Register** each fiscal year that funding is made available for the Clean Fuels program. The notice shall provide the criteria by which the eligible projects will be evaluated for selection and the Administrator's determination of the net Federal share for projects funded under this Part.

(b) The Administrator shall determine the criteria for selecting proposed projects for funding, which may include, but are not limited to the following factors:

(1) Whether the proposed project is a transportation control measure in an approved State Implementation Plan;

(2) The benefits of the proposed project in reducing transportation-related pollutants;

(3) Consistency with the recipient's fleet management plan;

(4) The applicant's ability to implement the project and facilities to maintain and fuel the proposed vehicles;

(5) The applicant's coordination of the proposed project with other public transportation entities or other related projects within the applicant's Metropolitan Planning Organization or the geographic region within which the proposed project will operate.

(6) The proposed project's ability to support emerging clean fuels technologies or advanced technologies for transit buses.

■ 6. Revise § 624.9 to read as follows:

§ 624.9 Grant requirements.

A grant under this section shall be subject to the following requirements of 49 U.S.C. 5307(d):

(a) *General.* All recipients shall maintain and report financial and operating information on an annual basis, as prescribed in 49 CFR part 630, and the most recent National Transit Database Reporting Manual.

(b) *Labor standards.* As a condition of financial assistance under 49 U.S.C. 5308, the interests of employees affected by the assistance shall be protected under arrangements that the Secretary of Labor concludes are fair and equitable.

(c) *Satisfactory continuing control.* An FTA grantee shall:

(1) Maintain control over federally funded property;

(i) Ensure that it is used in transit service; and

(ii) Dispose of it in accordance with Federal requirements.

(2) Under this paragraph (c), if the grantee leases federally funded property to another party, the lease must provide the grantee satisfactory continuing control over the use of that property as determined in two areas: real property (land) and facilities; and personal property (equipment and rolling stock, both revenue and non-revenue).

(d) *Maintenance.* The grant applicant shall certify annually that pursuant to 49 U.S.C. 5307(d)(1)(C), it will maintain (federally funded) facilities and equipment. In addition, the grantee shall keep equipment and facilities acquired with Federal assistance in good operating order, which includes maintenance of rolling stock (revenue and non-revenue), machinery and equipment, and facilities.

(e) *Rates charged elderly and persons with disabilities during nonpeak hours.* In accordance with 49 U.S.C. 5307(d)(1)(D), the grant applicant shall certify that the rates charged the elderly and persons with disabilities during nonpeak hours for fixed-route transportation using facilities and equipment financed with Federal assistance from FTA will not exceed one-half of the rates generally applicable to other persons at peak hours, whether the operation is by the applicant or by another entity under lease or otherwise.

(f) *Use of competitive procurements.* Pursuant to 49 U.S.C. 5307(d)(1)(E), the grant applicant shall certify that it will use competitive procurements and will not use procurements employing exclusionary or discriminatory specifications.

(g) *Compliance with Buy America provisions.* The grant applicant shall certify that in carrying out a procurement authorized for this program, the applicant will comply with applicable Buy America laws.

(h) *Certification that local funds are available for the project.* The grant applicant shall certify that the local funds are or will be available to carry out the project.

(i) *Compliance with national policy concerning elderly persons and individuals with disabilities.* The grant applicant shall certify that it will comply with the requirements of 49 U.S.C. 5301(d) concerning the rights of elderly persons and persons with disabilities.

(j) *FTA Master Agreement.* The grant applicant shall comply with applicable provisions of the FTA Master Agreement which is incorporated by reference in the grant agreement.

■ 7. Amend § 624.11 by revising paragraph (a) introductory text and paragraph (c) to read as follows:

§ 624.11 Reporting.

(a) Recipients of financial assistance under 49 U.S.C. 5308 who purchase or lease hybrid electric, battery electric and fuel cell vehicles shall report semiannually the following information to the appropriate FTA Regional Office

for the first three years of the useful life of the vehicle:

* * * * *

(c) Recipients of financial assistance under 49 U.S.C. 5308 that purchase or lease clean diesel vehicles are not required to report information beyond FTA grant reporting requirements for capital projects.

Appendix A to Part 624 [Removed]

■ 8. Remove Appendix A to Part 624.

Issued in Washington, DC, this 26th day of March 2007.

James S. Simpson,

Administrator.

[FR Doc. E7–5879 Filed 3–29–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01; I.D. 032607F]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the 2007 total allowable catch (TAC) of pollock for Statistical Area 620 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 27, 2007, through 1200 hrs, A.l.t., August 25, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

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

The B season allowance of the 2007 TAC of pollock in Statistical Area 620 of the GOA is 8,924 metric tons (mt) as established by the 2007 and 2008 harvest specifications for groundfish of the GOA (72 FR 9676, March 5, 2007). In accordance with § 679.20(a)(5)(iv)(B) the Administrator, Alaska Region, NMFS (Regional Administrator), hereby increases the B season pollock allowance by 1,785 mt, the remaining amount of the A season allowance for pollock in Statistical Area 620. Therefore, the revised B season allowance of the pollock TAC in Statistical Area 620 is therefore 10,709 mt (8,924 mt plus 1,785 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the B season allowance of the 2007 TAC of pollock in Statistical Area 620 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 10,659 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 620 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 26, 2007.

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

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

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

Dated: March 26, 2007.

James P. Burgess,

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

[FR Doc. 07–1579 Filed 3–27–07; 3:07 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 61
Friday, March 30, 2007

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket # AMS–FV–2007–0010; FV–06–302]

United States Standards for Grades of Sweet Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS), has reviewed the Fresh Fruit and Vegetable grade standards for usefulness in serving the industry. As a result, AMS is proposing to revise the sweet cherry standard to include standardized row sizes into the standard. These standardized row sizes would establish a uniform basis for defining size in the industry.

DATES: Comments must be received by May 29, 2007.

ADDRESSES: Interested persons are invited to submit written comments on the Internet at *http://www.regulations.gov* or to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 1661 South Building, Stop 0240, Washington, DC 20250–0240. Fax (202) 720–8871. Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Vincent J. Fusaro, Standardization Section, Fresh Products Branch, (202) 720–2185. The United States Standards for Grades of Sweet Cherries are available either through the address cited above or by accessing the Fresh Products Branch Web site at: *http://www.ams.usda.gov/standards/stanfrfv.htm*.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture ''To develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities. AMS makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements no longer appear in the Code of Federal Regulations, but are maintained by USDA, AMS, Fruit and Vegetable Programs.

Regulatory Flexibility Act and Paperwork Reduction Act

AMS reviewed the Fresh Fruit and Vegetable grade standards for usefulness in serving the industry. AMS identified the United States Standards for Grades of Sweet Cherries for possible revision. The United States Standards for Grades of Sweet Cherries was last revised in 1971. The standard row sizes being proposed will make the standards current with today's marketing trends and practices.

Executive Order 12866 and 12988

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action. This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Accordingly, AMS has prepared this initial regulatory flexibility analysis. Interested parties are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule will revise the U.S. Standards for Grades of Sweet Cherries that were issued under the Agricultural Marketing Act of 1946. Standards issued under the 1946 Act are voluntary.

Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. The number of sweet cherry handlers in the United States is not known. However, we estimate that the majority of such handlers may be classified as small entities, reflecting the size of a majority of handlers regulated under the marketing order 7 CFR part 925.

According to the National Agricultural Statistics Service (NASS) report of the 2002 Census of Agriculture, these are 8,043 sweet cherry farms in the United States. Using additional data from the Noncitrus Fruits and Nuts Summary for 2005, total fresh utilization of sweet cherries was 167,190 tons. Furthermore, the price per ton for sweet cherries in 2005 was $2,610 and the value of sweet cherries utilized as fresh was $436,992,000. Based on the number of farms (8,043) the average producer revenue from the sale of fresh sweet cherries is estimated at approximately $54,332 per year. Thus, the majority of fresh sweet cherry producers may be classified as small entities.

This proposed rule would incorporate standard row sizes into the standard. The effects of this rule are not expected to be disproportionately greater or smaller for small handlers or producers than for larger entities.

This proposed action would establish standard row sizes and make the standard more consistent and uniform with marketing trends and practices. The size of sweet cherries are described in ''rows'' and this practice dates back to when the industry place-packed the top layer in the box. For example; a tight fit of ten cherries across the narrow face of the lug became known as size ''10 row'' cherries.

This proposed action will not impose any additional reporting or

recordkeeping requirements on either small or large sweet cherry producers, handlers, or importers. USDA has not identified any Federal rules that duplicate, overlap, or conflict with this rule. However, there is a marketing order program (7 CFR part 923) which regulates the handling of sweet cherries. Sweet cherries under a marketing order have to meet certain requirements set forth in the U.S. grade standards.

Alternatives were considered for this action. One alternative would be to not issue a proposed rule. However, the need for this revision has increased as a result of changing market characteristics. Since the purpose of these standards is to facilitate the marketing of agricultural commodities, not revising the sweet cherries standard could result in confusion in terms of industry marketing and the use of the U.S. standards. AMS is seeking comments regarding how, if at all, marketing would be improved by incorporating standard row sizes into the standard. Further, comments outlining any additional costs or benefits would be helpful in determining a final decision after the comments are received and reviewed. AMS will also review any other suggested revisions and would be interested in how they would improve the marketing of sweet cherries and any associated costs and/or benefits to the industry.

Background

Prior to undertaking detailed work to develop a proposed revision to the standard, AMS published a notice on January 25, 2006, in the **Federal Register** (71 FR 4100) soliciting comments on a proposal to incorporate row sizes into the standards.

In response to our request for comments, AMS received two comments from the industry. These comments are available by accessing the AMS, Fresh Products Branch Web site at: *http://www.ams.usda.gov/fv/fpbdocketlist.htm.*

The first comment was from a grower/shipper which supported incorporating a standard row size into the Standards for Grades of Sweet Cherries. The second comment was from a trade association representing wholesale receivers. The comment only stated that the association saw no reason to incorporate the standard row size into the U.S. Grade Standards at this time. However, AMS believes incorporating the size will be beneficial and reflect current marketing practices.

Accordingly, AMS is proposing to incorporate standard row sizes into the U.S. standards. The row size corresponds with current row sizes being used in the industry. The section 51.2660 Metric Conversion Table would be designated as section 51.2660 Standard Row Sizes to show the following definition for row size with corresponding sizes in inches:

Row sizes	9	9½	10	10½	11	11½	12	12½	13
Size in inches	75/64	71/64	67/64	64/64	61/64	57/64	54/64	51/64	48/64

Section 51.2661 would be the standard and the current § 51.2660 Metric Conversion Table will be re-designated as § 51.2661.

The official grade of a lot of sweet cherries covered by these standards is determined by the procedures set forth in the Regulations Governing Inspection, Certification, and Standards of Fresh Fruits, Vegetables and Other Products (§ 51.1 to 51.61).

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

PART 51—[AMENDED]

For reasons set forth in the preamble, 7 CFR part 51 is proposed to be amended as follows:

1. The authority citation for part 51 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. Section 51.2660 is revised and § 51.2661 is added to read as follows:

Subpart—United States Standards for Grades of Sweet Cherries

§ 51.2660 Standard Row Sizes.

Row sizes	9	9½	10	10½	11	11½	12	12½	13
Size in inches	75/64	71/64	67/64	64/64	61/64	57/64	54/64	51/64	48/64

§ 51.2661 Metric Conversion Table.

Inches	Millimeters (mm)
8/64 equals	3.2
16/64 equals	6.4
24/64 equals	9.5
32/64 equals	12.7
40/64 equals	15.9
48/64 equals	19.1
51/64 equals	20.2
52/64 equals	20.6
54/64 equals	21.4
56/64 equals	22.2
1 equals	25.4
1 8/64 equals	28.6
1 16/64 equals	31.8
1 24/64 equals	34.9

Dated: March 23, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07–1537 Filed 3–29–07; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Docket No. AO–254–A10; AMS–FV–06–0220; FV06–915–2]

Avocados Grown in South Florida; Recommended Decision on Proposed Amendments of Marketing Order No. 915

AGENCY: Agricultural Marketing Service (AMS), USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This is a recommended decision regarding proposed

amendments to Marketing Order No. 915 (order), which regulates the handling of avocados grown in Florida. The amendments were proposed by the Florida Avocado Administrative Committee (Committee), which is responsible for local administration of the order. The amendments included in this recommended decision would: add authority for the Committee to borrow funds; revise voting requirements for changing the assessment rate; allow for District 1 nominations to be conducted by mail; and add authority for the Committee to accept voluntary contributions. The proposed amendments are intended to improve the operation and functioning of the marketing order program. This recommended decision invites written exceptions on the proposed amendments. This rule also announces AMS's intention to request approval by the Office of Management and Budget (OMB) of a new information collection.

DATES: Written exceptions must be filed by April 30, 2007. Pursuant to the Paperwork Reduction Act, comments on the information collection burden must be received by May 29, 2007.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, room 1081–S, Washington, DC 20250–9200, Fax: (202) 720–9776 or via the Internet at *http://www.regulations.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments will be made available for public inspection in the Office of the Hearing Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Marc McFetridge or Melissa Schmaedick, Marketing Specialists, Fruit and Vegetable Programs, Marketing Order Administration Branch (MOAB), AMS, USDA, 1400 Independence Ave. SW., Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Marc.McFetridge@usda.gov* or *Melissa.Schmaedick@usda.gov*.

Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on July 18, 2006, and published in the July 24, 2006 issue of the **Federal Register** (71 FR 41740).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendments to Marketing Order 915 regulating the handling of avocados grown in Florida, and the opportunity to file written exceptions thereto. Copies of this decision can be obtained from Marc McFetridge whose address is listed above.

This recommended decision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed amendments are based on the record of a public hearing held August 16, 2006, in Homestead, Florida. Notice of this hearing was published in the **Federal Register** on July 24, 2006 (71 FR 41740). The notice of hearing contained proposals submitted by the Committee.

The proposed amendments are the result of the Committee's review of the order. The Committee met several times in 2005 and drafted proposed amendments to the order and presented them at industry meetings. The proposed amendments were then unanimously approved by the Committee. The amendments are intended to streamline organization and administration of the marketing order program. The Committee's request for a public hearing was submitted to the USDA on May 1, 2006.

The Committee's proposed amendments to the order are summarized below:

1. Amend the order to provide the Committee authority to borrow funds. This proposal would amend § 915.41, Assessments.

2. Amend the order by revising the voting requirements for changing the assessment rate. This change would remove the current voting requirement for rate increases above $0.20 per bushel that provides for a quorum of eight Committee members and eight concurring votes for approval. The new voting requirement would be applicable to all assessment rate increases and would provide for a quorum of seven Committee members and a two-thirds majority vote of those in attendance for approval. This proposal would amend § 915.30, Procedure.

3. Amend the order to allow District 1 nominations to be conducted by mail. District 2 nomination procedures already provide that authority. This proposal would amend § 915.22, Nomination.

4. Add authority to the order for the Committee to accept voluntary contributions. This proposal would add a new § 915.43, Contributions.

USDA also proposes to make changes to the order as may be necessary, if any of the proposed changes are adopted, so that all of the order's provisions conform to the effectuated amendments.

Nine industry witnesses testified at the hearing. These witnesses represented fresh avocado producers and handlers in the production area. All of the witnesses testified in support of the proposed amendments to the order.

Industry witnesses addressed the need for adding authority to borrow funds. Witnesses indicated that multiple years of weather-related disasters have led to economic hardships for the Florida avocado industry and, as a result, lower assessment collections to fund the administrative costs of the Committee. The authority to borrow funds would enable the Committee access to an additional source for cash flow in addition to assessments, thereby providing the Committee with flexibility in covering their operational costs during times of economic hardship.

Industry witnesses stated their support for revising the voting requirements for changing the assessment rate. This amendment would remove the current voting requirement for rate increases above $0.20 per bushel that provides for a quorum of eight Committee members and eight concurring votes for approval. The new voting requirement would be applicable to all assessment rate increases and would provide for a quorum of seven Committee members and a two-thirds majority vote of those in attendance for approval. Revising these voting requirements would allow the Committee to become more flexible in responding to budgetary emergencies due to economic fluctuations in the avocado industry.

Witnesses also supported the proposal to allow for District 1 nominations to be conducted by mail. While the authority already exists to conduct nominations in District 2 by mail, voters in District 1 are required to travel to nomination meetings to cast their vote in District 1. Many witnesses cited grower reluctance to attend these meetings because of

travel related expenses and lost wages due to time away from the workplace. Thus, voter participation in District 1 nominations has been consistently lower compared to those held in District 2. Witnesses stated that this proposal would broaden grower participation in the Committee nominations for District 1.

Lastly, industry witnesses testified in support of adding authority to accept voluntary contributions. According to the record, the authority to accept voluntary contributions would enable the Committee access to an additional source of revenue besides assessments. Some witnesses stated that voluntary contributions could also eliminate the need to raise the assessment rate and could support Committee research and development activities.

At the conclusion of the hearing, the Administrative Law Judge stated that the final date for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing would be 30 days after USDA's posting of the hearing record transcript. The transcript was posted on September 13, 2006. Therefore, the briefing period ended October 13, 2006. One brief was filed. The brief stated a need for a technical change to § 915.11. The brief noted that the name of Dade County has changed to Miami-Dade County. This correction has been incorporated as a technical change throughout this amendatory proceeding.

Material Issues

The material issues presented on the record of hearing are as follows:

(1) Whether to add authority to borrow funds;

(2) Whether to revise the voting requirements for changing the assessment rate;

(3) Whether to allow for District 1 nominations to be conducted by mail; and

(4) Whether to add authority to accept voluntary contributions.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof.

Material Issue Number 1—Authority to Borrow Funds

Section 915.41, Assessments, should be amended to provide the Committee with authority to borrow funds. Any such funds would be limited for use by the Committee to meet its administrative responsibilities under the order during times of economic hardship and would be subject to prior approval by USDA.

Under the current definition of the order, the Committee does not have the authority to borrow funds. Witnesses explained that without the authority to borrow funds or access to other non-assessment resources, the Committee is reliant on production-related revenue to fund its administrative operations.

According to the record, multiple years of weather related-disasters have resulted in lower assessment collections due to heavy losses of crops and production capacity. As a result, the Committee has relied on its financial reserves to continue its administrative operations. After more than five years of consecutive weather damage and low assessment collections, the Committee has depleted its reserves. Witnesses stated that the authority to borrow funds would be essential to the Committee's ability to continue operations during any future times of economic hardship.

As an example, witnesses cited USDA's grant of special emergency, short-term authority to borrow funds during fiscal year 2005–2006. It was indicated that without those borrowed funds, the Committee would not have been able to continue to operate. The Committee has since repaid its loan, and witnesses stated that the borrowed funds were critical to the Committee's ability to continue functioning during that time.

If implemented, the authority to borrow funds would be limited to use by the Committee to meet its administrative responsibilities under the order only during times of economic hardship. According to record evidence, the Committee's ability to borrow funds would be based on the financial history and assets of the Committee. If a loan, or a line of credit, for example, were approved, the Committee would be required to repay the loan by the end of the fiscal year in which the funds were borrowed. Loans could be renewed for the following fiscal year and would be subject to USDA oversight as part of the Committee's annual budgetary process. Witnesses explained that any interest incurred on the loan would be offset by the benefit of allowing the Committee to finance its operations.

Based on record evidence, USDA recommends modifying the language for this proposed amendment to clarify that the authority to borrow funds would only be used in emergency situations, on a short-term basis and to meet financial obligations as those obligations occur, or to allow the Committee to adjust its reserve funds to meet such obligations. In addition, the language should be clarified to specify that any borrowing activities of the Committee would be subject to prior review and approval by USDA. These clarifying changes have been incorporated in the amendatory text section of this recommended decision.

It is recommended that the order be amended to provide the Committee with authority to borrow funds. Without access to additional funds during times of economic hardship the Committee may not be able to meet their administrative responsibilities. The amount of the loan would be based on the financial history of the assessments collected by the Committee and would be repaid by the end of the fiscal year with the possibility for renewal. Any such loan would require prior approval by USDA.

For the reasons outlined above, § 915.41 should be amended to provide the Committee the authority to borrow funds, subject to USDA approval. USDA recommends modifying the amendatory text of this proposal so that the authority to borrow funds would only be used in emergency, short-term situations, and that such authority would be subject to USDA's prior approval. There was no opposition testimony on this issue.

Material Issue Number 2—Revision of the Voting Requirements for Committee Recommendations To Increase the Assessment Rate

Section 915.30, Procedures, should be amended to revise the voting requirements for Committee recommendations for assessment rate changes above $0.20 per bushel. This change would remove the current voting requirement for rate increases above $0.20 per bushel provides for a quorum of eight Committee members and eight concurring votes for approval. The new voting requirement would be applicable to all assessment rate increases and would provide for a quorum of seven Committee members and a two-thirds majority vote of those in attendance for approval.

The avocado marketing order provides authority for the Committee, with approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of avocados. They are familiar with the Board's needs and with the costs for goods and services in their local area and are, thus, in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide

input. The assessment rate can be revised when it is recommended by the Committee and approved the USDA.

Authority to fix the rate of assessment to be paid by each handler and to collect such assessment appears in § 915.41 of the order. In addition, § 915.45 of the order provides that the Committee, with the approval of USDA, may establish or provide for the establishment of production research, marketing research, and market development projects designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of avocados. The expense of such projects is paid from funds collected pursuant to § 915.41 (Assessments).

Under the current definition of the order, the Committee must have a quorum of eight and at least eight concurring votes to increase assessment rates above $0.20 per bushel. The Committee consists of ten members, and the quorum requirement for all other voting purposes is seven members.

According to record evidence, the Committee has had difficulties meeting the eight-member quorum and consensus requirement specific to assessment rate increases above $0.20 per bushel. Witnesses explained that recommendations to increase the assessment rate above this level typically arise during periods of economic hardship, such as crop loss after a hurricane. During the 2004–2005 season, the last time the assessment rate was changed to a level above $0.20 per bushel, it took three separate meeting attempts to receive the required quorum votes of eight. The assessment rate change was needed to increase the reserve funds for continued operation of the committee because crop estimates were below expectations and reserve funds had become low. As a result, the Committee has not been able to be as responsive as it wanted to be in obtaining adequate funds to operate the Committee.

The Committee's proposal to relax voting requirements for increases in the assessment rate would facilitate the Committee's ability to be responsive. The amendment would require that for any change in the assessment rate a quorum of seven Committee members would be required and a two-thirds consensus vote of attending members would be needed to approve the change.

According to the record, the original intent regarding voting requirements for assessment rates above $0.20 per bushel was to provide growers with a voice in significant changes in the assessment rate. Historically there has been tension between growers and handlers, so the order was written to provide balance between growers and handlers when changes in the assessment rate above the specified threshold were proposed. According to witnesses there now exists general unity between handlers and growers, especially with regard to this specific proposal. Handlers and growers agree that especially during times of economic hardships it is beneficial to relax the voting requirements to facilitate the Committee's ability to be responsive.

The language for this proposed amendment published in the Notice of Hearing only states a ⅔ majority requirement but did not clarify that a quorum was necessary. For this reason, USDA proposes that proposed amendatory language for § 915.30, Procedure, be modified to clarify that a quorum of seven Committee members is required in addition to the two-thirds majority vote to recommend an assessment rate change. The modified language would read as follows: ''For any recommendation of the Committee for an assessment rate change, a quorum of seven Committee members and a two-thirds majority vote of approval of those in attendance is required.''

It is recommended that the order be amended to revise the voting requirements to increase the assessment rate above $0.20 per bushel. The ability to recommend any rate change with a two-thirds majority vote, given that the quorum requirement is met, would allow the Committee more flexibility in responding to the needs of the industry. Without this authority, the Committee's ability to react and modify the assessment rate to cover operational costs would be unnecessarily limited.

For the reasons above, it is recommended that § 915.30 be amended. This amendment would remove the current voting requirement for rate increases above $0.20 per bushel that stipulates a quorum of eight Committee members and eight concurring votes for approval. The new voting requirement, modified by USDA as recommended above, would be applicable to all assessment rate increases and would provide for a quorum of seven Committee members and a two-thirds majority vote of those in attendance for approval. There was no opposition testimony on this issue.

Material Issue Number 3—Allow for District 1 Nominations To Be Conducted by Mail

Section 915.22, Nomination, should be amended to provide District 1 with the authority to conduct nominations by mail.

Under the current nomination rules of the order, growers residing in District 1 must vote in person at the designated polling office, which is located at the Miami-Dade County Extension office. The proposed amendment would allow growers to vote via mail on nominations for the Committee. If implemented, this amendment would also remove the Committee's financial outlays associated with holding a nomination meeting, and would reduce the financial and other burdens currently required of growers commuting to vote.

Witnesses testified that a considerable amount of growers in District 1 do not live within an easily commutable radius of the nomination meeting location. According to the record, some growers can spend hours commuting to the meeting due to both distance and traffic congestion. Witnesses stated that time spent commuting often results in lost wages because of time spent away from the workplace. Along with lost wages, growers are also burdened with the costs of fuel for their commute.

According to witnesses, the burdens of commuting to a nomination meeting have led to poor voter turnout. Witnesses stated that during the previous District 1 nomination, voter turnout equaled less than 30 growers, which is fewer than 15% of the total 220 registered growers in that district. According to the record, growers in District 1 have stated a reluctance to participate because the burdens associated with traveling to the meeting are too great.

A witness also testified that the costs associated with conducting a nomination meeting are not justified due to low voter participation. The witness stated that both a USDA representative and a Committee staff member are required to conduct nomination meetings. Given that few growers in District 1 elect to attend the nomination meetings, two employee work days are used to accommodate a very low level of grower participation.

Witnesses also stated that growers in District 2 have the authority to vote via mail. The benefits of voting by mail in District 1 could be obtained without additional costs incurred by the Committee. The cost of mailing the ballots within District 1 would be less than the costs associated with staffing a voting location.

Also, continuance referenda, considered by witnesses to be the most important vote that growers participate in, are conducted by mail. Thus, witnesses stated that the precedence for successful voter participation by mail exists under the order and should be extended to nomination voting for District 1.

Witnesses supported the Committee's recommendation to change the date for submitting names of the nominees from February 15 to March 1. The extra time is needed to accommodate mail balloting.

According to the record, the benefits of allowing District 1 vote by mail include: increased voter grower participation in the District 1 Committee nominations, reduced costs on growers' time and money, and reduced costs associated with conducting a nomination meeting. Allowing District 1 to vote by mail would increase grower participation in the voting process without incurring additional expenses.

For the reasons above, it is recommended that § 915.22 be amended to provide the Committee with the authority to conduct nominations by mail in District 1. There was no opposition testimony on this issue.

Material Issue Number 4—Authority To Accept Voluntary Contributions

A new § 915.43, Contribution, should be added to provide the Committee with the authority to accept voluntary contributions. Such contributions should be free from any encumbrances by the donor so that the Committee would retain complete control of their use.

Under the current order, the Committee does not have the authority to accept voluntary contributions. All marketing order activities are funded through handler assessments. Adding § 915.43 to the order would provide the Committee with the authority to accept voluntary contributions. According to the record, voluntary contributions could help the Committee meet its administrative responsibilities under the order during times of economic hardships and may also provide additional funds for Committee research and development activities.

Witnesses testified that the authority to accept voluntary contributions would be beneficial, especially during times of emergency, and that such monies could potentially assist in averting the need to increase handler assessments during those times. According to witnesses, if contributions are available, then the Committee should have the authority to accept them.

Voluntary contributions could also assist the Committee in addressing complex crop growth and development issues facing the avocado industry. Witnesses stated that voluntary contributions could fund research on disease and pest issues that threaten the industry which, due to a lack of adequate funds, the Committee has not been able to address. The proposal to add authority to the order to use voluntary contributions for production research, marketing research and development activities was discussed and supported by witnesses at the hearing. For this reason, and based on supporting evidence found in the record of hearing, USDA recommends a conforming change to § 915.45, Production research, marketing research and development, of the order. This section should be modified to allow for such activities to be to be paid for by either assessment funds (provided for under § 915.41, Assessments) or any receipts received as contributions (proposed under the new § 915.43, Contributions). This proposed conforming change has been included in the regulatory text of this recommended decision.

It is recommended that the order be amended to add the authority for the Committee to accept voluntary contributions. Currently the Committee does not have the authority under the order to accept voluntary contributions from any source. Providing the Committee with the authority to accept voluntary contributions could help the Committee meet its administrative responsibilities under the order. Also, voluntary contributions could be used to conduct research. For the reasons above, it is recommended that § 915.43 be added to provide the authority for the Committee to accept voluntary contributions. Based on the record, USDA is also recommending a conforming change to § 915.45, Production research, marketing research and development, so that voluntary contributions, in addition to assessments, may be used for activities provided for under this provision. There was no opposition testimony on this issue.

Small Business Consideration

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit.

Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $6,500,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments to the order on small business. The record evidence is that while minimal costs may occur upon implementation of some of the proposed amendments, those costs would be outweighed by the benefits expected to accrue to the Florida fresh market avocado industry.

Avocado Industry Background and Overview

There are approximately 300 producers of avocados in the production area and approximately 35 handlers subject to regulation under the order.

According to the National Agricultural Statistics Service (NASS) and Committee data, the average price for Florida avocados during the 2005–06 season was around $46.75 per 55-pound bushel container, and total shipments were near 470,000 55-pound bushel equivalent. Using the average price and shipment information provided by the Committee, the majority of avocado handlers could be considered small businesses under the SBA definition. In addition, based on avocado production, grower prices, and the total number of Florida avocado growers, the average annual grower revenue is less than $750,000. Thus, the majority of Florida avocado producers may also be classified as small entities.

The NASS reported that in 2005, total Florida avocado bearing acres were 5,300 and the average yield per acre was 2.26 tons. The total Florida production reported in 2005 was 12,000 tons, with growers receiving an average (farm gate) price of $940/ton. The estimated total value of 2005 Florida avocado production was $11.28 million.

Over the past 30 years the U.S. avocado industry has seen many changes. According to NASS, the total U.S. production acres for avocados have decreased by 13 percent, from 78,000 acres in 1982 to 67,600 acres in 2005. Prices have trended upward from 1959 to 2005, although there has been significant variability in prices from year to year. The average grower price for the U.S. in 1959 was $109 per ton and in 2005 the average grower price was $1,280 per ton. The total value of U.S. avocado production has increased dramatically since 1959, reaching a peak of $394 million in 2003. The per capital consumption of fresh avocados has risen significantly since 1970. Between 1970

and 2004, per capital consumption increased almost five-fold to 2.9 pounds per person in 2004. According to the record, the availability of imported avocados, in addition to domestically produced avocados, resulting in year-round availability could be contributing to this increase.

Comparatively, Florida's avocado industry has seen similar trends. According to NASS, the production acreage has decreased by 53 percent over the last three decades. According to record evidence, the rapid decrease in Florida production acreage compared to that of U.S. acreage can be directly associated with crop damage resulting from hurricanes. Florida's production trended upward to 34,700 tons in the early 1980's and has shown great variability since. Production in 2005 was at a 10 year low of 12,000 tons. After Hurricane Andrew, which affected the value of production in 1992 and 1993, the value of Florida's production has ranged from a high of $17.2 million in 2003 to a low of $11.3 million in 2005.

Proposal 1, Adding the Authority To Borrow Funds

The proposal described in Material Issue No. 1 would amend § 915.41, Assessments, to add authority for the Committee to borrow funds. If implemented, the authority to borrow funds would be limited to use by the Committee to meet its administrative responsibilities under the order during times of economic hardship.

Witnesses supported this proposal by stating that the authority to borrow funds would provide the Committee with an alternative revenue source besides assessments. The industry has experienced multiple years of economic hardship resulting in decreased production levels. Lower production levels reduce the amount of assessments collected from the handlers, which has resulted in depleting the Committee's monetary reserve over past years.

According to the record, any interest incurred by the Committee on the borrowed funds would be offset by the benefit of keeping the Committee operating. Thus, no significant impact on small business entities is anticipated.

Proposal 2, Revising the Voting Requirements for Committee Recommendations To Increase the Assessment Rate

The proposal described in Material Issue No. 2 would amend § 915.30, Procedure, to revise the current voting requirements for Committee recommendations to increase the assessment rate above $0.20 per bushel from eight concurring votes to a two-thirds majority vote of those Committee members in attendance. If implemented, this proposed amendment would allow the Committee to be more flexible in dealing with inflation and economic hardships that impact the Committee's monetary reserves.

Witnesses supported this proposal by stating that the current voting requirements have resulted in delaying the Committee's ability to quickly respond to needs for an increase in assessments. According to the record, during the 2004–2005 season, the last time the assessment rate was changed, it took three separate meeting attempts to receive the required quorum votes of eight. The assessment rate change was needed to increase the reserve funds for continued operation of the Committee because crop estimates were below expectations and reserve funds were low.

Relaxing the voting requirements would reduce the probability that multiple meetings would need to be held before quorum was met, as well as increase the Committee's ability to effectively respond to budget needs. Therefore the costs of revising the voting requirements should be out weighed by the benefits.

Proposal 3, Allowing for District 1 Nominations To Be Conducted by Mail

The proposal described in Material Issue No. 3 would amend § 915.22, Nomination, to provide the Committee with the authority to conduct nominations for District 1 by mail.

Under the current nomination rules, growers living in District 1 must vote in person at the designated polling office, which is located at the Miami-Dade County Extension office. The proposed amendment would allow growers to vote via mail on nominations for the Committee. If implemented, this amendment would reduce financial outlays associated with maintaining a physical voting location, and would reduce the financial and physical burdens currently required of growers commuting to vote.

The impact for providing the Committee with the authority to conduct nominations by mail for District 1 would result with increased mailing costs. Any increased mailing cost would be less than or equal to current staffing costs. Witnesses testified that the benefits of increased grower participation and reduced transportation costs for growers would offset any possible costs associated with this proposal.

Proposal 4, Adding Authority To Accept Voluntary Contributions

The proposal described in Material Issue No. 4 would add a new § 915.43, Contributions, and would allow the Committee to accept voluntary contributions. Contributions would be free from any encumbrances by the donor and, according to the record, the contributions could be used to cover operational costs during times of economic hardships or fund research. According to the hearing record, the Committee would retain oversight over such contributions.

Witnesses supported this proposal by stating that it would provide the Committee and the industry with an additional source of revenue to cover operational costs or to fund research. It is not expected that this proposal would result in any additional costs to growers or handlers.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that AMS is seeking approval from OMB for a new information collection request for Avocados Grown in South Florida, Marketing Order No. 915, under OMB No. 0581-New. Upon OMB approval, the additional burden will be merged into the information collection currently approved under OMB No. 0581–0189, ''Generic OMB Fruit Crops.''

Title: Avocados Grown in South Florida, Marketing Order No. 915.

OMB No.: 0581-NEW.

Expiration Date of Approval: Three years from OMB date of approval.

Type of Request: New collection.

Abstract: The information collection requirement in this request is essential to provide growers and handlers with ballots so that nominations for the Committee can be conducted by mail.

This information collected is used only by authorized representatives of USDA, including AMS, Fruit and Vegetable Programs regional and headquarters' staff, and authorized employees and agents of the Committee. Authorized Committee employees, agents, and the industry are the primary users of the information and AMS is the secondary user.

Grower Ballot To Nominate Members and Alternate Members for District 1 or District 2

Avocado growers would use this ballot to nominate members and alternative members, either for District 1 or District 2 (whichever is applicable), to serve on the Committee. The ballot would be used when voting by mail.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.083 hour per response.

Respondents: Avocado growers.

Estimated Number of Respondents: 352.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 29 hours.

Handler Ballot To Nominate Members and Alternate Members for District 1 or District 2

Avocado handlers would use this ballot to nominate members and alternate members for either District 1 or District 2 (whichever is applicable), to serve on the Committee. This ballot would be used when voting by mail.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.083 hour per response.

Respondents: Avocado handlers.

Estimated Number of Respondents: 32.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 3 hours.

The Committee recommended amending the nomination process to allow for District 1 nominations to be conducted by mail.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

Committee meetings regarding these proposals as well as the hearing date were widely publicized throughout the Florida avocado industry, and all interested persons were invited to attend the meetings, the hearing and participate in Committee deliberations on all issues. All Committee meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

Civil Justice Reform

The amendments to Marketing Order 915 proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

Rulings on Briefs of Interested Persons

Briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth in this recommended decision. To the extent that the suggested findings and conclusions filed by interested persons are inconsistent with the findings and conclusions of this recommended decision, the requests to make such findings or to reach such conclusions are denied.

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein:

(1) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of avocados grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited to their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of avocados grown in the production area; and

(5) All handling of avocados grown in the production area as defined in the marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate so that the proposed amendments may be implemented as close to the beginning of the coming crop year as possible. The next crop year begins April 1. All written exceptions timely received will be considered and a grower referendum will be conducted before these proposals are implemented.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble the Agricultural Marketing Service proposes to amend title 7 part 915 of the Code of Federal Regulations as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 915.11, paragraphs (a) and (b) are revised to read as follows:

§ 915.11 District.

(a) *District 1* shall include Miami-Dade County.

(b) *District 2* shall include all of the production area except Miami-Dade County.

3. In § 915.22, paragraph (b)(1) is revised to read as follows:

§ 915.22 Nomination.

(a) * * *

(b) *Successor members.* (1) The Committee shall hold or cause to be held a meeting or meetings of growers and handlers in each district to designate nominees for successor members and alternate members of the Committee; or the Committee may conduct nominations in Districts 1 and 2 by mail in a manner recommended by the Committee and approved by the Secretary. Such nominations shall be submitted to the Secretary by the Committee not later than March 1 of each year. The Committee shall prescribe procedural rules, not inconsistent with the provisions of this section, for the conduct of nomination.

* * * * *

4. In § 915.30, paragraph (c) is revised to read as follows:

§ 915.30 Procedure.

(a) * * *

(b) * * *

(c) For any recommendation of the Committee for an assessment rate change, a quorum of seven Committee members and a two-thirds majority vote of approval of those in attendance is required.

5. In § 915.41, paragraph (b) is revised to read as follows:

§ 915.41 Assessments.

(a) * * *

(b) The Secretary shall fix the rate of assessment per 55-pounds of fruit or equivalent in any container or in bulk, to be paid by each such handler. At any time during or after a fiscal year, the Secretary may increase the rate of assessment, in order to secure sufficient funds to cover any later finding by the Secretary relative to the expense which may be incurred. Such increase shall be applied to all fruit handled during the applicable fiscal year. In order to provide funds for the administration of the provisions of this part, the Committee may accept the payment of assessments in advance, or borrow money on an emergency short-term basis. The authority of the Committee to borrow money is subject to approval of the Secretary and may be used only to meet financial obligations as the obligations occur or to allow the Committee to adjust its reserve funds to meet such obligations.

6. Add a new § 915.43 to read as follows:

§ 915.43 Contributions.

The Committee may accept voluntary contributions. Such contributions shall be free from any encumbrances by the donor and the Committee shall retain complete control of their use.

7. Revise § 915.45 to read as follows:

§ 915.45 Production research, marketing research and development.

The committee may, with the approval of the Secretary, establish or provide for the establishment of production research, marketing research and development projects designed to assist, improve or promote the marketing, distribution, and consumption or efficient production of avocados. Such products may provide for any form of marketing promotion, including paid advertising. The expenses of such projects shall be paid from funds collected pursuant to the applicable provisions of § 915.41, or from such other funds as approved by the USDA.

Dated: March 23, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–5792 Filed 3–29–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket Number FAA–2007–27739; Directorate Identifier 2006–NM–250–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 Airplanes; and Model A340–200 and –300 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

The aim of * * * [Special Federal Aviation Regulation (SFAR) 88] is to require all holders of type certificates * * * to carry out a definition review against explosion hazards.

The unsafe condition is the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by April 30, 2007.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Fax: (202) 493–2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register**

requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This proposed AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket Number FAA–2007–27739; Directorate Identifier 2006–NM–250–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued Airworthiness Directive 2006–0322, dated October 18, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> [T]he FAA published SFAR 88 (Special Federal Aviation Regulation 88).
>
> By mail referenced 04/00/02/07/01–L296 of March 4th, 2002 and 04/00/02/07/03–L024 of February 3rd, 2003 the JAA (Joint Aviation Authorities) recommended to the National Aviation Authorities (NAA) the application of a similar regulation.
>
> The aim of this regulation is to require all holders of type certificates for passenger transport aircraft certified after January 1st, 1958 with a capacity of 30 passengers or more, or a payload of 3402 kg or more, to carry out a definition review against explosion hazards.
>
> Consequently, the following measures are rendered mandatory:
>
> • [inspection and] replacement [if necessary] of the white P-clips by blue P-clips which are more fuel resistant [to] remove the risks of fuel quantity indicator (FQI) and fuel level sensor system (FLSS) harnesses chafing against the metallic part of the P-clip,
>
> • Modification of electrical bonding of equipment installed in fuel tanks in order to re-establish the conformity with the design definition by introducing additional bonding leads, electrical bonding points and electrical bonding of a support bracket for a diffuser assembly installed between Rib 1 and Rib 2 on the stringers of the Number 1 bottom skin panel,
>
> • Modification of bonding points, installation of additional bonding leads and other modifications of the Additional Center Tank (ACT),
>
> • Modification to increase the distance between metallic parts on the THS (trimmable horizontal stabilizer) Trim Tank,
>
> • Installation of a bonding lead between the bonding tags on the Jettison valve actuator and drive assembly.

You may obtain further information by examining the MCAI in the AD docket.

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation Number 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

Airbus has issued the following service bulletins:

- A330–28–3082, including Appendix 01, Revision 02, dated August 11, 2006.
- A330–28–3092, including Appendix 01, Revision 01, dated December 14, 2005.
- A330–28–3101, Revision 01, dated October 11, 2006.
- A330–55–3016, Revision 1, dated February 12, 1997.
- A340–28–4073, Revision 01, October 9, 1998.
- A340–28–4078, dated March 17, 2000.
- A340–28–4097, including Appendix 01, Revision 02, dated August 16, 2006.
- A340–28–4107, including Appendix 01, Revision 01, dated December 14, 2005.
- A340–28–4118, Revision 01, dated October 11, 2006.
- A340–55–4017, Revision 1, dated February 12, 1997.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another

country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 28 products of U.S. registry. We also estimate that it would take about 600 work-hours per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $2,718 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,420,104, or $50,718 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Airbus: Docket Number FAA–2007–27739; Directorate Identifier 2006-NM–250–AD.

Comments Due Date

(a) We must receive comments by April 30, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A330, A340–200, and A340–300 airplanes, all certified models, all serial numbers, certificated in any category.

Subject

(d) Fuel.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

[T]he FAA published SFAR 88 (Special Federal Aviation Regulation 88).

By mail referenced 04/00/02/07/01–L296 of March 4th, 2002 and 04/00/02/07/03–L024 of February 3rd, 2003 the JAA (Joint Aviation Authorities) recommended to the National Aviation Authorities (NAA) the application of a similar regulation.

The aim of this regulation is to require all holders of type certificates for passenger transport aircraft certified after January 1st, 1958 with a capacity of 30 passengers or more, or a payload of 3402 kg or more, to carry out a definition review against explosion hazards.

Consequently, the following measures are rendered mandatory:

- [Inspection and] replacement [if necessary] of the white P-clips by blue P-clips which are more fuel resistant [to] remove the risks of fuel quantity indicator (FQI) and fuel level sensor system (FLSS) harnesses chafing against the metallic part of the P-clip,
- Modification of electrical bonding of equipment installed in fuel tanks in order to re-establish the conformity with the design definition by introducing additional bonding leads, electrical bonding points and electrical bonding of a support bracket for a diffuser assembly installed between Rib 1 and Rib 2 on the stringers of the Number 1 bottom skin panel,
- Modification of bonding points, installation of additional bonding leads and other modifications of the Additional Center Tank (ACT),
- Modification to increase the distance between metallic parts on the THS (trimmable horizontal stabilizer) Trim Tank,
- Installation of a bonding lead between the bonding tags on the Jettison valve actuator and drive assembly.

Actions and Compliance

(f) Within 38 months after the effective date of this AD, unless already done, do the actions in paragraphs (f)(1), (f)(2), (f)(3), (f)(4), and (f)(5).

(1) Action number 1, applicable to Model A330, A340–200, and A340–330 aircraft, all certified models, all serial numbers, except for airplanes on which Airbus Modification 47634 has been embodied in production: Perform a detailed visual inspection of the P-clips in the wings and center fuel tanks, and apply the applicable corrective actions, in accordance with the instructions of Airbus Service Bulletin A330–28–3092, Revision 01, dated December 14, 2005; or Airbus Service Bulletin A340–28–4107, Revision 01, dated December 14, 2005.

(2) Action number 2, applicable to Model A330, A340–200, and A340–300 airplanes, all certified models, all serial numbers, except for airplanes on which Airbus Modifications 49135 and 49630 and 51825 and 55118 have been embodied in

production or modified in-service in accordance with both Airbus Service Bulletin A330–28–3082, including Appendix 01, and Airbus Service Bulletin A330–28–3101, or both Airbus Service Bulletin A340–28–4097 and Airbus Service Bulletin A340–28–4118: Modify the electrical bonding of the equipment installed in fuel tanks, in accordance with both Airbus Service Bulletin A330–28–3082, Revision 02, dated August 11, 2006, and Airbus Service Bulletin A330–28–3101, Revision 01, dated October 11, 2006; or both Airbus Service Bulletin A340–28–4097, including Appendix 01, Revision 02, dated August 16, 2006, and Airbus Service Bulletin A340–28–4118, Revision 01, dated October 11, 2006; as applicable.

(3) Action number 3, applicable to Model A340–200 and A340–300 airplanes, all certified models, all serial numbers, which have Airbus modification 42612/Airbus Service Bulletin A340–28–4047 or Airbus modification 44002/Airbus Service Bulletin A340–28–4066 or Airbus modification 44005/Airbus Service Bulletin A340–28–4067 embodied in production/in-service (installation of an ACT (Additional Center Tank)), except airplanes modified by Airbus Service Bulletin A340–28–4078 in-service: Modify the electrical bonding in the ACT in accordance with the instructions of Airbus Service Bulletin A340–28–4078, dated March 17, 2000.

(4) Action number 4, applicable to Model A330–300 airplanes, –301, –321, –322, –341, –342 models, all serial numbers except for airplanes on which Airbus Modification 44252 has been embodied in production or modified in-service in accordance with Airbus Service Bulletin A330–55–3016; and Model A340–200 and Model A340–300 airplanes, all certified models, all serial numbers, except for airplanes on which Airbus Modification 44252 has been embodied in production or modified in-service in accordance with Airbus Service Bulletin A340–55–4017: Increase the distance between metallic parts on the THS (trimmable horizontal stabilizer) trim tank in accordance with the instructions of Airbus Service Bulletin A330–55–3016, Revision 1, dated February 12, 1997; or Airbus Service Bulletin A340–55–4017, Revision 1, dated February 12, 1997; as applicable.

(5) Action number 5, applicable to Model A340–200 and A340–300 airplanes, all certified models, all serial numbers, except for airplanes which have Airbus modification 46142 embodied in production or modified in-service in accordance with Airbus Service Bulletin A340–28–4073, Revision 01, dated October 9, 1998: Install a bonding lead between the bonding tags on the Jettison valve actuator and drive assembly in accordance with the instructions of Airbus Service Bulletin A340–28–4073, Revision 01, dated October 9, 1998.

(6) Actions done before the effective date of this AD in accordance with the service bulletins listed in Table 1 of this AD are acceptable for compliance with the corresponding requirements of paragraphs (f)(1), (f)(2), (f)(3), (f)(4), and (f)(5) of this AD, as applicable.

TABLE 1.—CREDIT SERVICE BULLETINS

Airbus Service Bulletin	Revision level	Date
A330–28–3082	Original	June 14, 2004.
A330–28–3082	01	March 2, 2005.
A330–28–3101	Original	June 5, 2006.
A330–55–3016	Original	August 20, 1996.
A340–28–4073	Original	May 14, 1998.
A340–28–4097	Original	June 14, 2004.
A340–28–4097	01	March 3, 2005.
A340–28–4118	Original	June 5, 2006.
A340–55–4017	Original	August 20, 1996.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, ANM–116, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tim Backman, Aerospace Engineer; 1601 Lind Ave. SW., Renton, Washington 98057–3356, telephone (425) 227–2797; fax (425) 227–1149. To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2006–0322, dated October 18, 2006, and the service bulletins in Table 2 of this AD, for related information.

TABLE 2.—RELATED SERVICE BULLETINS

Airbus Service Bulletin	Revision level	Date
A330–28–3082, including Appendix 01	02	August 11, 2006.
A330–28–3092	01	December 14, 2005.
A330–28–3101	01	October 11, 2006.
A330–55–3016	1	February 12, 1997.
A340–28–4073	01	October 9, 1998.
A340–28–4078	Original	March 17, 2000.
A340–28–4097, including Appendix 01	02	August 16, 2006.
A340–28–4107	01	December 14, 2005.
A340–28–4118	01	October 11, 2006.
A340–55–4017	1	February 12, 1997.

Issued in Renton, Washington, on March 23, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–5908 Filed 3–29–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27741; Directorate Identifier 2006–NM–261–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 Airplanes; and Model A340–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as keel beam rupture, which affects the structural integrity of the area. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by April 30, 2007.

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

- DOT Docket Web Site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Fax: (202) 493–2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This streamlined process will allow us to adopt MCAI safety requirements in a more efficient manner and will reduce safety risks to the public. This process continues to follow all FAA AD issuance processes to meet legal, economic, Administrative Procedure Act, and **Federal Register** requirements. We also continue to meet our technical decision-making responsibilities to identify and correct unsafe conditions on U.S.-certificated products.

This proposed AD references the MCAI and related service information that we considered in forming the engineering basis to correct the unsafe condition. The proposed AD contains text copied from the MCAI and for this reason might not follow our plain language principles.

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–27741; Directorate Identifier 2006–NM–261–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2006–0315, dated October 13, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states that during the A330 and A340 aircraft fatigue test, cracks appeared on the right and left sides between the crossing area of the keel beam fitting and the front spar on the center wing box (CWB). This situation if not corrected can lead in the worst case to keel beam rupture, which affects the structural integrity of the area. In order to maintain the structural integrity of the aircraft, the MCAI requires a repetitive special detailed inspection on the horizontal flange of the keel beam in the area of the first fastener hole aft of FR (frame) 40, follow-up actions (further inspections, installation of new fasteners, and sealing the fasteners), and repair if necessary. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Service Bulletin A330–57–3081, including Appendix 01, Revision 02, dated January 24, 2006; and Service Bulletin A340–57–4089, including Appendix 01, Revision 02, dated January 24, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI. The compliance times for doing the actions described in the service bulletins are as follows:

- Service Bulletin A330–57–3081: The mandatory thresholds range from the earlier of 19,100 flight cycles or 57,300 flight hours, to the earlier of 24,200 flight cycles or 72,800 flight hours; the repetitive intervals range from the earlier of 9,800 flight cycles or 29,400 flight hours, to the earlier of 13,500 flight cycles or 40,500 flight hours.
- Service Bulletin A340–57–4089: The mandatory thresholds range from the earlier of 19,000 flight cycles or 95,000 flight hours, to the earlier of 24,600 flight cycles or 49,200 flight hours; the repetitive intervals range from the earlier of 9,200 flight cycles or 46,000 flight hours, to the earlier of 12,600 flight cycles or 63,000 flight hours.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the proposed AD. These requirements, if ultimately adopted, will take precedence over the actions copied from the MCAI.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 9 products of U.S. registry. We also estimate that it would take about 12 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $382 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $12,078, or $1,342 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Airbus: Docket No. FAA–2007–27741; Directorate Identifier 2006–NM–261–AD.

Comments Due Date

(a) We must receive comments by April 30, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD; certificated in any category; except as provided by paragraph (c)(3) of this AD.

(1) Airbus Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes, all serial numbers, except those on which Airbus modification 49202 has been embodied in production, or Airbus Service Bulletin A330–57–3090 has been embodied in service.

(2) Airbus Model A340–200 and –300 series airplanes, all certified models, all serial numbers, except those on which Airbus modification 49202 has been embodied in production or Airbus Service Bulletin A340–57–4098 has been embodied in service.

(3) This AD does not apply to Model A340–200 and –300 series airplanes repaired in accordance with Airbus Repair Drawing R57115053, R57115051, or R57115047 (installation of titanium doubler). These airplanes are covered by European Aviation Safety Agency (EASA) AD 2006–0314. (The FAA is considering rulemaking regarding EASA AD 2006–0314.)

Reason

(d) The mandatory continuing airworthiness information (MCAI) states that during the A330 and A340 fatigue test, cracks appeared on the right and left sides between the crossing area of the keel beam fitting and the front spar on the center wing box (CWB). This situation if not corrected can lead in the worst case to keel beam rupture which affects the structural integrity of the area. In order to maintain the structural integrity of the aircraft, the MCAI requires a repetitive special detailed inspection on the horizontal flange of the keel beam in the area of the first fastener hole aft of FR (frame) 40, follow-up actions, and repair if necessary.

Actions and Compliance

(e) Unless already done, do the following actions.

(1) Within the mandatory threshold (flight cycles or flight hours) mentioned in the paragraph 1.E.(2) of Airbus Service Bulletin A340–57–4089, Revision 02; or A330–57–3081, Revision 02; both dated January 24, 2006, depending on the configuration of the aircraft model; or within 3 months after the effective date of this AD; whichever occurs later: Carry out the NDT (non-destructive test) inspection of the hole(s) of the horizontal flange of the keel beam located on FR (frame) 40 datum on RH (right-hand) and/or LH (left-hand) side of the fuselage, in accordance with the instructions of Airbus Service Bulletin A340–57–4089, Revision 02; or A330–57–3081, Revision 02; as applicable. Inspection in accordance with Airbus Technical Disposition Ref F57D03012810, Issue B, dated August 18, 2003, or 582.0651/2002, Issue A, dated October 17, 2002,

satisfies the inspection requirements for the first rotating probe inspection which is specified at the inspection threshold of this AD.

Note 1: In order to prevent large repairs or heavy maintenance, Airbus recommends to perform the above inspection according to recommended thresholds mentioned in paragraph 1.E.(2) of Airbus Service Bulletin A340–57–4089, Revision 02; or Airbus Service Bulletin A330–57–3081, Revision 02; both dated January 24, 2006.

(2) In case of any crack finding, before further flight, contact Airbus in order to get repair instructions before next flight, and repair before further flight.

(3) Should no crack be detected:

(i) Before further flight: Follow up the actions indicated in the flow charts, figure 7, 8, or 9, of Airbus Service Bulletin A340–57–4089, including Appendix 01, Revision 02, dated January 24, 2006; or figure 5, 6, or 7, of Airbus Service Bulletin A330–57–3081, including Appendix 01, Revision 02, dated January 24, 2006; in accordance with the instructions of the applicable service bulletin.

(ii) Within 30 days after the effective date of this AD, or within 30 days after doing the inspection required by paragraph (e)(1) of this AD, whichever occurs later: Send the report of actions carried out in paragraph (e)(3)(i) of this AD to Airbus.

(iii) Renew the inspection at mandatory intervals given in paragraph 1.E.(2) of Airbus Service Bulletin A340–57–4089, Revision 02, dated January 24, 2006; or Airbus Service Bulletin A330–57–3081, Revision 02, dated January 24, 2006; as applicable; in accordance with the instructions of Service Bulletin A340–57–4089, Revision 02, or Service Bulletin A330–57–3081, Revision 02; as applicable, and send the inspection results to Airbus.

Note 2: In order to prevent large repairs or heavy maintenance, Airbus recommends to perform the above repetitive inspection according to recommended intervals mentioned in paragraph 1.E.(2) of Airbus Service Bulletin A340–57–4089, Revision 02, dated January 24, 2006; or Airbus Service Bulletin A330–57–3081, Revision 02, dated January 24, 2006.

(4) Upon detection of a crack during a repetitive inspection, before further flight, contact Airbus to get repair instructions, and repair before further flight.

(5) No additional work is required for aircraft inspected in accordance with the instructions of Airbus Service Bulletin A330–57–3081, dated October 30, 2003, or Revision 01, dated May 18, 2004; or Airbus Service Bulletin A340–57–4089, dated October 30, 2003, or Revision 01, dated March 2, 2004. Nevertheless, the operators must check that their inspection program is in accordance with paragraph 1.E.(2) of Airbus Service Bulletin A340–57–4089, Revision 02, dated January 24, 2006; or Airbus Service Bulletin A330–57–3081, Revision 02, dated January 24, 2006, for the repetitive inspection.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows:

(1) The MCAI did not have a required action if cracks are found during a repetitive inspection. This AD requires contacting Airbus for repair instructions before further flight.

Other FAA AD Provisions

(f) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, ANM–116, Transport Airplane Directorate, FAA, ATTN: Tim Backman, Aerospace Engineer, 1601 Lind Avenue, SW., Renton, Washington 98057–3356, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(g) Refer to MCAI EASA Airworthiness Directive 2006–0315, dated October 13, 2006; Airbus Service Bulletin A340–57–4089, Revision 02, dated January 24, 2006; and Airbus Service Bulletin A330–57–3081, Revision 02, dated January 24, 2006; for related information.

Issued in Renton, Washington, on March 23, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–5909 Filed 3–29–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21701; Directorate Identifier 2005–NM–086–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 and 767 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier proposed airworthiness directive (AD) for certain Boeing Model 747 and 767 airplanes. The original NPRM would have required reworking the electrical bonding between the airplane structure and the pump housing of the outboard boost pumps in the main fuel tank of certain Boeing Model 747 airplanes, and between the airplane structure and the pump housing of the override/jettison pumps in the left and right wing center auxiliary fuel tanks of certain Boeing Model 767 airplanes. The original NPRM would also have required related investigative actions and corrective actions if necessary. The original NPRM resulted from fuel system reviews conducted by the manufacturer. This action revises the original NPRM by adding an inspection requirement for certain Model 747 airplanes, and by specifying cold-working the fastener holes for certain other Model 747 airplanes. We are proposing this supplemental NPRM to prevent insufficient electrical bonding, which could result in a potential of ignition sources inside the fuel tanks, and which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: We must receive comments on this supplemental NPRM by April 24, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this supplemental NPRM.

- *DOT Docket web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Philip Sheridan, Aerospace Engineer,

Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6441; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this supplemental NPRM. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2005–21701; Directorate Identifier 2005–NM–086–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this supplemental NPRM. We will consider all comments received by the closing date and may amend this supplemental NPRM in light of those comments.

We will post all comments submitted, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this supplemental NPRM. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level in the Nassif Building at the DOT street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We proposed to amend 14 CFR part 39 with a notice of proposed rulemaking (NPRM) (the ''original NPRM'') for an AD for certain Boeing Model 747 and 767 airplanes. The original NPRM was published in the **Federal Register** on June 29, 2005 (70 FR 37293). The original NPRM proposed to require reworking the electrical bonding between the airplane structure and the pump housing of the outboard boost pumps in the main fuel tank of certain Boeing Model 747 airplanes, and between the airplane structure and the pump housing of the override/jettison pumps in the left and right wing center auxiliary fuel tanks of certain Boeing Model 767 airplanes. The original NPRM also proposed to require related investigative actions and corrective actions if necessary.

Actions Since Original NPRM Was Issued

Since we issued the original NPRM, Boeing has issued Boeing Special Attention Service Bulletin 747–28–2259, Revision 1, dated October 5, 2006 (for Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes). The original NPRM referred to Boeing Special Attention Service Bulletin 747–28–2259, dated November 4, 2004, as the appropriate source of service information for accomplishing certain actions.

Boeing Special Attention Service Bulletin 747–28–2259, Revision 1, adds, for Group 1 airplanes, a high frequency eddy current (HFEC) inspection for cracks, corrosion, and damage of the fastener holes. Revision 1 also indicates reaming to repair those conditions, and gives an additional structural repair manual reference for doing the repair; but also specifies contacting Boeing if the repair does not eliminate cracks, corrosion, or damage when reamed to 0.2942- to 0.2962-inch in diameter. Revision 1 also adds a step that specifies cold-working the fastener holes for Group 2 airplanes; adds and revises certain part numbers for certain rivets; removes the step that specifies emptying fuel from the outboard main fuel tanks; clarifies an illustration of the new bonding rivets; and clarifies the measurements of the bonding resistance.

Comments

We have considered the following comments on the original NPRM.

Support for the Original NPRM

US Airways supports the original NPRM.

Request To Use New Revision of Service Bulletin

Japan Airlines (JAL) requests that we refer to Boeing Special Attention Service Bulletin 747–28–2259, Revision 1, rather than the original issue of the service bulletin (Boeing Special Attention Service Bulletin 747–28–2259, dated November 4, 2004, was referred to as the appropriate source of service information for accomplishing the required actions). JAL also would like to confirm that it is acceptable to use the original issue of the service bulletin for compliance with the original NPRM, if the actions are done before the effective date of the AD.

We agree with JAL's requests. We have revised this supplemental NPRM to refer to Revision 1 of the service bulletin. We have also added a new paragraph (g) to this supplemental NPRM to give operators credit for accomplishing the applicable actions before the effective date of the AD in accordance with the original issue of the service bulletin. We have also re-identified subsequent paragraphs accordingly.

Requests To Extend Compliance Time

Boeing, British Airways, Royal Dutch Airlines (KLM), and the Air Transport Association (ATA) on behalf of one of its members, Delta Airlines, all request that we extend the 60-month compliance time for reworking the electrical bonding, as described below.

Boeing, British Airways, and KLM request a 72-month compliance time because it is the threshold that the manufacturer recommends. British Airways and KLM discussed this issue with Boeing and advise that the 60-month compliance time pre-dates Boeing's latest risk management guidelines for Special Federal Aviation Regulation (SFAR) 88 issues and is, therefore, out of step with current Boeing analyses. Boeing confirms that it initially recommended a 60-month compliance time before the completion of a formal compliance recommendation process. As such, the 60-month compliance time does not reflect current analyses. Boeing subsequently submitted a letter to the FAA that proposes a 72-month compliance time for all SFAR 88 design changes, with the exception of those associated with fuel pump inlet protection.

British Airways supports its request to extend the compliance time from 60 months to 72 months by asking us to consider an interim action. The proposed interim action would be any fuel pump housing replacement that is mounted and electrically bonded to the AD-affected under-wing housing. British Airways proposes an alternate ground path through the fasteners of the pump housing. If this bond can be verified, British Airways states that it justifies a 12-month extension to the compliance time.

Delta Airlines requests an 84-month compliance time because it would allow operators to accomplish the proposed actions during scheduled substantial

aircraft maintenance visits due to complete de-fueling requirements. Delta states that an 84-month compliance time would also prevent undue financial and scheduling burdens.

We disagree with the requests to change the compliance time from 60 months to 72 or 84 months. In establishing the proposed compliance time, we considered not only the manufacturer's recommendation, but also the labor required to accomplish the actions, and the risks to the airplane if these actions are not done in a timely manner. We also considered that the alternate ground path proposed by British Airways does not have sufficient current-carrying capability (as stated in Boeing Special Attention Service Bulletin 747–28–2259); and we have taken into account the fact that there is a primary bond path. We determined that a 60-month compliance time is adequate for operators to schedule the task during heavy maintenance visits, and that it will provide an adequate level of safety. In further discussions, Boeing agrees with the 60-month compliance time for this supplemental NPRM.

However, operators may request approval of an alterative method of compliance (AMOC) in accordance with the procedures specified in paragraph (h) of this supplemental NPRM. The AMOC request must contain appropriate rationale to substantiate that the AMOC will maintain an acceptable level of safety. Operators outside the United States must work with the applicable regulatory authority regarding this process.

We have not changed the supplemental NPRM in this regard.

Request To Use Operator's Equivalent Procedures for Certain Repairs

ATA, on behalf of one of its members, Northwest Airlines, is concerned that the requirement to obtain FAA or authorized Boeing representative approval for repairs of crack or corrosion findings could have additional cost and schedule implications. Northwest Airlines states that obtaining this approval is outside the intent of the modification, and should be addressed with existing Northwest Airlines procedures, which may or may not require FAA approval. Northwest Airlines states that it would perform the specified bonding resistance checks to verify that there are still proper ground paths and current-carrying capabilities.

We disagree with changing the supplemental NPRM to remove the requirement to contact the FAA or authorized Boeing representative. Structural repair manual (SRM) repair procedures are spelled out in both Boeing Special Attention Service Bulletin 747–28–2259, dated November 4, 2004; and Boeing Special Attention Service Bulletin 747–28–2259, Revision 1, dated October 5, 2006. Revision 1 also adds an additional SRM reference, and specifies contacting a Boeing representative for the repairs only if the SRM repair is not clean of cracks, corrosion, or damage when reamed to 0.2942- to 0.2962-inch in diameter. Approval of any deviation from the requirements of this supplemental NPRM, such as operator's equivalent or existing procedures, may be requested in accordance with the AMOC procedures specified in paragraph (h) of this supplemental NPRM. The AMOC request must contain appropriate rationale to substantiate that the AMOC will maintain an acceptable level of safety. We have not changed the supplemental NPRM in this regard.

Request To Clarify HFEC Inspection for Group 1 Airplanes

British Airways points out that Boeing Special Attention Service Bulletin 747–28–2259, dated November 4, 2004, specifies an HFEC inspection for defects after rework only for Group 2 airplanes, but for Group 1 airplanes the service bulletin does not state what inspections, if any, are necessary after reworking the holes. British Airways normally would expect, for all airplanes, to oversize the rivet holes, follow the SRM specifications, and progressively remove any damage. If it is the FAA's intent to subject Group 1 airplanes and Group 2 airplanes to the HFEC inspection, British Airways requests that we include a statement indicating that it affects both groups. However, British Airways believes that this statement would be best published in the service bulletin.

We agree that the inspection applies to both Group 1 and Group 2 airplanes. As stated previously, Boeing has issued Revision 1 of Boeing Special Attention Service Bulletin 747–28–2259, which makes the change that British Airways requests. We have changed the supplemental NPRM to refer to Revision 1 of the service bulletin.

Clarification of AMOC Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Explanation of Change to Costs of Compliance

After the original NPRM was issued, we reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $65 per work hour to $80 per work hour. The cost information, below, reflects this increase in the specified hourly labor rate.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

The changes discussed above expand the scope of the original NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this supplemental NPRM.

Difference Between the Supplemental NPRM and Boeing Special Attention Service Bulletin 747–28–2259, Revision 1

Although Boeing Special Attention Service Bulletin 747–28–2259, Revision 1, specifies contacting the manufacturer if any crack, corrosion, or damage that exceeds certain limits is found during the open-hole HFEC inspection, this supplemental NPRM would require operators to repair those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

Costs of Compliance

There are about 3,401 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this supplemental NPRM.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Rework electrical bonding for Boeing Model 747 airplanes	10	$80	$800	1,115	$892,000
Rework electrical bonding for Boeing Model 767 airplanes	9	80	720	921	663,120

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this supplemental NPRM and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2005–21701; Directorate Identifier 2005–NM–086–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 24, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Boeing airplane models identified in Table 1 of this AD, certificated in any category.

TABLE 1.—AIRPLANES AFFECTED BY THIS AD

Model—	As identified in Boeing Special Attention Service Bulletin—
747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes.	747–28–2259, Revision 1, dated October 5, 2006.
767–200, –300, and –300F series airplanes	767–57–0092, dated November 4, 2004.
767–400ER series airplanes	767–57–0093, dated November 4, 2004.

Unsafe Condition

(d) This AD was prompted by the results of fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent insufficient electrical bonding, which could result in a potential of ignition sources inside the fuel tanks, and which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Rework Electrical Bonding

(f) Within 60 months after the effective date of this AD: Do the actions specified in paragraph (f)(1) or (f)(2) of this AD, as applicable, by accomplishing all the actions specified in the Accomplishment Instructions of the applicable service bulletin in Table 1 of this AD. Do any related investigative and corrective actions before further flight.

(1) For Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes: Rework the electrical bonding between the airplane structure and the pump housing of the outboard boost pumps in the main fuel tank, and do related investigative and applicable corrective actions. If any crack, corrosion, or damage is found during the open-hole high-frequency eddy current (HFEC) inspection specified in Boeing Special Attention Service Bulletin 747–28–2259, Revision 1, dated October 5, 2006, and the special attention service bulletin specifies contacting Boeing for repair instructions: Before further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the certification basis of the airplane approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle

ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically reference this AD.

(2) For Boeing Model 767–200, –300, –300F, and –400ER series airplanes: Rework the electrical bonding between the airplane structure and the pump housing of the override/jettison pumps in the left and right wing center auxiliary fuel tanks, and do the related investigative and applicable corrective actions.

Credit for Actions Accomplished Previously

(g) Actions done before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 747–28–2259, dated November 4, 2004, are acceptable for compliance with the corresponding requirements of paragraph (f)(1) of this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Issued in Renton, Washington, on March 23, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–5928 Filed 3–29–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27740; Directorate Identifier 2006–NM–290–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800 and –900 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 737–600, –700, –700C, –800 and –900 series airplanes. This proposed AD would require an inspection of the fillet sealant at the inboard and outboard sides of the receptacles in the wheel wells of the main landing gear, and related investigative/corrective actions if necessary. This proposed AD results from reports of in-production airplanes with missing or insufficient fillet sealant around the receptacles at the disconnect bracket. We are proposing this AD to prevent corrosion damage due to missing or insufficient fillet sealant. Such corrosion could result in insufficient electrical bonding between the connectors and the disconnect bracket, and consequent loss of the shielding that protects the wire bundles from lightning, electromagnetic interference (EMI), and high intensity radiated field (HIRF). Loss of lightning, EMI, and HIRF protection at those receptacles could cause failure of multiple electrical systems and subsequent loss of several critical control systems that are necessary for safe flight. In addition, a lightning strike could cause arcing in the fuel tank; this potential ignition source, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by May 14, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Binh Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6485; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–27740; Directorate Identifier 2006–NM–290–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We have received a report indicating that 333 Boeing Model 737–600, –700, –700C, –800 and –900 series airplanes in the production factory had missing or insufficient fillet sealant around the receptacles in the wheel wells of the main landing gear (MLG). Missing or insufficient fillet sealant could result in corrosion damage, and consequent insufficient electrical bonding between the connectors and the disconnect bracket. The loss of electrical bonding could result in loss of the shielding that protects the wire bundles from lightning, electromagnetic interference (EMI), and high intensity radiated field (HIRF). The loss of lightning, EMI, and HIRF protection at those receptacles could cause multiple electrical systems failures. Those failures could result in the loss of several critical control systems that are necessary for safe flight.

In addition, a lightning strike could cause arcing in the fuel tank; this potential ignition source, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 737–24–1169, dated December 15, 2006. The service bulletin describes procedures for a detailed inspection of the fillet sealant at the inboard and outboard sides of the receptacles in the MLG wheel wells. For airplanes on which the sealant is missing or otherwise insufficient, the service bulletin describes the following related investigative and corrective actions:

- An additional detailed inspection to detect signs of corrosion damage of the connector and receptacle;
- Cleaning of any corrosion-free connector;
- Cleaning of any receptacle that has corrosion damage on less than 20 percent of the total surface area of the receptacle flange;
- Replacement (with a new part having the same part number) of any receptacle that has corrosion on more than 20 percent of the total surface area of the receptacle flange;
- Replacement of corroded connectors with connectors identified in the service bulletin; and
- Application of fillet sealant around the receptacles.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

There are about 333 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
1	$80	$80	118	$9,440

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2007–27740; Directorate Identifier 2006–NM–290–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by May 14, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–600, –700, –700C, –800 and –900 series airplanes; certificated in any category; as identified in Boeing Special Attention Service Bulletin 737–24–1169, dated December 15, 2006.

Unsafe Condition

(d) This AD results from reports of in-production airplanes with missing or insufficient fillet sealant around the receptacles installed in the wheel wells of the main landing gear (MLG). We are issuing this AD to prevent corrosion damage due to missing or insufficient fillet sealant. Such corrosion could result in insufficient electrical bonding between the connectors and the disconnect bracket, and consequent loss of the shielding that protects the wire bundles from lightning, electromagnetic interference (EMI), and high intensity radiated field (HIRF). Loss of lightning, EMI, and HIRF protection at those receptacles could cause failure of multiple electrical systems and subsequent loss of several critical control systems that are necessary for safe flight. In addition, a lightning strike could cause arcing in the fuel tank; this potential ignition source, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection

(f) Within 24 months after the effective date of this AD, perform a detailed inspection to determine if there is sufficient fillet sealant at the inboard and outboard sides of the receptacles in the MLG wheel wells, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–24–1169, dated December 15, 2006. Do all applicable related investigative and corrective actions before further flight in accordance with the service bulletin.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Issued in Renton, Washington, on March 23, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–5907 Filed 3–29–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26354; Directorate Identifier 2006–NM–196–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 Airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier NPRM for certain EMBRAER Model EMB–135 airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. The original NPRM would have required replacing the metallic tubes enclosing the vent and pilot valve wires in the left- and right-hand wing fuel tanks with non-conductive hoses. The original NPRM resulted from fuel system reviews conducted by the manufacturer. This action revises the original NPRM by adding airplanes to the applicability. We are proposing this supplemental NPRM to prevent an ignition source inside the fuel tank that could ignite fuel vapor and cause a fuel tank explosion and loss of the airplane.

DATES: We must receive comments on this supplemental NPRM by April 24, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this supplemental NPRM.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343–CEP 12.225, Sao Jose dos Campos-SP, Brazil, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tom Groves, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1503; fax (425) 227–1503.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this supplemental NPRM. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2006–26354; Directorate Identifier 2006–NM–196–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this supplemental NPRM. We will consider all comments received by the closing date and may amend this supplemental NPRM in light of those comments.

We will post all comments submitted, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this supplemental NPRM. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level in the Nassif Building at the DOT street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We proposed to amend 14 CFR part 39 with a notice of proposed rulemaking (NPRM) for an airworthiness directive (AD) (the ''original NPRM''). The original NPRM applies to certain EMBRAER Model EMB–135 airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. The original NPRM was published in the **Federal Register** on November 20, 2006 (71 FR 67082). The original NPRM proposed to require replacing the metallic tubes enclosing the vent and pilot valve wires in the left- and right-hand wing fuel tanks with non-conductive hoses.

Comments

We have considered the following comments on the original NPRM.

Support for the NPRM

Chautauqua Airlines expresses full support for the intent of the NPRM and the initiatives taken by the FAA to enhance safety.

Request To Revise Service Information Reference

EMBRAER requests that we revise the NPRM to refer to current service information. EMBRAER states that, although the NPRM specifies Service Bulletin 145–28–0023, Revision 05,

dated May 15, 2006, as the latest revision, Revision 06 and Revision 07 have been issued. EMBRAER therefore proposes that the NPRM be revised to cite EMBRAER Bulletin 145–28–0023, Revision 07, dated February 7, 2007, as the appropriate source of service information for accomplishing the requirements of the AD; and that EMBRAER Service Bulletin 145–28–0023, Revision 05, dated May 15, 2006; and Revision 06, dated October 31, 2006; be included in Table 1 of the AD as acceptable means of compliance.

We agree with this request as ADs should refer to current service information. We have reviewed Service Bulletin 145–28–0023, Revision 06, dated October 31, 2006; and Revision 07, dated February 7, 2007; which include additional airplanes in the effectivity. The procedures in Revision 06 and Revision 07 are essentially the same as in Revision 05; however, Revision 06 corrects a few illustrative errors and Revision 07 specifies a reduced parts cost. Accordingly, in the Costs of Compliance of this supplemental NPRM, we have increased the number of airplanes of U.S. registry specified to 623 airplanes and revised the parts cost. We have also revised the supplemental NPRM to refer to Service Bulletin 145–28–0023, Revision 07, as the appropriate source of service information for accomplishing the proposed requirements of the supplemental NPRM. Further, we have modified Table 1 of the supplemental NPRM to give credit for the use of Service Bulletin 145–28–0023, Revision 05 and Revision 06, prior to the effective date of the AD.

Request for Revised Parts Costs

Chautauqua Airlines requests that we clarify the parts costs of the NPRM, which are listed as ''between $1,121 and $1,796 per airplane.'' Chautauqua asserts that EMBRAER Service Bulletin 145–28–0023, Revision 05, clearly states kit pricing as ''reference price of U.S. $1,795.53.'' Chautauqua points out that the $1,796 quoted in the NPRM seems appropriate, but that the lower end of the range stated in the NPRM is not mentioned anywhere in the referenced service bulletin.

We partially agree. The kit price of $1,121 does not appear in Service Bulletin 145–28–0023, Revision 05, but appears in EMBRAER Service Bulletin 145LEG–28–0018, Revision 01, dated April 20, 2005, which applies only to Model EMB–135BJ airplanes. Therefore, as stated in the original NPRM, the parts cost would have varied between $1,121 and $1,796, depending upon the airplane model. However, Service Bulletin 145–28–0023, Revision 07, specifies a kit price of $1,788 rather than $1,796. Therefore, we have revised the parts cost of the Costs of Compliance of the supplemental NPRM to reflect this reduced figure for airplanes other than Model EMB–135BJ airplanes.

Request for Revised Work Hours

Chautauqua also requests that we revise the labor costs specified in the NPRM. Chautauqua states that this NPRM (as with most others) does not include time to disassemble, reassemble, or test, allowing one man hour for the modification, where the service bulletin allows a total of 4.5 man hours to disassemble, modify, reassemble, and test. Chautauqua acknowledges that, as a general rule, the FAA does not include times for disassembly, reassembly, or testing in proposed rules, asserting however, that, over the years, these hours add up to considerable expense that is not accounted for in the rulemaking process. Chautauqua continues that the NPRM also does not include any allowances for defueling the aircraft, which is one of the first requirements of the service bulletin. Chautauqua asserts that most operators would elect to perform the requirements of the AD during a heavy check where the aircraft is already in a defueled state, stating that, for those who perform this modification at any time other than a heavy check, there may be additional costs associated with defueling. Chautauqua asks why these times should not be included in the rule making process, stating a firm belief that all associated costs should be accounted for in any rulemaking decisions when those costs are so clearly identified by the manufacturer.

We do not agree with this request. As noted by Chautauqua, the cost information describes only the direct costs of the specific actions required by this supplemental NPRM: in this case, the modification. Based on the best data available, the manufacturer provided the number of work hours (1 hour) necessary to do the required actions. This number represents the time necessary to perform only the actions actually required by this supplemental NPRM. We recognize that, in doing the actions required by an AD, operators might incur incidental costs in addition to the direct costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs such as the time required to gain access and close up, time necessary for planning, or time necessitated by other administrative actions. Those incidental costs, which might vary significantly among operators, are almost impossible to calculate. We have not changed the supplemental NPRM in this regard.

Change to Costs of Compliance

We have been advised that there are 30 Model EMB–135BJ airplanes on the U.S. register. As this allows us to specify a more precise fleet cost estimate, we have changed the Costs of Compliance of the supplemental NPRM accordingly.

Clarification of Applicability

To eliminate confusion, we have revised the applicability of this supplemental NPRM to clearly identify which airplane models are affected by each service bulletin.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

Certain changes discussed above expand the scope of the original NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this supplemental NPRM.

Costs of Compliance

This supplemental NPRM would affect about 623 airplanes of U.S. registry. The proposed actions would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Required parts would cost about $1,121 (for each of 30 Model EMB–135BJ airplanes) or $1,788 (for each of 593 remaining airplanes). The cost per airplane would be $1,201 or $1,868. Based on these figures, the estimated cost of the supplemental NPRM for U.S. operators is $1,143,754.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on

products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this supplemental NPRM and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2006–26354; Directorate Identifier 2006–NM–196–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by April 24, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following airplanes, certificated in any category; as described in paragraph (c)(1) and (c)(2) of this AD.

(1) EMBRAER Model EMB–135ER, –135KE, –135KL, and –135LR airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes; as identified in EMBRAER Service Bulletin 145–28–0023, Revision 07, dated February 7, 2007.

(2) EMBRAER Model EMB–135BJ airplanes, as identified in EMBRAER Service Bulletin 145LEG–28–0018, Revision 01, dated April 20, 2005.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent an ignition source inside the fuel tank that could ignite fuel vapor and cause a fuel tank explosion and loss of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Tube Replacement

(f) Within 5,000 flight hours or 48 months after the effective date of this AD, whichever occurs first, replace the metallic tubes enclosing the vent and pilot valve wires in the left- and right-hand wing fuel tanks with new, improved, non-conductive hoses, in accordance with the Accomplishment Instructions of the service bulletin specified in paragraph (f)(1) or (f)(2) of this AD, as applicable.

(1) For Model EMB–135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes: EMBRAER Service Bulletin 145–28–0023, Revision 07, dated February 7, 2007.

(2) For Model EMB–135BJ airplanes: EMBRAER Service Bulletin 145LEG–28–0018, Revision 01, dated April 20, 2005.

Credit for Actions Done Using Previous Service Information

(g) Actions accomplished before the effective date of this AD in accordance with the service information specified in Table 1 of this AD are considered acceptable for compliance with the corresponding actions specified in this AD.

TABLE 1.—ACCEPTABLE EMBRAER SERVICE INFORMATION

Service bulletin	Revision level	Date
145–28–0023	Original	April 19, 2004.
145–28–0023	01	June 9, 2004.
145–28–0023	02	November 8, 2004.
145–28–0023	03	April 27, 2005.
145–28–0023	04	November 7, 2005.
145–28–0023	05	May 15, 2006.
145–28–0023	06	October 31, 2006.
145LEG–28–0018	Original	April 23, 2004.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, ANM–116, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(i) Brazilian airworthiness directive 2006–06–02, effective June 28, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on March 23, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–5911 Filed 3–29–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2007–27594; Airspace Docket 07–ASO–3]

Proposed Establishment of Class D and E Airspace; Aguadilla, PR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D and E4 airspace at Aguadilla, PR. A Federal contract tower with a weather reporting system is being constructed at Rafael Hernandez Airport. Therefore, the airport will meet criteria for Class D and E4 airspace Class D and E4 surface area airspace is required when the control tower is open to contain Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action would establish Class D and E4 airspace extending upward from the surface to and including 2,700 feet MSL within a 4.5-mile radius of the airport and within 2.4 miles each side of the Borinquen VORTAC 257° radial extending from the 4.5 mile radius to 7 miles west of the VORTAC.

DATES: Comments must be received on or before April 30, 2007.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2007–27594 Airspace Docket No. 07–ASO–3, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Mark D. Ward, Manager, System Support, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2007–27594/Airspace Docket No. 07–ASO–3.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with the rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov.* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class D and E4 airspace at Aguadilla, PR. Class D and E4 airspace designations for airspace areas extending upward from the surface of the earth are published in Paragraphs 5000 and 6000 of FAA Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class D and E4 airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

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

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO PR D Aguadilla, PR [New]

Rafael Hernandez Airport, PR
(Lat. 18°29′42″ N, long. 67°07′46″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.5-mile radius of the Rafael Hernandez Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will

thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6000 Class E Airspace.

* * * * *

ASO PR E4 Aguadilla, PR [NEW]

Rafael Hernandez Airport, PR
(Lat. 18°29′42″ N, long. 67°07′46″ W)
Borinquen VORTAC
(Lat. 18°29′53″ N, long. 67°06′30″ W)

That airspace extending upward from the surface within 2.4 miles each side of the Borinquen VORTAC 257° radial extending from the 4.5 mile radius to 7 miles west of the VORTAC. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

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Issued in College Park, Georgia, on March 21, 2007.

Mark D. Ward,

Group Manager, System Support Group, Eastern Service Center.

[FR Doc. 07–1545 Filed 3–29–07; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34–55520; File No. S7–12–06]

RIN 3235–AJ57

Amendments to Regulation SHO

AGENCY: Securities and Exchange Commission.

ACTION: Notice of re-opening of comment period.

SUMMARY: The Securities and Exchange Commission is re-opening the comment period on the ''Amendments to Regulation SHO'' it proposed in Securities Exchange Act Release No. 54154 (July 14, 2006), 71 FR 41710 (July 21, 2006) (the ''Proposal''). In view of the continuing public interest in the Proposal, as well as to reflect concerns raised by commenters, we believe that it is appropriate to re-open the comment period before we take action on the Proposal.

DATES: Comments should be received on or before April 30, 2007.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–12–06 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

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 S7–12–06. 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/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1090. 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.

FOR FURTHER INFORMATION CONTACT: James A. Brigagliano, Associate Director, Josephine J. Tao, Branch Chief, Joan M. Collopy, Special Counsel, Lillian S. Hagen, Special Counsel, Elizabeth A. Sandoe, Special Counsel, Victoria L. Crane, Special Counsel, Office of Trading Practices and Processing, Division of Market Regulation, at (202) 551–5720, at the Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is requesting additional public comment on proposed amendments to Rule 203 of Regulation SHO [17 CFR 242.200 and 242.203] under the Exchange Act. In Release No. 54154 (July 14, 2006), 71 FR 41710 (July 21, 2006), the Commission proposed amendments to Regulation SHO under the Securities Exchange Act of 1934 (the ''Exchange Act'') intended to further reduce the number of persistent fails to deliver in certain equity securities by eliminating the grandfather provision and narrowing the options market maker exception.[1] The Commission is re-opening the comment period, which ended on September 19, 2006, to provide additional information with respect to the Proposal to the public.

Commenters have urged the Commission to provide additional data related to the Proposal before it determines whether additional rulemaking is necessary.[2] In formulating the Proposal, the Commission relied primarily on data collected by the National Association of Securities Dealers, Inc. (''NASD''). NASD collected this data through confidential queries and examinations of member firms. As a result, the Commission did not provide the data underlying the examinations and discussions because it was concerned that the data contained confidential, company-specific examination findings and discussions. However, in response to commenters' requests for data, the NASD submitted a comment letter on March 12, 2007 that provides the NASD's findings in summary form with confidential, company-specific information removed.[3]

Accordingly, the Commission is re-opening the comment period to highlight the fact that additional data has become available and to provide the public with an opportunity to comment on this data. In addition, in re-opening the comment period, the Commission also directs the public's attention to additional data that may be of interest to commenters seeking information on the reasons why fails may be persisting since the adoption of Regulation SHO:[4]

○ Prior to the Commission's Proposal, the New York Stock Exchange LLC (the ''NYSE'') informed the Commission that it conducted a review of five securities with substantial aged fail positions from July 1, 2005 through September 23, 2005. The NYSE found that the aged fail positions in these five securities were

[1] The Commission also proposed amendments to update the market decline limitation referenced in Regulation SHO.

[2] *See e.g.*, Comments of Keith F. Higgins, Chair, Committee on Federal Regulation of Securities, American Bar Association (September 27, 2006) (stating that ''without the benefit of knowing the information relied upon by the Commission in analyzing the cause or causes of the current fails to deliver and the likelihood that the proposed changes will reduce those fails to deliver, commenters are deprived of the opportunity to opine on the significance of the examination results or the Commission's interpretation of such information''); comments of Alan Schwartz, Novato, California (September 19, 2006) (requesting ''strong empirical data for the existence of problems * * *''); comments of Margaret Wiermanski, Chief Operations Officer, and Matthew Abraham, Compliance Officer, CTC LLC (September 28, 2006) (stating, ''What is not clear in the current Proposing Amendments is any research that would evidence the anticipated levels of additional improvements in eliminating fails to deliver.'')

[3] *See* File No. S7–12–06, Comments of the National Association of Securities Dealers, Inc. (March 12, 2007).

[4] *See* Securities Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004).

attributable to one broker-dealer. This broker-dealer informed the NYSE that the fail positions were not being closed out because it was relying on the options market maker exception.

○ Prior to the Commission's Proposal, the Commission's Office of Compliance and Inspections (''OCIE'') conducted some examinations for Regulation SHO compliance and found that some broker-dealers were still carrying a significant amount of fails to deliver in securities that they were not closing out because they were relying on the grandfather provision. One broker-dealer indicated that it had not closed out several persistent fails in threshold securities because it was relying on the options market maker exception.

Therefore, the Commission is re-opening the comment period for Exchange Act Release No. 54154 from the date of this release through April 30, 2007.

By the Commission.

Dated: March 26, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–5870 Filed 3–29–07; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 211, 226, 300, 500, 530, 600, 895, and 1271

[Docket No. 2005N–0373]

RIN 0910–AF54

Use of Materials Derived From Cattle in Medical Products Intended for Use in Humans and Drugs Intended for Use in Ruminants; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until May 14, 2007, the comment period for the proposed rule published in the **Federal Register** of January 12, 2007 (72 FR 1582). The proposed rule would prohibit the use of certain cattle material in, or in the manufacture (including processing) of, drugs, biologics, and medical devices intended for use in humans and human cells, tissues, and cellular and tissue-based products (HCT/Ps) (collectively, medical products for humans), and in drugs intended for use in ruminant animals (drugs for ruminants) and would also require new recordkeeping provisions for medical products for humans and drugs for ruminants that are manufactured from or otherwise contain material from cattle. The agency is reopening the comment period in response to a request for more time to enable industry to generate more information on products that might be affected by the rule.

DATES: Submit written or electronic comments on the proposed rule by May 14, 2007.

ADDRESSES: You may submit comments, identified by Docket No. 2005N–0373 and RIN number 0910–AF54, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described previously in the **ADDRESSES** portion of this document under *Electronic Submissions*.

Instructions: All submissions received must include the agency name and Docket No(s). and Regulatory Information Number (RIN) for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see section II ''Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

For information concerning products regulated by the Center for Drug Evaluation and Research: Audrey A. Thomas, Center for Drug Evaluation and Research (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5533, e-mail: *audrey.thomas@fda.hhs.gov*.

For information concerning products regulated by the Center for Biologics Evaluation and Research: Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210, e-mail: *stephen.ripley@fda.hhs.gov*.

For information concerning products regulated by the Center for Devices and Radiological Health: Scott G. McNamee, Center for Devices and Radiological Health, Food and Drug Administration, 2094 Gaither Rd., rm. 230, Rockville, MD 20850, 240–276–0105, e-mail: *scott.mcnamee@fda.hhs.gov*.

For information concerning products regulated by the Center for Veterinary Medicine: Michael J. Popek, Center for Veterinary Medicine (HFV–144), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6462, e-mail: *michael.popek@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 12, 2007 (72 FR 1582), FDA published a proposed rule that, if finalized, would prohibit the use of certain cattle material in, or in the manufacture (including processing) of, medical products for humans and drugs for ruminants. FDA also proposed new recordkeeping requirements for medical products for humans and drugs for ruminants that are manufactured from or otherwise contain material from cattle.

Interested persons were given until March 13, 2007, to submit written or electronic comments to the agency on the proposal. On February 12, 2007,

FDA received a request to extend the comment period. FDA believes that extending the comment period by 45 days is appropriate to allow industry to generate information on products that might be affected by the rule. Therefore, FDA is extending the comment period until May 14, 2007. This extension will provide the public with a total of 105 days to submit comments.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the proposed rule. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the Docket No. 2005N–0373. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 23, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–5894 Filed 3–29–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–156779–06]

RIN 1545–BG27

Determining the Amount of Taxes Paid for Purposes of Section 901

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: These proposed regulations provide guidance relating to the determination of the amount of taxes paid for purposes of section 901.

The proposed regulations affect taxpayers that claim direct and indirect foreign tax credits. This document also provides notice of a public hearing.

DATES: Written or electronic comments must be received by June 28, 2007. Outlines of topics to be discussed at the public hearing scheduled for July 30, 2007, at 10 a.m. must be received by July 9, 2007.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–156779–06), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–156779–06), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–156779–06). The public hearing will be held in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning submission of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Kelly Banks (202) 622–7180; concerning the regulations, Bethany A. Ingwalson, (202) 622–3850 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 901 of the Internal Revenue Code (Code) permits taxpayers to claim a credit for income, war profits, and excess profits taxes paid or accrued (or deemed paid) during the taxable year to any foreign country or to any possession of the United States.

Section 1.901–2(a) of the regulations defines a tax as a compulsory payment pursuant to the authority of a foreign country to levy taxes, and further provides that a tax is an income, war profits, or excess profits tax if the predominant character of the tax is that of an income tax in the U.S. sense. Section 1.901–2(e) provides rules for determining the amount of tax paid by a taxpayer for purposes of section 901. Section 1.901–2(e)(5) provides that an amount paid is not a compulsory payment, and thus is not an amount of tax paid, to the extent that the amount paid exceeds the amount of liability under foreign law for tax. For purposes of determining whether an amount paid exceeds the amount of liability under foreign law for tax, § 1.901–2(e)(5) provides the following rule:

> An amount paid does not exceed the amount of such liability if the amount paid is determined by the taxpayer in a manner that is consistent with a reasonable interpretation and application of the substantive and procedural provisions of foreign law (including applicable tax treaties) in such a way as to reduce, over time, the taxpayer's reasonably expected liability under foreign law for tax, and if the taxpayer exhausts all effective and practical remedies, including invocation of competent authority procedures available under applicable tax treaties, to reduce, over time, the taxpayer's liability for foreign tax (including liability pursuant to a foreign tax audit adjustment).

Section 1.901–2(e)(5) provides further that if foreign tax law includes options or elections whereby a taxpayer's liability may be shifted, in whole or part, to a different year, the taxpayer's use or failure to use such options or elections does not result in a noncompulsory payment, and that a settlement by a taxpayer of two or more issues will be evaluated on an overall basis, not on an issue-by-issue basis, in determining whether an amount is a compulsory amount. In addition, it provides that a taxpayer is not required to alter its form of doing business, its business conduct, or the form of any transaction in order to reduce its liability for tax under foreign law.

A. U.S.-Owned Foreign Entities

Commentators have raised questions regarding the application of § 1.901–2(e)(5) to a U.S. person that owns one or more foreign entities. In particular, commentators have raised questions concerning the application of the regulation when one foreign entity directly or indirectly owned by a U.S. person transfers, pursuant to a group relief type regime, a net loss to another foreign entity, which may or may not also be owned by the U.S. person. Certain commentators have expressed concern that foreign taxes paid by the transferor in a subsequent tax year might not be compulsory payments to the extent the transferor could have reduced its liability for those foreign taxes had it chosen not to transfer the net loss in the prior year. This concern arises because the current final regulations apply on a taxpayer-by-taxpayer basis, obligating each taxpayer to minimize its liability for foreign taxes over time, even though the net effect of the loss surrender may be to minimize the amount of foreign taxes paid in the aggregate by the controlled group over time.

Similar questions and concerns arise when one or more foreign subsidiaries of a U.S. person reach a combined settlement with a foreign taxing authority that results in an increase in the amount of one foreign subsidiary's foreign tax liability and a decrease in the amount of a second foreign subsidiary's foreign tax liability.

B. Certain Structured Passive Investment Arrangements

The IRS and Treasury Department have become aware that certain U.S. taxpayers are engaging in highly structured transactions with foreign counterparties in order to generate foreign tax credits. These transactions are intentionally structured to create a foreign tax liability when, removed from the elaborately engineered structure, the basic underlying business transaction

generally would result in significantly less, or even no, foreign taxes. In particular, the transactions purport to convert what would otherwise be an ordinary course financing arrangement between a U.S. person and a foreign counterparty, or a portfolio investment of a U.S. person, into some form of equity ownership in a foreign special purpose vehicle (SPV). The transaction is deliberately structured to create income in the SPV for foreign tax purposes, which income is purportedly subject to foreign tax. The parties exploit differences between U.S. and foreign law in order to permit the U.S. taxpayer to claim a credit for the purported foreign tax payments while also allowing the foreign counterparty to claim a foreign tax benefit. The U.S. taxpayer and the foreign counterparty share the cost of the purported foreign tax payments through the pricing of the arrangement.

Explanation of Provisions

The proposed regulations address the application of § 1.901–2(e)(5) in cases where a U.S. person directly or indirectly owns one or more foreign entities and in cases in which a U.S. person is a party to a highly structured passive investment arrangement described in this preamble. The proposed regulations would treat as a single taxpayer for purposes of § 1.901–2(e)(5) all foreign entities with respect to which a U.S. person has a direct or indirect interest of 80 percent or more. The proposed regulations would treat foreign payments attributable to highly structured passive investment arrangements as noncompulsory payments under § 1.901–2(e)(5) and, thus, would disallow credits for such amounts.

A. U.S.-Owned Foreign Entities

Section 1.901–2(e)(5) requires a taxpayer to interpret and apply foreign law reasonably in such a way as to reduce, over time, the taxpayer's reasonably expected liability under foreign law for tax. This requirement ensures that a taxpayer will make reasonable efforts to minimize its foreign tax liability even though the taxpayer may otherwise be indifferent to the imposition of foreign tax due to the availability of the foreign tax credit. The purpose of this requirement is served if all foreign entities owned by such person, in the aggregate, satisfy the requirements of the regulation. Accordingly, for purposes of determining compliance with § 1.901–2(e)(5), the proposed regulations would treat as a single taxpayer all foreign entities in which the same U.S. person has a direct or indirect interest of 80 percent or more. For this purpose, an interest of 80 percent or more means stock possessing 80 percent or more of the vote and value (in the case of a foreign corporation) or an interest representing 80 percent or more of the income (in the case of non-corporate foreign entities).

The proposed regulations provide that if one 80 percent-owned foreign entity transfers or surrenders a net loss for the taxable year to a second such entity pursuant to a foreign law group relief or similar regime, foreign tax paid by the transferor in a different tax year does not fail to be a compulsory payment solely because such tax would not have been due had the transferor retained the net loss and carried it over to such other year. Similarly, it provides that if one or more 80 percent-owned foreign entities enter into a combined settlement under foreign law of two or more issues, such settlement will be evaluated on an overall basis, not on an issue-by-issue or entity-by-entity basis, in determining whether an amount is a compulsory amount. The proposed regulations include examples to illustrate the proposed rule.

The IRS and Treasury Department intend to monitor structures involving U.S.-owned foreign groups, including those that would be covered by the proposed regulations, to determine whether taxpayers are utilizing such structures to separate foreign taxes from the related income. The IRS and Treasury Department may issue additional regulations in the future in order to address arrangements that result in the inappropriate separation of foreign tax and income.

B. Certain Structured Passive Investment Arrangements

The structured arrangements discovered and identified by the IRS and the Treasury Department can be grouped into three general categories: (1) U.S. borrower transactions, (2) U.S. lender transactions, and (3) asset holding transactions. The transactions, including the claimed U.S. tax results, are described in section B.1 of this preamble. Section B.2 of this preamble discusses the purpose of the foreign tax credit regime and explains why allowing a credit in the transactions is inconsistent with this purpose. Section B.3 of this preamble discusses comments the IRS and the Treasury Department have received on the transactions and describes the proposed regulations. The IRS is continuing to scrutinize the transactions under current law and intends to utilize all tools available to challenge the claimed U.S. tax results in appropriate cases.

1. Categories of Structured Passive Investment Arrangements

(a) *U.S. borrower transactions.* The first category consists of transactions in which a U.S. person indirectly borrows funds from an unrelated foreign counterparty. If a U.S. person were to borrow funds directly from a foreign person, the U.S. person generally would make nondeductible principal payments and deductible interest payments. The U.S. person would not incur foreign tax. The foreign lender generally would owe foreign tax on its interest income. In a structured financing arrangement, the U.S. borrower attempts to convert all or a portion of its deductible interest payments and, in certain cases, its nondeductible principal payments into creditable foreign tax payments. The U.S. borrower's foreign tax credit benefit is shared by the parties through the pricing of the arrangement. See *Example 1* of proposed § 1.901–2(e)(5)(iv)(D).

In a typical structured financing arrangement, the loan is made indirectly through an SPV. The foreign lender's interest income (and, in many cases, other income) is effectively isolated in the SPV. The U.S. borrower acquires a direct or indirect interest in the SPV and asserts that it has a direct or indirect equity interest in the SPV for U.S. tax purposes. The U.S. borrower claims a credit for foreign taxes imposed on the income derived by the SPV. The U.S. borrower's purported equity interest may be treated as debt for foreign tax purposes or it may be treated as an equity interest that is owned by the foreign lender for foreign tax purposes. In either case, the foreign lender is treated as owning an equity interest in the SPV for foreign tax purposes, which entitles the foreign lender to receive tax-free distributions from the SPV.

For example, assume that a U.S. person seeks to borrow $1.5 billion from a foreign person. Instead of borrowing the funds directly, the U.S. borrower forms a corporation (SPV) in the same country as the foreign counterparty. The U.S. borrower contributes $1.5 billion to SPV in exchange for 100 percent of the stock of SPV. SPV, in turn, loans the entire $1.5 billion to a corporation wholly owned by the U.S. borrower. The U.S. borrower recovers its $1.5 billion by selling its entire interest in SPV to the foreign counterparty, subject to an obligation to repurchase the interest in five years for $1.5 billion. Each year, SPV earns $120 million of interest income from the U.S. borrower's subsidiary. SPV pays $36 million of foreign tax and distributes the

remaining $84 million to the foreign counterparty.

The U.S. borrower takes the position that, for U.S. tax purposes, the sale-repurchase transaction is a borrowing secured by the SPV stock. Accordingly, the U.S. borrower asserts that it owns the stock of SPV for U.S. tax purposes and has an outstanding debt obligation to the foreign counterparty. It reports the distribution from SPV as dividend income and claims indirect credits under section 902 for the $36 million of foreign taxes paid by SPV. It includes in income the cash dividend of $84 million paid to the foreign counterparty, plus a section 78 gross-up amount of $36 million, for a total of $120 million. The U.S. borrower claims a deduction of $84 million as interest on its debt obligation to the foreign counterparty. In addition, the U.S. borrower's subsidiary claims an interest deduction of $120 million. In the aggregate, the U.S. borrower and its subsidiary claim a foreign tax credit of $36 million and an interest expense deduction (net of income inclusions) of $84 million.

For foreign tax purposes, the foreign counterparty owns the equity of SPV and is not subject to additional foreign tax upon receipt of the dividend. Thus, the net result is that the foreign jurisdiction receives foreign tax payments attributable to what is in substance the lender's interest income, which is consistent with the foreign tax results that would be expected from a direct borrowing.

Both parties benefit from the arrangement. The foreign lender obtains an after-foreign tax interest rate that is higher than the after-foreign tax interest rate it would earn on a direct loan. The U.S. borrower's funding costs are lower on an after-U.S. tax basis (though not on a pre-U.S. tax basis) because it has converted interest expense into creditable foreign tax payments.

The benefit to the parties is solely attributable to the reduction in the U.S. borrower's U.S. tax liability resulting from the foreign tax credits claimed by the U.S. borrower. The foreign jurisdiction benefits from the arrangement because the amount of interest received by SPV exceeds the amount of interest that would have been received by the foreign lender if the transaction had been structured as a direct loan. As a result, the amount paid by SPV to the foreign jurisdiction exceeds the amount of foreign tax the foreign jurisdiction would have imposed on the foreign lender's interest income in connection with a direct loan.

(b) *U.S. lender transactions.* The second category consists of transactions in which a U.S person indirectly loans funds to an unrelated foreign counterparty. If a U.S. person were to loan the funds directly to the foreign person, the U.S. person generally would be subject to U.S. tax on its interest income and the borrower would receive a corresponding deduction for the interest expense. The U.S. person generally would not be subject to foreign tax other than, in certain circumstances, a gross basis withholding tax.

In a typical structured financing arrangement, the U.S. person advances funds to a foreign borrower indirectly through an SPV. The U.S. person asserts that its interest in the SPV is equity for U.S. tax purposes. Income of the foreign borrower (or another foreign counterparty) is effectively shifted into the SPV. The U.S. person receives cash payments from the SPV and claims a credit for foreign taxes imposed on the income recognized by the SPV for foreign tax purposes. The foreign tax credits eliminate all or substantially all of the U.S. tax the U.S. person would otherwise owe on its return and, in many cases, U.S. tax the U.S. person would otherwise owe on unrelated foreign source income. The economic cost of the foreign taxes is shared through the pricing of the arrangement. See *Example 4* of proposed § 1.901–2(e)(5)(iv)(D).

For example, assume a U.S. person seeks to loan $1 billion to a foreign person. In lieu of a direct loan, the U.S. lender contributes $1 billion to a newly-formed corporation (SPV). The foreign counterparty contributes $2 billion to SPV, which is organized in the same country as the foreign counterparty. SPV contributes the total $3 billion to a second special purpose entity (RH), receiving a 99 percent equity interest in RH in exchange. The foreign counterparty owns the remaining 1 percent of RH. RH loans the funds to the foreign counterparty in exchange for a note that pays interest currently and a second zero-coupon note. RH is a corporation for U.S. tax purposes and a flow-through entity for foreign tax purposes.

Each year, the foreign counterparty pays $92 million of interest to RH, and RH accrues $113 million of interest on the zero-coupon note. RH distributes the $92 million of cash it receives to SPV. Because RH is a partnership for foreign tax purposes, SPV is required to report for foreign tax purposes 99 percent ($203 million) of the income recognized by RH. Because RH is a corporation for U.S. tax purposes, SPV recognizes only the cash distributions of $92 million for U.S. tax purposes. SPV pays foreign tax of $48 million on its net income (30 percent of $159 million, or $203 interest income less $44 million interest deduction) and distributes its remaining cash of $44 million to the U.S. lender.

The U.S. lender takes the position that it has an equity interest in SPV for U.S. tax purposes. It claims an indirect credit for the $48 million of foreign taxes paid by SPV. It includes in income the cash dividend of $44 million, plus a section 78 gross-up amount of $48 million. For foreign tax purposes, the U.S. lender's interest in SPV is debt, and the foreign borrower owns 100 percent of the equity of SPV. The foreign counterparty and SPV, in the aggregate, have a net deduction of $44 million for foreign tax purposes.

Both parties benefit from the transaction. The foreign borrower obtains ''cheap financing'' because the $44 million of cash distributed to the U.S. lender is less than the amount of interest it would have to pay on a direct loan with respect to which the U.S. lender would owe U.S. tax. The U.S. lender is better off on an after-U.S. tax basis because of the foreign tax credits, which eliminate the U.S. lender's U.S. tax on the ''dividend'' income.

The benefit to the parties is solely attributable to the reduction in the U.S. lender's U.S. tax liability resulting from the foreign tax credits claimed by the U.S. lender. The foreign jurisdiction benefits because the aggregate foreign tax result is a deduction for the foreign borrower that is less than the amount of the interest deduction the foreign borrower would have had upon a direct loan.

(c) *Asset holding transactions.* The third category of transactions (''asset holding transactions'') consists of transactions in which a U.S. person that owns an income-producing asset moves the asset into a foreign taxing jurisdiction. For example, assume a U.S. person owns passive-type assets (such as debt obligations) generating an income stream that is subject to U.S. tax. In an asset holding transaction, the U.S. person transfers the assets to an SPV that is subject to tax in a foreign jurisdiction on the income stream. Ordinarily, such a transfer would not affect the U.S. person's after-tax position since the U.S. person could claim a credit for the foreign tax paid and, thereby, obtain a corresponding reduction in the amount of U.S. tax it would otherwise owe. In the structured transactions, however, the cost of the foreign tax is shared by a foreign person who obtains a foreign tax benefit by participating in the arrangement. Thus, the U.S. person is better off paying the foreign tax instead of U.S. tax because

it does not bear the full economic burden of the foreign tax.

In a typical structured transaction, a foreign counterparty participates in the arrangement with the SPV. For example, the foreign counterparty may be considered to own a direct or indirect interest in the SPV for foreign tax purposes. The foreign counterparty's participation in the arrangement allows it to obtain a foreign tax benefit that it would not otherwise enjoy. The foreign counterparty compensates the U.S. person for this benefit in some manner. This compensation, which can be viewed as a reimbursement for a portion of the foreign tax liability resulting from the transfer of the assets, puts the U.S. person in a better after-U.S. tax position. See *Example 7* of proposed § 1.901–2(e)(5)(iv)(D).

The benefit to the parties is solely attributable to the reduction in the U.S. taxpayer's U.S. tax liability resulting from the foreign tax credits claimed by the U.S. taxpayer. The foreign jurisdiction benefits because the foreign taxes purportedly paid by the SPV exceed the amount by which the foreign counterparty's taxes are reduced.

2. Purpose of the Foreign Tax Credit

The purpose of the foreign tax credit is to mitigate double taxation of foreign source income. Because the foreign tax credit provides a dollar-for-dollar reduction in U.S. tax that a U.S. person would otherwise owe, the U.S. person generally is indifferent, subject to various foreign tax credit limitations, as to whether it pays foreign tax on its foreign source income (if fully offset by the foreign tax credit) or whether it pays U.S. (and no foreign) tax on that income.

The structured arrangements described in section B.1 of this preamble violate this purpose. A common feature of all these arrangements is that the U.S. person and a foreign counterparty share the economic cost of the foreign taxes claimed as credits by the U.S. person. This creates an incentive for the U.S. person to subject itself voluntarily to the foreign tax because there is a U.S. tax motivation to do so. The result is an erosion of the U.S. tax base in a manner that is not consistent with the purpose of the foreign tax credit provisions.

Although the foreign counterparty derives a foreign tax benefit in these arrangements, the foreign jurisdiction generally is made whole because of the payments to the foreign jurisdiction made by the special purpose vehicle. In fact, the aggregate amount of payments to the foreign jurisdictions in connection with these transactions generally exceeds the amount of foreign tax that would have been imposed in the ordinary course. Only the U.S. fisc experiences a reduction in tax payments as a result of the structured arrangements.

The IRS and Treasury Department recognize that often there is a business purpose for the financing or portfolio investment underlying the otherwise elaborately engineered transactions. However, it is inconsistent with the purpose of the foreign tax credit to permit a credit for foreign taxes that result from intentionally structuring a transaction to generate foreign taxes in a manner that allows the parties to obtain duplicate tax benefits and share the cost of the tax payments. The result in these structured arrangements is that both parties as well as the foreign jurisdiction benefit at the expense of the U.S. fisc.

3. Comments and Proposed Regulations

The IRS and Treasury Department have determined that it is not appropriate to allow a credit in connection with these highly engineered transactions where the U.S. taxpayer benefits by intentionally subjecting itself to foreign tax. The proposed regulations would revise § 1.901–2(e)(5) to provide that an amount paid to a foreign country in connection with such an arrangement is not an amount of tax paid. Accordingly, under the proposed regulations, a taxpayer would not be eligible to claim a foreign tax credit for such a payment. For periods prior to the effective date of final regulations, the IRS will continue to utilize all available tools under current law to challenge the U.S. tax results claimed in connection with such arrangements, including the substance over form doctrine, the economic substance doctrine, debt-equity principles, tax ownership principles, existing § 1.901–2(e), section 269, and the partnership anti-abuse rules of § 1.701–2.

Certain commentators recommended that the IRS and Treasury Department adopt a broad anti-abuse rule that would deny a foreign tax credit in any case where allowance of the credit would be inconsistent with the purpose of the foreign tax credit regime. Other commentators recommended a narrower approach that would only deny foreign tax credits attributable to transactions that include particular features. The IRS and Treasury Department are concerned that a broad anti-abuse rule would create uncertainty for both taxpayers and the IRS. The IRS and Treasury Department have concluded that, at this time, a targeted rule denying foreign tax credits in arrangements similar to the arrangements described in section B.1 of this preamble is more appropriate.

For periods after the effective date of final regulations, the IRS and Treasury Department will continue to scrutinize other arrangements that are not covered by the regulations but are inconsistent with the purpose of the foreign tax credit. Such arrangements may include arrangements that are similar to arrangements described in the proposed regulations, but that do not meet all of the conditions included in the proposed regulations. The IRS will utilize all available tools, including those described above, to challenge the claimed U.S. tax results in appropriate cases. In addition, the IRS and Treasury Department may issue additional regulations in the future in order to address such other arrangements.

The proposed regulations would retain the general rule in the existing regulations that a taxpayer need not alter its form of doing business or the form of any transaction in order to reduce its foreign tax liability. However, the proposed regulations would provide that, notwithstanding the general rule, an amount paid to a foreign country (a ''foreign payment'') is not a compulsory payment, and thus is not an amount of tax paid, if the foreign payment is attributable to a structured passive investment arrangement. For this purpose, the proposed regulations would define a structured passive investment arrangement as an arrangement that satisfies six conditions. The six conditions consist of features that are common to the three types of arrangements identified in section B.1 of this preamble. The IRS and Treasury Department believe it is appropriate to treat foreign payments attributable to these arrangements as voluntary payments because such arrangements are intentionally structured to generate the foreign payment.

The first condition is that the arrangement utilizes an entity that meets two requirements (an ''SPV''). The first requirement is that substantially all of the gross income (for United States tax purposes) of the entity is attributable to passive investment income and substantially all of the assets of the entity are assets held to produce such passive investment income. The second requirement is that there is a purported foreign tax payment attributable to income of the entity. The purported foreign tax may be paid by the entity itself, by the owner(s) of the entity (if the entity is treated as a pass-through entity under foreign law) or by a lower-tier entity (if the lower-tier

entity is treated as a pass-through entity under U.S. law).

For purposes of this first requirement, passive investment income is defined as income described in section 954(c), with two modifications. The first modification is that if the entity is a holding company that owns a direct equity interest (other than a preferred interest) of 10 percent or more in another entity (a lower-tier entity) that is predominantly engaged in the active conduct of a trade or business (or substantially all the assets of which consist of qualifying equity interests in other entities that are predominantly engaged in the active conduct of a trade or business), passive investment income does not include income attributable to the interest in such lower-tier entity. This exception does not apply if there are arrangements under which substantially all of the opportunity for gain and risk of loss with respect to such interest in the lower-tier entity are borne by either the U.S. party or the counterparty (but not both). Accordingly, a direct equity interest in any such lower-tier entity is not held to produce passive investment income provided there are no arrangements under which substantially all of the entity's opportunity for gain and risk of loss with respect to the lower-tier entity are borne by either the U.S. party or the counterparty (but not both). This modification is based on the notion that an entity is not a passive investment vehicle of the type targeted by these regulations if the entity is a holding company for one or more operating companies. This modification ensures that a joint venture arrangement between a U.S. person and a foreign person is not treated as a passive investment arrangement solely because the joint venture is conducted through a holding company structure.

The second modification is that passive investment income is determined by disregarding sections 954(c)(3) and (c)(6) and by treating income attributable to transactions with the counterparties (described in this preamble) as ineligible for the exclusions under sections 954(h) and (i). Sections 954(c)(3) and (c)(6) provide exclusions for certain related party payments of dividends, interest, rents, and royalties. Those exclusions are not appropriate for these transactions because these transactions can be structured utilizing related party payments. The modifications to the application of sections 954(h) and (i) are intended to ensure that income derived from the counterparty cannot qualify for the exclusion from passive investment income, but will not prevent other income from qualifying for those exclusions. The IRS and Treasury Department intend that the structured financing arrangements described in this preamble do not qualify for the active banking, financing or insurance business exceptions to the definition of passive investment income. Comments are requested on whether further modifications or clarifications to the proposed regulations' definition of passive investment income are appropriate to ensure this result.

The requirement that substantially all of the assets of the entity produce passive investment income is intended to ensure that an entity engaged in an active trade or business is not treated as an SPV solely because, in a particular year, it derives only passive investment income.

The second overall condition is that a person (a ''U.S. party'') would be eligible to claim a credit under section 901(a) (including a credit for foreign taxes deemed paid under section 902 or 960) for all or a portion of the foreign payment if such payment were an amount of tax paid. Such eligibility to claim the credit could arise because the U.S. party would be treated as having paid or accrued the foreign payment for purposes of section 901 if it were an amount of tax paid. Alternatively, the U.S. party's eligibility to claim the credit could arise because the U.S. party owns an equity interest in the SPV or another entity that would be treated as having paid or accrued the foreign payment for purposes of section 901 if it were an amount of tax paid.

The third overall condition is that the foreign payment or payments are (or are expected to be) substantially greater than the amount of credits, if any, that the U.S. party would reasonably expect to be eligible to claim under section 901(a) if such U.S. party directly owned its proportionate share of the assets owned by the SPV other than through a branch, a permanent establishment or any other arrangement (such as an agency arrangement) that would subject the income generated by its share of the assets to a net basis foreign tax. For example, if the SPV owns a note that generates interest income with respect to which a foreign payment is made, but foreign law (including an applicable treaty) provides for a zero rate of withholding tax on interest paid to non-residents, the U.S. party would not reasonably expect to pay foreign tax for which it could claim foreign tax credits if it directly owned the note and directly earned the interest income.

The fourth condition is that the arrangement is structured in such a manner that it results in a foreign tax benefit (such as a credit, deduction, loss, exemption or a disregarded payment) for a counterparty or for a person that is related to the counterparty, but not related to the U.S. party.

The fifth condition is that the counterparty is a person (other than the SPV) that is unrelated to the U.S. party and that (i) directly or indirectly owns 10 percent or more of the equity of the SPV under the tax laws of a foreign country in which such person is subject to tax on the basis of place of management, place of incorporation or similar criterion or otherwise subject to a net basis foreign tax or (ii) acquires 20 percent or more of the assets of the SPV under the tax laws of a foreign country in which such person is subject to tax on the basis of place of management, place of incorporation or similar criterion or otherwise subject to a net basis foreign tax.

The sixth condition is that the U.S. and an applicable foreign country treat the arrangement differently under their respective tax systems. For this purpose, an applicable foreign country is any foreign country in which either the counterparty, a person related to the counterparty (but not related to the U.S. party) or the SPV is subject to net basis tax. To provide clarity and limit the scope of this factor, the proposed regulations provide that the arrangement must be subject to one of four specified types of inconsistent treatment. Specifically, the U.S. and the foreign country (or countries) must treat one or more of the following aspects of the arrangement differently, and the U.S. treatment of the inconsistent aspect must materially affect the amount of foreign tax credits claimed, or the amount of income recognized, by the U.S. party to the arrangement: (i) The classification of an entity as a corporation or other entity subject to an entity-level tax, a partnership or other flow-through entity or an entity that is disregarded for tax purposes; (ii) the characterization as debt, equity or an instrument that is disregarded for tax purposes of an instrument issued in the transaction, (iii) the proportion of the equity of the SPV (or an entity that directly or indirectly owns the SPV) that is considered to be owned directly or indirectly by the U.S. party and the counterparty; or (iv) the amount of taxable income of the SPV for one or more tax years during which the arrangement is in effect.

Under the proposed regulations, a foreign payment would not be a compulsory payment if it is attributable to an arrangement that meets the six conditions. The proposed regulations

would treat a foreign payment as attributable to such an arrangement if the foreign payment is attributable to income of the SPV. Such foreign payments include a payment by the SPV, a payment by the owner of the SPV (if the SPV is a pass-through entity under foreign law) and a payment by a lower-tier entity that is treated as a pass-through entity under U.S. law. For this purpose, a foreign payment is not treated as attributable to the income of the SPV if the foreign payment is a gross basis withholding tax imposed on a distribution or payment from the SPV to the U.S. party. Such taxes could be considered to be noncompulsory payments because the U.S. party intentionally subjects itself to the taxes as part of the arrangement. However, the IRS and Treasury Department have determined that such taxes should not be treated as attributable to the arrangement because, among other reasons, the foreign counterparty generally does not derive a duplicative foreign tax benefit and, therefore, generally does not share the economic cost of such taxes.

The IRS and Treasury Department considered excluding all foreign payments with respect to which the economic cost is not shared from the definition of foreign payments attributable to the arrangement, but determined that such a rule would be difficult to administer. The IRS and Treasury Department request comments on whether it would be appropriate to exclude certain foreign payments from the definition of foreign taxes attributable to the structured passive investment arrangement. Comments should address the rationale and administrable criteria for identifying any such exclusions.

Certain commentators recommended that the proposed regulations include a requirement that the foreign tax credits attributable to the arrangement be disproportionate to the amount of taxable income attributable to the arrangement. This recommendation has not been adopted for three reasons. First, the IRS and Treasury Department were concerned that such a requirement would create too much uncertainty and would be unduly burdensome for taxpayers and the IRS. Second, the extent to which interest and other expenses, as well as returns on borrowed funds and capital, should be considered attributable to a particular arrangement is not entirely clear. A narrow view could present opportunities for manipulation, especially for financial institutions having numerous alternative placements of leverage for use within the group, while an expansive view could undercut the utility of such a test. Third, the fundamental concern in these transactions is that they create an incentive for taxpayers voluntarily to subject themselves to foreign tax. This concern exists irrespective of whether the particular arrangement generates a disproportionate amount of foreign tax credits.

The IRS and Treasury Department considered whether it would be appropriate to permit a taxpayer to treat a foreign payment attributable to an arrangement that meets the definition of a structured passive investment arrangement as an amount of tax paid, if the taxpayer can show that tax considerations were not a principal purpose for the structure of the arrangement. Alternatively, the IRS and Treasury Department considered whether it would be appropriate to treat a foreign payment as an amount of tax paid if a taxpayer shows that there is a substantial business purpose for utilizing a hybrid instrument or entity, which would not include reducing the taxpayer's after-tax costs or enhancing the taxpayer's after-tax return through duplicative foreign tax benefits. The IRS and Treasury Department determined not to include such a rule in these proposed regulations due to administrability concerns. Comments are requested, however, on whether the final regulations should include such a rule as well as how such a rule could be made to be administrable in practice, including what reasonably ascertainable evidence would be sufficient to establish such a substantial non-tax business purpose, or the lack of a tax-related principal purpose. Comments should also address whether it would be appropriate to adopt a broader anti-abuse rule and permit a taxpayer to demonstrate that it should not apply.

C. Effective Date

The regulations are proposed to be effective for foreign taxes paid or accrued during taxable years of the taxpayer ending on or after the date on which the final regulations are published in the **Federal Register**. No inference is intended regarding the U.S. tax consequences of structured passive investment arrangements prior to the effective date of the regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6), does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for July 30, 2007, at 10 a.m. in the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit electronic or written comments and an outline of the topics to be discussed and time to be devoted to each topic (a signed original and eight (8) copies) by July 9, 2007. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Bethany A. Ingwalson, Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.901–2 is amended by adding paragraphs (e)(5)(iii) and (iv), and revising paragraph (h) to read as follows:

§ 1.901–2 Income, war profits, or excess profits tax paid or accrued.

* * * * *

(e)(5) * * *

(iii) *U.S.-owned foreign entities*—(A) *In general.* If a U.S. person described in section 901(b) directly or indirectly owns stock possessing 80 percent or more of the total voting power and total value of one or more foreign corporations (or, in the case of a non-corporate foreign entity, directly or indirectly owns an interest in 80 percent or more of the income of one or more such foreign entities), the group comprising such foreign corporations and entities (the ''U.S.-owned group'') shall be treated as a single taxpayer for purposes of paragraph (e)(5) of this section. Therefore, if one member of such a U.S.-owned group transfers or surrenders a net loss for the taxable year to a second member of the U.S.-owned group and the loss reduces the foreign tax due from the second member pursuant to a foreign law group relief or similar regime, foreign tax paid by the first member in a different year does not fail to be a compulsory payment solely because such tax would not have been due had the member that transferred or surrendered the net loss instead carried over the loss to reduce its own income and foreign tax liability in that year. Similarly, if one or more members of the U.S.-owned group enter into a combined settlement under foreign law of two or more issues involving different members of the group, such settlement will be evaluated on an overall basis, not on an issue-by-issue or entity-by-entity basis, in determining whether an amount is a compulsory amount. The provisions of this paragraph (e)(5)(iii) apply solely for purposes of determining whether amounts paid are compulsory payments of foreign tax and do not, for example, modify the provisions of section 902 requiring separate pools of post-1986 undistributed earnings and post-1986 foreign income taxes for each member of a qualified group.

(B) *Special rules.* All domestic corporations that are members of a consolidated group (as that term is defined in § 1.1502–1(h)) shall be treated as one domestic corporation for purposes of this paragraph (e)(5)(iii). For purposes of this paragraph (e)(5)(iii), indirect ownership of stock or another equity interest (such as an interest in a partnership) shall be determined in accordance with the principles of section 958(a)(2), whether the interest is owned by a U.S. or foreign person.

(C) *Examples.* The following examples illustrate the rules of this paragraph (e)(5)(iii):

Example 1. (i) *Facts.* A, a domestic corporation, wholly owns B, a country X corporation. B, in turn, wholly owns several country X corporations, including C and D. B, C, and D participate in group relief in country X. Under the country X group relief rules, a member with a net loss may choose to surrender the loss to another member of the group. In year 1, C has a net loss of (1,000x) and D has net income of 5,000x for country X tax purposes. Pursuant to the group relief rules in country X, C agrees to surrender its year 1 net loss to D and D agrees to claim the net loss. D uses the net loss to reduce its year 1 net income to 4,000x for country X tax purposes, which reduces the amount of country X tax D owes in year 1 by 300x. In year 2, C earns 3,000x with respect to which it pays 900x of country X tax. Country X permits a taxpayer to carry forward net losses for up to ten years.

(ii) *Result.* Paragraph (e)(5)(i) of this section provides, in part, that an amount paid to a foreign country does not exceed the amount of liability under foreign law for tax if the taxpayer determines such amount in a manner that is consistent with a reasonable interpretation and application of the substantive and procedural provisions of foreign law (including applicable tax treaties) in such a way as to reduce, over time, the taxpayer's reasonably expected liability under foreign law for tax. Under paragraph (e)(5)(iii)(A) of this section, B, C, and D are treated as a single taxpayer for purposes of testing whether the reasonably expected foreign tax liability has been minimized over time, because A directly and indirectly owns 100 percent of each of B, C, and D. Accordingly, none of the 900x paid by C in year 2 fails to be a compulsory payment solely because C could have reduced its year 2 country X tax liability by 300x by choosing to carry forward its year 1 net loss to year 2 instead of surrendering it to D to reduce D's country X liability in year 1.

Example 2. (i) *Facts.* L, M, and N are country Y corporations. L owns 100 percent of the common stock of M, which owns 100 percent of the stock of N. O, a domestic corporation, owns a security issued by M that is treated as debt for country Y tax purposes and as stock for U.S. tax purposes. As a result, L owns 100 percent of the stock of M for country Y purposes while O owns 99 percent of the stock of M for U.S. tax purposes. L, M, and N participate in group relief in country Y. Pursuant to the group relief rules in country Y, M may surrender its loss to any member of the group. In year 1, M has a net loss of $10 million, N has net income of $25 million, and L has net income of $15 million. M chooses to surrender its year 1 net loss to L. Country Y imposes tax of 30 percent on the net income of country Y corporations. Accordingly, in year 1, the loss surrender has the effect of reducing L's country Y tax by $3 million. In year 1, N makes a payment of $7.5 million to country Y with respect to its net income of $25 million. If M had surrendered its net loss to N instead of L, N would have had net income of $15 million, with respect to which it would have owed only $4.5 million of country Y tax.

(ii) *Result.* M and N, but not L, are treated as a single taxpayer for purposes of paragraph (e)(5) of this section because O directly and indirectly owns 99 percent of each of M and N, but owns no direct or indirect interest in L. Accordingly, in testing whether M and N's reasonably expected foreign tax liability has been minimized over time, L is not considered the same taxpayer as M and N, collectively, and the $3 million reduction in L's year 1 country Y tax liability through the surrender to L of M's $10 million country Y net loss in year 1 is not considered to reduce M and N's collective country Y tax liability.

(iv) *Certain structured passive investment arrangements*—(A) *In general.* Notwithstanding paragraph (e)(5)(i) of this section, an amount paid to a foreign country (a ''foreign payment'') is not a compulsory payment, and thus is not an amount of tax paid, if the foreign payment is attributable to an arrangement described in paragraph (e)(5)(iv)(B) of this section. For purposes of this paragraph (e)(5)(iv), a foreign payment is attributable to an arrangement described in paragraph (e)(5)(iv)(B) of this section if the foreign payment is described in paragraph (e)(5)(iv)(B)(*1*)(*ii*) of this section.

(B) *Conditions.* An arrangement is described in this paragraph (e)(5)(iv)(B) if all of the following conditions are satisfied:

(*1*) *Special purpose vehicle (SPV).* An entity that is part of the arrangement meets the following requirements:

(*i*) Substantially all of the gross income (for United States tax purposes) of the entity is passive investment income as defined in paragraph (e)(5)(iv)(C)(*4*) of this section, and substantially all of the assets of the entity are assets held to produce such passive investment income. As provided in paragraph (e)(5)(iv)(C)(*4*)(*ii*) of this section, passive investment income generally does not include income of a holding company from qualified equity interests in lower-tier entities that are predominantly engaged in the active conduct of a trade or business. Thus, except as provided in paragraph (e)(5)(iv)(C)(*4*)(*ii*) of this section,

qualified equity interests of a holding company in such lower-tier entities are not held to produce passive investment income and the ownership of such interests will not cause the holding company to satisfy this paragraph (e)(5)(iv)(B)(*1*)(*i*).

(*ii*) There is a foreign payment attributable to income of the entity (as determined under the laws of the foreign country to which such foreign payment is made), including the entity's share of income of a lower-tier entity that is a branch or pass-through entity under the laws of such foreign country. A foreign payment attributable to income of an entity includes a foreign payment attributable to income that is required to be taken into account by an owner of the entity, if the entity is a branch or pass-through entity under the laws of such foreign country. A foreign payment attributable to income of an entity also includes a foreign payment attributable to income of a lower-tier entity that is a branch or pass-through entity for U.S. tax purposes. A foreign payment attributable to income of the entity does not include a withholding tax (within the meaning of section 901(k)(1)(B)) imposed on a distribution or payment from the entity to a U.S. party (as defined in paragraph (e)(5)(iv)(B)(*2*) of this section).

(*2*) *U.S. party.* A person (a ''U.S. party'') would be eligible to claim a credit under section 901(a) (including a credit for foreign taxes deemed paid under section 902 or 960) for all or a portion of the foreign payment described in paragraph (e)(5)(iv)(B)(*1*)(*ii*) of this section if the foreign payment were an amount of tax paid.

(*3*) *Direct investment.* The foreign payment or payments described in paragraph (e)(5)(iv)(B)(*1*)(*ii*) of this section are (or are expected to be) substantially greater than the amount of credits, if any, the U.S. party would reasonably expect to be eligible to claim under section 901(a) for foreign taxes attributable to income generated by the U.S. party's proportionate share of the assets owned by the SPV if the U.S. party directly owned such assets. For this purpose, direct ownership shall not include ownership through a branch, a permanent establishment or any other arrangement (such as an agency arrangement) that would result in the income generated by the U.S. party's proportionate share of the assets being subject to tax on a net basis in the foreign country to which the payment is made. A U.S. party's proportionate share of the assets of the SPV shall be determined by reference to such U.S. party's proportionate share of the total value of all of the outstanding interests in the SPV that are held by its equity owners and creditors.

(*4*) *Foreign tax benefit.* The arrangement is structured in such a manner that it results in a foreign tax benefit (such as a credit, deduction, loss, exemption or a disregarded payment) for a counterparty described in paragraph (e)(5)(iv)(B)(*5*) of this section or for a person that is related to the counterparty (determined under the principles of paragraph (e)(5)(iv)(C)(*6*) of this section by applying the tax laws of a foreign country in which the counterparty is subject to tax on a net basis) but is not related to the U.S. party (within the meaning of paragraph (e)(5)(iv)(C)(*6*) of this section).

(*5*) *Unrelated counterparty.* The arrangement involves a counterparty. A counterparty is a person (other than the SPV) that is not related to the U.S. party (within the meaning of paragraph (e)(5)(iv)(C)(*6*) of this section) and that meets one of the following conditions:

(*i*) The person is considered to own directly or indirectly 10 percent or more of the equity of the SPV under the tax laws of a foreign country in which the person is subject to tax on the basis of place of management, place of incorporation or similar criterion or otherwise subject to a net basis tax.

(*ii*) In a single transaction or series of transactions, the person directly or indirectly acquires 20 percent or more of the value of the assets of the SPV under the tax laws of a foreign country in which the person is subject to tax on the basis of place of management, place of incorporation or similar criterion or otherwise subject to a net basis tax. For purposes of determining the percentage of assets of the SPV acquired by the person, an asset of the SPV shall be disregarded if a principal purpose for transferring such asset to the SPV was to avoid this paragraph (e)(5)(iv)(B)(*5*)(*ii*).

(*6*) *Inconsistent treatment.* The U.S. and an applicable foreign country (as defined in paragraph (e)(5)(iv)(C)(*1*) of this section) treat one or more of the following aspects of the arrangement differently under their respective tax systems, and the U.S. treatment of the inconsistent aspect would materially affect the amount of income recognized by the U.S. party or the amount of credits claimed by the U.S. party if the foreign payment described in paragraph (e)(5)(iv)(B)(*1*)(*ii*) of this section were an amount of tax paid:

(*i*) The classification of the SPV (or an entity that has a direct or indirect ownership interest in the SPV) as a corporation or other entity subject to an entity-level tax, a partnership or other flow-through entity or an entity that is disregarded for tax purposes.

(*ii*) The characterization as debt, equity or an instrument that is disregarded for tax purposes of an instrument issued by the SPV (or an entity that has a direct or indirect ownership interest in the SPV) to the U.S. party, the counterparty or a person related to the U.S. party or the counterparty.

(*iii*) The proportion of the equity of the SPV (or an entity that directly or indirectly owns the SPV) that is considered to be owned directly or indirectly by the U.S. party and the counterparty.

(*iv*) The amount of taxable income of the SPV for one or more tax years during which the arrangement is in effect.

(C) *Definitions*—(*1*) *Applicable foreign country.* An *applicable foreign country* means each foreign country to which a foreign payment described in paragraph (e)(5)(iv)(B)(*1*)(*ii*) of this section is made or which confers a foreign tax benefit described in paragraph (e)(5)(iv)(B)(*4*) of this section.

(*2*) *Entity.* For purposes of paragraph (e)(5)(iv)(B)(*1*) and (e)(5)(iv)(C)(*4*) of this section, the term *entity* includes a corporation, trust, partnership or disregarded entity described in § 301.7701–2(c)(2)(i) of this chapter.

(*3*) *Indirect ownership.* For purposes of paragraph (e)(5)(iv) of this section, indirect ownership of stock or another equity interest (such as an interest in a partnership) shall be determined in accordance with the principles of section 958(a)(2), whether the interest is owned by a U.S. or foreign entity.

(4) *Passive investment income*—(i) *In general.* For purposes of paragraph (e)(5)(iv) of this section, the term *passive investment income* means income described in section 954(c), as modified by this paragraph (e)(5)(iv)(C)(*4*)(*i*) and paragraph (e)(5)(iv)(C)(*4*)(*ii*) of this section. In determining whether income is described in section 954(c), sections 954(c)(3) and 954(c)(6) shall be disregarded, and sections 954(h) and (i) shall be taken into account by applying those provisions at the entity level as if the entity were a controlled foreign corporation (as defined in section 957(a)). In addition, for purposes of the preceding sentence, any income of an entity attributable to transactions with a person that would be a counterparty (as defined in paragraph (e)(5)(iv)(B)(*5*) of this section) if the entity were an SPV, or with other persons that are described in paragraph (e)(5)(iv)(B)(*4*) of this section and that are eligible for a foreign tax benefit described in such paragraph (e)(5)(iv)(B)(*4*), shall not be treated as

qualified banking or financing income or as qualified insurance income, and shall not be taken into account in applying sections 954(h) and (i) for purposes of determining whether other income of the entity is excluded from section 954(c)(1) under section 954(h) or (i).

(*ii*) *Income attributable to lower-tier entities.* Except as provided in this paragraph (e)(5)(iv)(C)(*4*)(*ii*), income of an entity that is attributable to an equity interest in a lower-tier entity is passive investment income. If the entity is a holding company and directly owns a qualified equity interest in another entity (a ''lower-tier entity'') that is engaged in the active conduct of a trade or business and that derives more than 50 percent of its gross income from such trade or business, then none of the entity's income attributable to such interest is passive investment income, provided that there are no arrangements whereby substantially all of the entity's opportunity for gain and risk of loss with respect to such interest is borne by the U.S. party (or a related person) or the counterparty (or a related person), but not both parties. For purposes of the preceding sentence, an entity is a holding company, and is considered to be engaged in the active conduct of a trade or business and to derive more than 50 percent of its gross income from such trade or business, if substantially all of its assets consist of qualified equity interests in one or more entities, each of which is engaged in the active conduct of a trade or business and derives more than 50 percent of its gross income from such trade or business and with respect to which there are no arrangements whereby substantially all of the entity's opportunity for gain and risk of loss with respect to such interest is borne by the U.S. party (or a related person) or the counterparty (or a related person), but not both parties. For purposes of this paragraph (e)(5)(iv)(C)(*4*)(*ii*), a lower-tier entity that is engaged in a banking, financing, or similar business shall not be considered to be engaged in the active conduct of a trade or business unless the income derived by such entity would be excluded from section 954(c)(1) under section 954(h) or (i), determined by applying those provisions at the lower-tier entity level as if the entity were a controlled foreign corporation (as defined in section 957(a)). In addition, for purposes of the preceding sentence, any income of an entity attributable to transactions with a person that would be a counterparty (as defined in paragraph (e)(5)(iv)(B)(*5*) of this section) if the entity were an SPV, or with other persons that are described in paragraph (e)(5)(iv)(B)(*4*) of this section and that are eligible for a foreign tax benefit described in such paragraph (e)(5)(iv)(B)(*4*), shall not be treated as qualified banking or financing income or as qualified insurance income, and shall not be taken into account in applying sections 954(h) and (i) for purposes of determining whether other income of the entity is excluded from section 954(c)(1) under section 954(h) or (i).

(*5*) *Qualified equity interest.* With respect to an interest in a corporation, the term *qualified equity interest* means stock representing 10 percent or more of the total combined voting power of all classes of stock entitled to vote and 10 percent or more of the total value of the stock of the corporation or disregarded entity, but does not include any preferred stock (as defined in section 351(g)(3)). Similar rules shall apply to determine whether an interest in an entity other than a corporation is a qualified equity interest.

(*6*) *Related person.* Two persons are related for purposes of paragraph (e)(5)(iv) of this section if—

(*i*) One person directly or indirectly owns stock (or an equity interest) possessing more than 50 percent of the total value of the other person; or

(*ii*) The same person directly or indirectly owns stock (or an equity interest) possessing more than 50 percent of the total value of both persons.

(*7*) *Special purpose vehicle (SPV).* For purposes of this paragraph (e)(5)(iv), the term *SPV* means the entity described in paragraph (e)(5)(iv)(B)(*1*) of this section.

(D) *Examples.* The following examples illustrate the rules of paragraph (e)(5)(iv) of this section. No inference is intended as to whether a taxpayer would be eligible to claim a credit under section 901(a) if a foreign payment were an amount of tax paid.

Example 1. U.S. borrower transaction. (i) *Facts.* A domestic corporation (USP) forms a country M corporation (Newco), contributing $1.5 billion in exchange for 100 percent of the stock of Newco. Newco, in turn, loans the $1.5 billion to a second country M corporation (FSub) wholly owned by USP. FSub is engaged in the active conduct of manufacturing and selling widgets and derives more than 50 percent of its gross income from such business. USP then sells its entire interest in Newco to a country M corporation (FP) for the original purchase price of $1.5 billion, subject to an obligation to repurchase the interest in five years for $1.5 billion. The sale has the effect of transferring ownership of the Newco stock to FP for country M tax purposes. The sale-repurchase transaction is structured in a way that qualifies as a collateralized loan for U.S. tax purposes. Therefore, USP remains the owner of the Newco stock for U.S. tax purposes. In year 1, FSub pays Newco $120 million of interest. Newco pays $36 million to country M with respect to such interest income and distributes the remaining $84 million to FP. Under country M law, the $84 million distribution is excluded from FP's income. FP is not related to USP within the meaning of paragraph (e)(5)(iv)(C)(*6*) of this section. Under an income tax treaty between country M and the U.S., country M does not impose country M tax on interest received by U.S. residents from sources in country M.

(ii) *Result.* The payment by Newco to country M is not a compulsory payment, and thus is not an amount of tax paid. First, Newco is an SPV because all of Newco's income is passive investment income described in paragraph (e)(5)(iv)(C)(*4*) of this section, Newco's only asset, a note, is held to produce such income, and the payment to country M is attributable to such income. Second, if the foreign payment were treated as an amount of tax paid, USP would be deemed to pay the foreign payment under section 902(a) and, therefore, would be eligible to claim a credit for such payment under section 901(a). Third, USP would not pay any country M tax if it directly owned Newco's loan receivable. Fourth, distributions from Newco to FP are exempt from tax under country M law. Fifth, FP is a counterparty because FP and USP are unrelated and FP owns more than 10 percent of the stock of Newco under country M law. Sixth, FP is the owner of 100 percent of Newco's stock for country M tax purposes, while USP is the owner of 100 percent of Newco's stock for U.S. tax purposes, and USP's ownership of the stock would materially affect the amount of credits claimed by USP if the payment to country M were an amount of tax paid. If the foreign payment were treated as an amount of tax paid, USP's ownership of the stock for U.S. tax purposes would make USP eligible to claim a credit for such amount under sections 901(a) and 902(a). Because the payment to country M is not an amount of tax paid, USP has dividend income of $84 million and is not deemed to pay any country M tax under section 902(a). USP also has interest expense of $84 million. FSub's post-1986 undistributed earnings are reduced by $120 million of interest expense.

Example 2. U.S. borrower transaction. (i) *Facts.* The facts are the same as in *Example 1*, except that FSub is a wholly-owned subsidiary of Newco. In addition, FSub agrees not to pay, and Newco and FP agree not to cause FSub to pay, dividends during the five-year period in which FP holds the Newco stock subject to the obligation of USP to repurchase the stock.

(ii) *Result.* The results are the same as in *Example 1.* Although Newco wholly owns FSub, which is engaged in the active conduct of manufacturing and selling widgets and derives more than 50 percent of its income from such business, income attributable to Newco's stock in FSub is passive investment income because there are arrangements whereby substantially all of Newco's opportunity for gain and risk of loss with respect to its stock in FSub is borne by USP.

See paragraph (e)(iv)(C)(*4*)(ii) of this section. Accordingly, Newco's stock in FSub is held to produce passive investment income. Thus, Newco is an SPV because all of Newco's income is passive investment income described in paragraph (e)(5)(iv)(C)(*4*) of this section, Newco's assets are held to produce such income, and the payment to country M is attributable to such income.

Example 3. Active business; no SPV. (i) *Facts.* A, a domestic corporation, wholly owns B, a country X corporation engaged in the manufacture and sale of widgets. On January 1, 2008, C, also a country X corporation, loans $400 million to B in exchange for an instrument that is debt for U.S. tax purposes and equity for country X tax purposes. As a result, C is considered to own 20 percent of the stock of B for country X tax purposes. B loans $55 million to D, a country Y corporation wholly owned by A. For its 2008 tax year, B has $166 million of net income attributable to its sales of widgets and $3.3 million of interest income attributable to the loan to D. Country Y does not impose tax on interest paid to nonresidents. B makes a payment of $50.8 million to country X with respect to B's net income. Country X does not impose tax on dividend payments between country X corporations. A and C are not related within the meaning of paragraph (e)(5)(iv)(C)(*6*) of this section.

(ii) *Result.* B is not an SPV within the meaning of paragraph (e)(5)(iv)(B)(*1*) of this section because the amount of interest income received from D does not constitute substantially all of B's income and the $55 million loan to D does not constitute substantially all of B's assets. Accordingly, the $50.8 million payment to country X is not attributable to an arrangement described in paragraph (e)(5)(iv) of this section.

Example 4. U.S. lender transaction. (i) *Facts.* (A) A country X corporation (foreign bank) contributes $2 billion to a newly-formed country X corporation (Newco) in exchange for 100 percent of Newco's common stock. A U.S. bank (USB) contributes $1 billion to Newco in exchange for securities that are treated as stock of Newco for U.S. tax purposes and debt of Newco for country X tax purposes. The securities represent 10 percent of the total voting power of Newco. Newco contributes the entire $3 billion to a newly-formed country X entity (RH) in exchange for 99 percent of RH's equity. Foreign bank owns the remaining 1 percent of RH. RH is treated as a corporation for U.S. tax purposes and a partnership for country X tax purposes. RH loans the entire $3 billion it receives from Newco to foreign bank in exchange for a note that pays interest currently and a zero-coupon note. Under an income tax treaty between country X and the U.S., country X does not impose country X tax on interest received by U.S. residents from sources in country X. Country X does not impose tax on dividend payments between country X corporations. USB and the foreign bank are not related within the meaning of paragraph (e)(5)(iv)(C)(*6*) of this section.

(B) In year 1, foreign bank pays RH $92 million of interest and accrues $113 million of interest on the zero-coupon note. RH distributes the $92 million of cash it receives to Newco. Newco distributes $44 million to USB. Because RH is a partnership for country X purposes, Newco is required to report for country X purposes 99 percent ($203 million) of the income recognized by RH. Newco is entitled to interest deductions of $44 million for distributions to USB on the securities for country X tax purposes and, thus, has $159 million of net income for country X tax purposes. Newco makes a payment to country X of $48 million with respect to its net income. For U.S. tax purposes, Newco's post-1986 undistributed earnings pool for year 1 is $44 million ($92 million–$48 million). For country X tax purposes, foreign bank is entitled to interest expense deductions of $205 million.

(ii) *Result.* (A) The payment to country X is not a compulsory payment, and thus is not an amount of tax paid. First, Newco is an SPV because all of Newco's income is passive investment income described in paragraph (e)(5)(iv)(C)(*4*) of this section, Newco's sole asset, stock of RH, is held to produce such income, and the payment to country X is attributable to such income. Second, if the foreign payment were treated as an amount of tax paid, USB would be deemed to pay the $48 million under section 902(a) and, therefore, would be eligible to claim a credit under section 901(a). Third, USB would not pay any country X tax if it directly owned its proportionate share of Newco's asset, the 99 percent interest in RH, because under the U.S.-country X tax treaty country X would not impose tax on USB's distributive share of RH's interest income. Fourth, foreign bank is entitled to interest deductions under country X law for interest it pays and accrues to RH, and will receive tax-free dividends from Newco upon payment of the accrued interest. Fifth, foreign bank and USB are unrelated and foreign bank is considered to own more than 10 percent of Newco under country X law. Sixth, the U.S. and country X view several aspects of the transaction differently, and the U.S. treatment would materially affect the amount of credits claimed by USB if the country X payment were an amount of tax paid. If the country X payment were treated as an amount of tax paid, the equity treatment of the securities for U.S. tax purposes would make USB eligible to claim a credit for the payment under sections 901(a) and 902(a). Moreover, the fact that Newco recognizes a smaller amount of income for U.S. tax purposes than it does for country X tax purposes would increase the amount of credits USB would be eligible to claim upon receipt of the $44 million distribution. Because the $48 million payment to country X is not an amount of tax paid, USB has dividend income of $44 million. It is not deemed to pay tax under section 902(a).

(B) In addition, RH is an SPV because all of RH's income is passive investment income described in paragraph (e)(5)(iv)(C)(*4*) of this section, RH's sole assets, notes of foreign bank, are held to produce such income, and Newco's payment to country X is attributable to such income. Second, if the foreign payment were treated as an amount of tax paid, USB would be deemed to pay the $48 million under section 902(a) and, therefore, would be eligible to claim a credit under section 901(a). Third, USB would not pay any country X tax if it directly owned its proportionate share of RH's assets, notes of foreign bank, because under the U.S.-country X tax treaty country X would not impose tax on interest paid by foreign bank to USB. Fourth, foreign bank is entitled to interest deductions under country X law for interest it pays and accrues to RH, and will receive tax-free dividends from Newco upon payment of the accrued interest. Fifth, foreign bank and USB are unrelated and foreign bank is considered to own directly or indirectly more than 10 percent of RH under country X law. Sixth, the U.S. and country X view several aspects of the transaction differently, and the U.S. treatment would materially affect the amount of credits claimed by USB if the country X payment were an amount of tax paid. If the country X payment were treated as an amount of tax paid, the equity treatment of the Newco securities for U.S. tax purposes would make USB eligible to claim a credit for the payment under sections 901(a) and 902(a). Moreover, the entity classification of RH for U.S. tax purposes results in Newco recognizing a smaller amount of income for U.S. tax purposes than it does for country X tax purposes, which would increase the amount of credits USB would be eligible to claim upon receipt of the $44 million distribution. Because the $48 million payment to country X is not an amount of tax paid, USB has dividend income of $44 million. It is not deemed to pay tax under section 902(a).

Example 5. Active business; no SPV. (i) *Facts.* A, a country X corporation, and B, a domestic corporation, each contribute $1 billion to a newly-formed country X entity (C) in exchange for stock of C. C is treated as a corporation for country X purposes and a partnership for U.S. tax purposes. C contributes $1.95 billion to a newly-formed country X corporation (D) in exchange for 100 percent of D's stock. It loans its remaining $50 million to D. Accordingly, C's sole assets are stock and debt of D. D uses the entire $2 billion to engage in the business of manufacturing and selling widgets. For the 2015 tax year, D derives $300 million of income from its widget business and derives $2 million of interest income. For the 2015 tax year, C has dividend income of $200 million and interest income of $3.2 million with respect to its investment in D. Country X does not impose tax on dividends received by one country X corporation from a second country X corporation. C makes a payment of $960,000 to country X with respect to C's net income.

(ii) *Result.* C's dividend income is not passive investment income, and C's stock in D is not held to produce such income, because C owns at least 10 percent of D and D derives more than 50 percent of its income from the active conduct of its widget business. See paragraph (e)(5)(iv)(C)(*4*)(*ii*) of this section. As a result, less than substantially all of C's income is passive investment income and less than substantially all of C's assets are held to produce passive investment income. Accordingly, C is not an SPV within the meaning of paragraph (e)(5)(iv)(B)(*1*) of this

section, and the $960,000 payment to country X is not attributable to an arrangement described in paragraph (e)(5)(iv) of this section.

Example 6. Active business; no SPV. (i) *Facts.* The facts are the same as in *Example 5,* except that instead of loaning $50 million to D, C contributes the $50 million to E in exchange for 10 percent of the stock of E. E is a country Y entity that in not engaged in the active conduct of a trade or business. Also, for the 2015 tax year, D pays no dividends to C, E pays $3.2 million in dividends to C, and C makes a payment of $960,000 to country X with respect to C's net income.

(ii) *Result.* C's dividend income attributable to its stock in E is passive investment income, and C's stock in E is held to produce such income. C's stock in D is not held to produce passive investment income because C owns at least 10 percent of D and D derives more than 50 percent of its income from the active conduct of its widget business. See paragraph (e)(5)(iv)(C)(*4*)(*ii*) of this section. As a result, less than substantially all of C's assets are held to produce passive investment income. Accordingly, C does not meet the requirements of paragraph (e)(5)(iv)(B)(*1*) of this section, and the $960,000 payment to country X is not attributable to an arrangement described in paragraph (e)(5)(iv) of this section.

Example 7. Asset holding transaction. (i) *Facts.* (A) A domestic corporation (USP) contributes $6 billion of country Z debt obligations to a country Z entity (DE) in exchange for all of the class A and class B stock of DE. A corporation unrelated to USP and organized in country Z (Fcorp) contributes $1.5 billion to DE in exchange for all of the class C stock of DE. DE uses the $1.5 billion contributed by Fcorp to redeem USP's class B stock. The class C stock is entitled to ''all'' income from DE. However, Fcorp is obligated immediately to contribute back to DE all distributions on the class C stock. USP and Fcorp enter into—

(*1*) A forward contract under which USP agrees to buy after five years the class C stock for $1.5 billion; and

(*2*) An agreement under which USP agrees to pay Fcorp interest at a below-market rate on $1.5 billion.

(B) For U.S. tax purposes, these steps create a secured loan of $1.5 billion from Fcorp to USP. Therefore, for U.S. tax purposes, USP is the owner of both the class A and class C stock. DE is a disregarded entity for U.S. tax purposes and a corporation for country Z tax purposes. In year 1, DE earns $400 million of interest income on the country Z debt obligations. DE makes a payment to country Z of $100 million with respect to such income and distributes the remaining $300 million to Fcorp. Fcorp contributes the $300 million back to DE. USP and Fcorp are not related within the meaning of paragraph (e)(5)(iv)(C)(*6*) of this section. Country Z does not impose tax on interest income derived by U.S. residents.

(C) Country Z treats Fcorp as the owner of the class C stock. Pursuant to country Z tax law, Fcorp is required to report the $400 million of income with respect to the $300 million distribution from DE, but is allowed to claim credits for DE's $100 million payment to country Z. For country Z tax purposes, Fcorp's contribution increases its basis in the class C stock. When the class C stock is later ''sold'' to USP for $1.5 billion, the increase in tax basis will result in a country Z tax loss for Fcorp. Each year, the amount of the basis increase (and, thus, the amount of the loss generated) will be approximately $300 million.

(ii) *Result.* The payment to country Z is not a compulsory payment, and thus is not an amount of tax paid. First, DE is an SPV because all of DE's income is passive investment income described in paragraph (e)(5)(iv)(C)(*4*) of this section, all of DE's assets are held to produce such income, and the payment to country Z is attributable to such income. Second, if the payment were treated as an amount of tax paid, USP would be eligible to claim a credit for such amount under section 901(a). Third, USP would not pay any country Z tax if it directly owned DE's assets. Fourth, Fcorp is entitled to claim a credit under country Z tax law for the payment and will recognize a loss under country Z law upon the ''sale'' of the class C stock. Fifth, Fcorp and USP are not related within the meaning of paragraph (e)(5)(iv)(C)(*6*) of this section and Fcorp is considered to own more than 10 percent of DE under country Z law. Sixth, the United States and country X view certain aspects of the transaction differently and the U.S. treatment would materially affect the amount of credits claimed by USP if the country Z payment were an amount of tax paid. USP's ownership of the class C stock for U.S. tax purposes would make USP eligible to claim a credit for the country Z payment if the payment were treated as an amount of tax paid.

* * * * *

(h) *Effective date.* Paragraphs (a) through (e)(5)(ii) and paragraph (g) of this section, § 1.901–2A, and § 1.903–1 apply to taxable years beginning after November 14, 1983. Paragraphs (e)(5)(iii) and (iv) of this section are effective for foreign taxes paid or accrued during taxable years of the taxpayer ending on or after the date on which these regulations are published as final regulations in the **Federal Register**.

Kevin M. Brown,

Deputy Commissioner for Services and Enforcement.

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–2007–0021]

RIN 1218–AC11

Announcement of Additional Stakeholder Meetings on Occupational Exposure to Ionizing Radiation

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Announcement of additional stakeholder meetings.

SUMMARY: The Occupational Safety and Health Administration (OSHA) invites interested parties to participate in or observe informal stakeholder meetings on Occupational Exposure to Ionizing Radiation. These meetings are a continuation of OSHA's information collection efforts on ionizing radiation.

DATES: *Stakeholder meetings:* The stakeholder meeting dates are:

1. 8:30 a.m.–1 p.m., April 19, 2007, Chicago, IL.

2. 8:30 a.m.–4:30 p.m., April 26, 2007, Washington, DC.

Notice of intention to attend a stakeholder meeting: You must submit a notice of intention to attend (i.e., to participate or observe) the Chicago, IL or Washington, DC, stakeholder meeting by April 11, 2007.

ADDRESSES: *Stakeholder meetings:* The stakeholder meeting locations are:

1. Crown Plaza Chicago O'Hare, 5440 North River Road, Rosemont, IL 60018.

2. Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Notices of intention to attend a stakeholder meeting: You may submit your notice of intention to attend (i.e., to participate or observe) a stakeholder meeting by any of the following methods:

Electronic: OSHA encourages you to submit your notice of intention to attend to *navas.liset@dol.gov*.

Facsimile: You may fax your notice of intention to attend to (202) 693–1678.

Regular mail, express delivery, hand delivery, messenger and courier service: Submit your notice of intention to attend to Liset Navas, OSHA, Directorate of Standards and Guidance, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1950. The Department of Labor's and OSHA's normal hours of operation are 8:15 a.m. to 4:45 p.m., e.t.

Instructions: For further information on the stakeholder meetings and

submitting notices of intention to attend (i.e., to participate or observe) one of the meetings, see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section of this notice.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of notices of intention to attend. For information about security procedures concerning the delivery of materials by hand, express mail, messenger or courier service, please contact Liset Navas at (202) 693–1950.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov*. This document, non-attributed notes from the stakeholder meetings, as well as news releases and other relevant information, will also be available at OSHA's Web page at *http://www.osha.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Seymour, Director, OSHA, Office of Physical Hazards, Directorate of Standards and Guidance, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1950.

SUPPLEMENTARY INFORMATION:

Background

The use of ionizing radiation has increased significantly in recent years. Today, ionizing radiation is used in a wide variety of workplaces and operations, including security operations, hospitals and medical offices, dental offices, manufacturing worksites, research facilities, forestry and other agricultural worksites, and wastewater treatment plants.

In 2005, OSHA initiated information collection efforts to obtain data, information, and comment on the increased workplace use of ionizing radiation and other related issues. These efforts started with the publication of a Request for Information (RFI) on May 3, 2005 (70 FR 22828). OSHA received 51 comments in response to the RFI. To supplement this information, OSHA is inviting interested parties to attend informal stakeholder meetings on the Occupational Exposure to Ionizing Radiation. OSHA will use the data and materials obtained through these information collections efforts to determine, in conjunction with other Federal agencies, whether regulatory action is necessary is protect employees from ionizing radiation exposure.

OSHA's existing standard on Ionizing Radiation (29 CFR 1910.1096) was adopted in 1971 pursuant to section 6(a) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651, 655). The standard has remained largely unchanged since that time.

OSHA's Ionizing Radiation standard applies to all workplaces except agricultural operations and those workplaces exempted from OSHA jurisdiction under section 4(b)(1) of the OSH Act (29 U.S.C. 653). Section 4(b)(1) states:

> Nothing in this Act shall apply to working conditions of employees with respect to which other Federal agencies, and State agencies acting under section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021), exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

The Nuclear Regulatory Commission (NRC) has statutory authority for licensing and regulating nuclear facilities and materials as mandated by the Atomic Energy Act of 1954 (as amended) (42 U.S.C. 2011 *et seq.*), the Energy Reorganization Act of 1974 (as amended), the Nuclear Nonproliferation Act of 1978, and other applicable statutes. Specifically, the NRC has the authority to regulate source, byproduct and certain special nuclear materials (e.g., nuclear reactor fuel). This authority covers radiation hazards in NRC-licensed nuclear facilities produced by radioactive materials and plant conditions that affect the safety of radioactive materials and thus present an increased radiation hazard to workers.

In 1988, OSHA and NRC signed a memorandum of understanding (MOU) delineating the general areas of responsibility of each agency (CPL 2.86, December 22, 1989). The MOU specifies that at NRC-licensed facilities OSHA has authority to regulate occupational ionizing radiation sources not regulated by NRC (CPL 2.86). Examples of non-NRC regulated radiation sources include X-ray equipment, accelerators, electron microscopes, betatrons, and some naturally occurring radiation sources (CPL 2.86). (See the Ionizing Radiation RFI (70 FR 22828) for additional information on sources of ionizing radiation exposure, workplace uses of ionizing radiation, and health effects of ionizing radiation exposure.)

Most recently, the Energy Policy Act of 2005 authorized NRC to regulate material made radioactive by accelerators by adding ''accelerator-produced material'' to the definition of ''byproduct material'' that NRC is authorized to license and regulate. The Energy Policy Act directed NRC to issue licensing and compliance oversight regulations to carry out the legislation. Until NRC issues and begins enforcing those regulations, OSHA retains authority over both accelerators and the materials they produce.

Stakeholder Meetings

OSHA intended to hold four stakeholder meetings on Occupational Exposure to Ionizing Radiation, the first two meetings covering the healing arts and industrial radiography, were announced on March 5, 2007 in the **Federal Register** (72 FR 9716). The healing arts stakeholder meeting was held in Washington, DC on March 16, 2007 and the industrial radiography was scheduled to be held on March 26, 2007 in Orlando, Florida but, was cancelled due to lack of participation. The Agency is announcing in this notice the third and fourth meetings. The third scheduled stakeholder meeting, to be held in Chicago, IL, will cover the non-medical or security use of accelerators. The fourth scheduled stakeholder meeting, to be held in Washington, DC will cover the use of ionizing radiation in security activities. OSHA encourages interested parties to attend only the stakeholder meeting that deals with their industry, occupation, or operation.

The stakeholder meetings will be an opportunity for informal discussion and the exchange of data, ideas, and points of view. To make the stakeholder meetings as productive as possible, OSHA requests that interested parties attending stakeholder meetings be prepared to discuss the following issues relating to occupational exposure to ionizing radiation in their respective industries, occupations, or operations:

- Uses of ionizing radiation;
- Available exposure data;
- Controls utilized to minimize exposure; and
- Training.

In addition, OSHA will use the stakeholder meetings to discuss comments and materials received in response to the RFI.

Each stakeholder meeting will begin with OSHA's presentation on Agency responsibilities related to occupational exposure to ionizing radiation followed by stakeholder questions. OSHA will devote the remainder of each meeting to informal discussions on the topics above and related issues. In particular, OSHA is interested in hearing firsthand from employers and employees and in reviewing exposure data. Meeting participants are not expected to prepare and present formal testimony.

Public Participation—Submission of Notices of Intention To Attend and Access To Docket

You must submit a notice of intention to attend if you wish to participate in or observe a stakeholder meeting. You may submit notices of intention to attend one of the stakeholder meetings (1)

electronically, (2) by facsimile, or (3) by hard copy. All notices must identify the Agency name and docket number for this notice (Docket No. OSHA–2007–0021). Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of notices of intention to attend. For information about security procedures concerning the delivery of materials by hand, express mail, messenger or courier service, please contact Liset Navas at (202) 693–1950.

Notices of intention to attend a stakeholder meeting must include the following information:

- Name and contact information;
- Affiliation (e.g., organization, association), if any;
- The stakeholder meeting you plan to attend;
- Whether you wish to be an active participant or observer; and
- Whether you need any special accommodations in order to attend or participate in a stakeholder meeting.

For access to comments and materials received in response to the RFI, go to OSHA Docket No. H–016 on OSHA's Web page at *http://www.osha.gov*. Contact the OSHA Docket Office, Docket No. H–016, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627) for information about materials in the RFI docket that are not available through OSHA's Web page and for assistance in using the Web page to locate docket submissions.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov*. This document, as well as news releases and other relevant information, also are available at OSHA's Web page at *http://www.osha.gov*.

Authority

This notice was prepared under the direction of Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health. It is issued under Sections 4 and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 657), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC on this 26th day of March, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E7–5871 Filed 3–29–07; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9 and 52

[FAR Case 2006–011; Docket 200-0001; Sequence 6]

RIN 9000–AK73

Federal Acquisition Regulation; FAR Case 2006–011, Representations and Certifications - Tax Delinquency

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to change the provision regarding certification regarding debarment, suspension, proposed debarment, and other responsibility matters, and to make changes to the language regarding contractor qualifications, to add language regarding nonpayment of taxes. This proposed rule requires offerors to also certify whether or not they have, within a three-year period preceding the offer, been convicted of or had a civil judgment rendered against them for violating any tax law or failing to pay any tax, or been notified of any delinquent taxes for which the liability remains unsatisfied. In addition, the offeror will be required to certify whether or not they have received a notice of a tax lien filed against them for which the liability remains unsatisfied or the lien has not been released.

DATES: Interested parties should submit written comments to the FAR Secretariat on or before May 29, 2007 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2006–011 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Search for any document by first selecting the proper document types and selecting ''Federal Acquisition Regulation'' as the agency of choice. At the ''Keyword'' prompt, type in the FAR case number (for example, FAR Case 2006–001) and click on the ''Submit'' button. Please include any personal and/or business information inside the document.You may also search for any document by clicking on the ''''Advanced search/document search'' tab at the top of the screen, selecting from the agency field ''Federal Acquisition Regulation '', and typing the FAR case number in the keyword field. Select the ''Submit'' button.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2006–011 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. William Clark, Procurement Analyst, at (202) 219–1813 for clarification of content. For information pertaining to status or publication schedules, contact the FAR Secretariat at (202) 501–4755. Please cite FAR case 2006–011.

SUPPLEMENTARY INFORMATION:

A. Background

Offerors are currently required to certify whether or not, within a three-year period preceding an offer, they have been convicted of or had a civil judgment rendered against them for tax evasion or are presently indicted for, or otherwise criminally or civilly charged with, the commission of tax evasion. This proposed rule requires offerors to also certify whether or not they have, within a three-year period preceding the offer, been convicted of or had a civil judgment rendered against them for violating any tax law or failing to pay any tax, or been notified of any delinquent taxes for which the liability remains unsatisfied. The offeror also will be required to certify whether or not they have received a notice of a tax lien filed against them for which the liability remains unsatisfied or the lien has not been released. The additional certifications are needed to identify prospective offerors that may have outstanding tax obligations that may be delinquent so that the Government can make an informed responsibility determination, as necessary. If an offeror certifies that any of these conditions exist, the contracting officer may ask the offeror for additional information related to the obligation to evaluate the offeror's ability to perform under the contract. In accordance with FAR 1.107,

the new certification must be approved by the Administrator for the Office of Federal Procurement Policy before a final rule can be issued.

In FAR 9.105–1 a cross reference is made to FAR 9.408 which describes additional actions contracting officers may take. In FAR 9.408 the language referring to the certifications at FAR 52.209–5 and 52.212–3 is simplified. In FAR 9.406–2 and 9.407–2, the following additional causes for debarment or suspension are added: delinquent taxes; unresolved tax liens; and a conviction of or civil judgment for violating tax laws or failing to pay taxes. The nonpayment of taxes is not restricted to Federal taxes, but may relate to any taxing entity. The focus of ''delinquent taxes'' is on taxes which are still unpaid: the affirmative certification is required after the taxpaying offeror is notified that the taxes are delinquent, for taxes which remain unpaid as of the date of certification.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most prospective offerors pay their tax liabilities.

An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 9 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2006–011), in correspondence.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 9 and 52

Government procurement.

Dated: March 26, 2007.

Ralph De Stefano,

Director, Contract Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 9 and 52 as set forth below:

1. The authority citation for 48 CFR parts 9 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 9—CONTRACTOR QUALIFICATIONS

9.105–1 [Amended]

2. Amend section 9.105–1 in paragraph (c)(3) by adding ''(including the certification at 52.209–5 or 52.212–3(h)—see 9.408)'' after ''proposal information,''.

3. Amend section 9.406–2 in paragraph (a)(3) by adding ''violating tax laws, failing to pay taxes,'' after ''tax evasion,'' and by adding paragraph (b)(1)(v) to read as follows:

9.406–2 Causes for debarment.

* * * * *

(b)(1) * * *

(v) Delinquent taxes or unresolved tax liens.

* * * * *

4. Amend section 9.407–2 paragraph (a)(3) by adding ''violating tax laws, failing to pay taxes,'' after ''tax evasion,''; redesignating paragraph (a)(7) as paragraph (a)(8) and by adding new paragraph (a)(7); to read as follows:

9.407–2 [Amended]

(a) * * *

(7) Delinquent taxes or unresolved tax liens.

* * * * *

5. Amend section 9.408 by revising the introductory text of paragraph (a) to read as follows:

9.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.

(a) When an offeror provides an affirmative response in paragraph (a)(1) of provision 52.209–5 or paragraph (h) of provision 52.212–3, (*e.g.*, indictment, conviction, debarment), the contracting officer shall—

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

6. Amend section 52.209–5 by—

a. Revising the date of the clause;

b. Adding to paragraph (a)(1)(i)(B) ''violating tax laws, failing to pay taxes,'' after ''tax evasion,''; and by removing ''and'' from the end of the paragraph;

c. Removing the period from the end of paragraph (a)(1)(i)(C) and adding a semicolon in its place; and

d. Adding paragraphs (a)(1)(i)(D)and (a)(1)(i)(E).

The revised and added text read as follows:

52.209–5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.

* * * * *

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (DATE)

(a)(1) * * *

(i) * * *

(D) Have □ have not □, within a three-year period preceding this offer, been notified of any delinquent taxes for which the liability remains unsatisfied; and

(E) Have □ have not □ received notice of a tax lien filed against them for which the liability remains unsatisfied or the lien has not been released.

* * * * *

7. Amend section 52.212–3 by—

a. Revising the date of the clause;

b. Adding to paragraph (h)(2) ''violating tax laws, failing to pay taxes'', after ''tax evasion''; and

c. Adding paragraphs (h)(4) and (h)(5).

The revised and added text read as follows:

52.212–3 Offeror Representations and Certifications–Commercial Items.

* * * * *

OFFEROR REPRESENTATIONS AND CERTIFICATIONS–COMMERCIAL ITEMS (DATE)

* * * * *

(h) * * *

(4) □ Have □ have not, within a three-year period preceeding this offer, been notified of any delinquent taxes for which the liability remains unsatisfied; and

(5) □ Have □ have not received notice of a tax lien filed against them for which the liability remains unsatisfied or the lien has not been released.

* * * * *

[FR Doc. 07–1558 Filed 3–29–07; 8:45 am]

BILLING CODE 6820–EP–S

Notices

Federal Register
Vol. 72, No. 61
Friday, March 30, 2007

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.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a closed meeting of the Advisory Committee on Actuarial Examinations.

DATES: The meeting will be held on April 19 and April 20, 2007, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at Mercer Human Resource Consulting, 1166 Avenue of the Americas, 35th Floor, New York, NY.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Executive Director of the Joint Board for the Enrollment of Actuaries, 202–622–8225.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at Mercer Human Resource Consulting, 1166 Avenue of the Americas, 35th Floor, New York, NY on April 19 and April 20, 2007, from 8:30 a.m. to 5 p.m. The purpose of the meeting is to discuss topics and questions that may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the subject of the meeting falls within the exception to the open meeting requirement set forth in Title 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: March 8, 2006.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. E7–5854 Filed 3–29–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 27, 2007.

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 Utility Service

Title: Seismic Safety of New Building Construction, 7 CFR Part 1792, Subpart C.

OMB Control Number: 0572–0099.

Summary of Collection: Seismic hazards present a serious threat to people and their surroundings. These hazards exist in most of the United States, not just on the West Coast. Unlike hurricanes, times and location of earthquakes cannot be predicted; most earthquakes strike without warning and, if of substantial strength, strike with great destructive forces. To reduce risks to life and property from earthquakes, Congress enacted the Earthquake Hazards Reduction Act of 1977 (Pub. L. 95–124, 42 U.S.C. 7701 *et seq.*,) and directed the establishment and maintenance of an effective earthquake reduction program. As a result, the National Earthquake Hazards Reduction Program (NEHRP) was established. The objectives of the NEHRP include the development of technologically and economically feasible design and construction methods to make both new and existing structures earthquake resistant, and the development and promotion of model building codes. 7 CFR part 1792, subpart C, identifies acceptable seismic standards which must be employed in new building construction funded by loans, grants, or guarantees made by the Rural Utility Service (RUS) or the Rural Telephone Bank (RTB) or through lien accommodations or subordinations approved by RUS or RTB.

Need and Use of the Information: Borrowers and grant recipients must provide to RUS a written acknowledgment from a registered architect or engineer responsible for the design of each applicable building stating that the seismic provisions to 7 CFR part 1792, Subpart C will be used in the design of the building. RUS will use this information to: (1) Clarify and inform the applicable borrowers and grant recipients about seismic safety requirements; (2) improve the effectiveness of all RUS programs; and (3) reduce the risk to life and property through the use of approved building codes aimed at providing seismic safety.

Description of Respondents: Not-for-profit institutions; business or other for-profit.

Number of Respondents: 1,000.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 750.

Rural Utilities Service

Title: Broadband Grant Program.
OMB Control Number: 0572–0127.
Summary of Collection: Congress has recognized the need to facilitate the deployment of broadband service to unserved rural areas. The provision to broadband transmission service is vital to the economic development, education, health, and safety of rural Americans. Grant authority is utilized to deploy broadband infrastructure to extremely rural, lower income communities on a ''community-oriented connectivity'' basis.
Need and Use of the Information: The Rural Development Utilities Programs (RUS) gives priority to rural areas that it believes have the greatest need for broadband transmission services. This broadband access is intended to promote economic development and provide enhanced educational and health care opportunities. RUS will provide financial assistance to eligible entities that are proposing to deploy broadband transmission service in rural communities where such service does not currently exist and who will connect the critical community facilities including the local schools, libraries, hospitals, police, fire and rescue services and who will operate a community center that provides free and open access to residents.
Description of Respondents: Business or other for-profit; not-for-profit institutions; State, Local or Tribal Government.
Number of Respondents: 90.
Frequency of Responses: Reporting; on occasion.
Total Burden Hours: 14,442.

Charlene Parker,
Departmental Information Collection Clearance Officer.
[FR Doc. E7–5923 Filed 3–29–07; 8:45 am]
BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 2007–0009]

Exemption for Retail Store Operations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of Adjusted Dollar Limitations.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing new dollar limitations on the amount of meat and meat food products and poultry products that a retail store can sell to hotels, restaurants, and similar institutions without disqualifying itself for exemption from Federal inspection requirements. By reason of FSIS' regulations, for calendar year 2007 the dollar limitation for meat and meat food products remains at $55,100 and for poultry products is being reduced from $45,200 to $44,400. FSIS is maintaining or changing the dollar limitations from calendar year 2006 based on price changes for these products evidenced by the Consumer Price Index.

DATES: *Effective Date:* This notice is effective March 30, 2007.

FOR FURTHER INFORMATION CONTACT: John O'Connell, Regulations and Petitions Policy Staff, Office of Policy, Program, and Employee Development, FSIS, U.S. Department of Agriculture, Room 112, Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700; telephone (202) 720–0345, fax (202) 690–0486.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) provide that the statutory provisions requiring inspection of the slaughter of livestock or poultry, and the preparation or processing of meat and meat food and poultry products, do not apply to the types of operations traditionally and usually conducted at retail stores and restaurants, when those operations are conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities (21 U.S.C. 454(c)(2)and 661 (c)(2)). In Title 9 of the Code of Federal Regulations §§ 303.1(d) and 381.10(d), FSIS regulations address the conditions under which requirements for inspection do not apply to retail operations involving the preparation or processing of meat or poultry products.

Under these regulations, sales to hotels, restaurants, and similar institutions disqualify a store for exemption if they exceed either of two maximum limits: 25 percent of the dollar value of total product sales or the calendar year dollar limitation set by the Administrator. The dollar limitation is adjusted automatically during the first quarter of the year if the Consumer Price Index (CPI), published by the Bureau of Labor Statistics, indicates an increase or decrease of more than $500 in the price of the same volume of product for the previous year. FSIS publishes a notice of the adjusted dollar limitations in the **Federal Register**. (See paragraph (d)(2)(iii)(*b*) of both §§ 303.1 and 381.10.)

The CPI for 2006 reveals an average annual price increase for meat and meat food products of 0.7 percent and an annual average price decrease for poultry products of 1.8 percent. When rounded off to the nearest $100, the price increase for meat and meat food products is $400, and the price decrease for poultry products is $800. Because the price of meat and meat food products has not increased by more than $500, and because the price of poultry products has decreased by more than $500, in accordance with §§ 303.1(d)(2)(iii)(*b*) and 381.10(d)(2)(iii)(*b*) of the regulations, the dollar limitation on sales to hotels, restaurants, and similar institutions remains at $55,100 for meat and meat food products and is being reduced to $44,400 for poultry products for calendar year 2007.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS web page located at *http://www.fsis.usda.gov/regulations/2007_Notices_Index/.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS web page. Through Listserv and the web page, FSIS is able to provide information to a much broader and more diverse audience.

In addition, FSIS offers an email subscription service which provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* and allows FSIS customers to sign up for subscription options across eight

categories. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC, on March 26, 2007.

David P. Goldman,

Acting Administrator.

[FR Doc. 07–1535 Filed 3–29–07; 8:45 am]

BILLING CODE 3410–DM–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* April 29, 2007.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259

FOR FURTHER INFORMATION CONTACT: Kimberly D. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail: *CMTEFedReg@jwod.gov*.

SUPPLEMENTARY INFORMATION: On February 2, 2007, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (72 FR 5001) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement.

Services

Service Type/Location: Grounds/Custodial Services, Cherokee National Forest-Tellico Ranger District, 250 Ranger Station Road, Tellico Plains, TN.
NPA: Goodwill Industries—Knoxville, Inc., Knoxville, TN.
Contracting Activity: USDA, Forest Service Cherokee National Forest.

Service Type/Location: Secure Document Destruction, Internal Revenue Service, 124 South Tennessee, Lakeland, FL.

Service Type/Location: Secure Document Destruction, Internal Revenue Service, 129 Hibiscus Boulevard, Melbourne, FL.

Service Type/Location: Secure Document Destruction, Internal Revenue Service, 850 Frafalga Court, Maitland, FL.

NPA: Brevard Achievement Center, Inc., Rockledge, FL.
Contracting Activity: Internal Revenue Services.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E7–5900 Filed 3–29–07; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete services previously furnished by such agencies.

Comments Must Be Received On or Before: April 29, 2007.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, VA 22202–3259.

For Further Information or To Submit Comments Contact: Kimberly D. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail: *CMTEFedReg@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Custodial Services, Akron Canton Regional Airport (Break and Training Room only), 5400 Lauby Road NW., North Canton, OH.
NPA: The Workshops, Inc., Canton, OH.
Contracting Activity: GSA, Public Buildings Service, Region 5, Cleveland, OH.
Service Type/Location: Custodial Services, Edward Hines Jr. VA Hospital (Hines

Campus), 5th Avenue, Roosevelt Road, Hines, IL.
NPA: Jewish Vocational Service and Employment Center, Chicago, IL.
Contracting Activity: Department of Veterans Affairs, Great Lakes Network—Contract Service Center, Milwaukee, WI.
Service Type/Location: Custodial Services, Mauna Loa Observatory (Hilo Office), 1437 Kilauea Ave, Hilo, HI.
NPA: The ARC of Hilo, Hilo, HI.
Contracting Activity: Department of Commerce, NOAA-Mountain, Boulder Labs, Boulder, CO.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for deletion from the Procurement List.

End of Certification

The following services are proposed for deletion from the Procurement List:

Services

Service Type/Location: Carwash Service, U.S. Department of Interior, Bureau of Land Management, 1661 South Fourth Street, El Centro, CA.
NPA: ARC-Imperial Valley, El Centro, CA.
Contracting Activity: U.S. Department of Interior, Bureau of Land Management, El Centro, CA.
Service Type/Location: Grounds Maintenance, Point Molate Housing Facilities (Only), Richmond, CA.
NPA: North Bay Rehabilitation Services, Inc., Rohnert Park, CA,
Contracting Activity: Department of Homeland Security, U.S. Coast Guard.
Service Type/Location: Janitorial/Custodial, Veterans Affairs Medical Center, Omaha, NE.
NPA: Unknown.
Contracting Activity: Department of Veterans Affairs, Omaha, NE.
Service Type/Location: Publications Distribution, Naval Construction Battalion Center, Pascagoula, MS.
NPA: AbilityWorks, Inc. of Harrison County, Long Beach, MS.
Contracting Activity: Department of the Navy, Naval Supply Center, Pensacola, FL.

Kimberly M. Zeich,
Director, Program Operations.
[FR Doc. E7–5901 Filed 3–29–07; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Technical Advisory Committee will meet on April 19, 2007, 10:30 a.m., Herbert C. Hoover Building, Room 6087B, 14th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

Public Session

1. Export Control Classification Number (ECCN) Review and Suspense dates.
2. Composite Working Group Update.
3. Emerging Technologies for Commerce Review.

Closed Session

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3).

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the materials should be forwarded prior to the meeting to Ms. Yvette Springer at *Yspringer@bis.doc.gov.*

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on March 15, 2007, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the portion of the meeting dealing with matters the premature disclosure of which would likely frustrate the implementation of a proposed agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: March 26, 2007.

Yvette Springer,
Committee Liaison Officer.
[FR Doc. 07–1580 Filed 3–29–07; 8:45 am]
BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee, Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee (SITAC) will meet on April 24, 2007, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Public Session

1. Welcome and Introductions.
2. Remarks from Bureau of Industry and Security Management.
3. Industry Presentations.
4. New Business—Election of Chairman(s).

Closed Session

5. Discussion of matters determined to be exempt from the provisions relating to public meetings and found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

A limited number of seats will be available during the public session of the meeting. Reservations are not excepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded before the meeting to Ms. Yvette Springer at *Yspringer@bis.doc.gov*

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on March 22, 2007 pursuant

to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d)), that the portion of this meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information contact Yvette Springer on (202) 482–2813.

Dated: March 26, 2007.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 07–1581 Filed 3–29–07; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–904]

Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon From the People's Republic of China

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

EFFECTIVE DATE: March 30, 2007.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand or Anya Naschak, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3207 or 482–6375, respectively.

Amendment to the Final Determination

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended, (''the Act''), on March 2, 2007, the Department of Commerce (''the Department'') published its final determination of sales at less than fair value (''LTFV''). *See Final Determination of Sales at Less Than Fair Value: Certain Activated Carbon from the People's Republic of China,* 72 FR 9508 (March 2, 2007) (*Final Determination*).

On March 5, 2007, NORIT Americas, Inc., and Calgon Carbon Corporation (collectively ''Petitioners'') filed timely allegations that the Department made various ministerial errors in the *Final Determination* and requested, pursuant to19 CFR 351.224(c), that the Department correct the alleged ministerial errors in the calculation of the margins for respondents. Also, on March 5, 2007, both Jacobi Carbons AB (''Jacobi'') and Calgon Carbon (Tianjin) Co., Ltd. (''CCT''), respondents in this investigation, filed timely allegations that the Department made ministerial errors and also requested that the Department correct these errors. Also, on March 5, 2007, Jilin Province Bright Future Chemicals Co. Ltd. (''JBF Chemical'') and its affiliated company Jilin Province Bright Future Industry & Commerce Co. Ltd. (''JBF Industry'') (collectively ''Jilin Bright Future'') requested clarification of the producer for the rate applied to the producer-exporter combination Shanxi DMD Corporation/Tonghua Xinpeng Activated Carbon Factory.

A ministerial error is defined as an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Department considers ministerial. *See* Section 735(e) of the Act; *see also* 19 CFR 351.224(f).

After analyzing all interested party comments and rebuttals, we have determined, in accordance with section 735 (e) of the Act and 19 CFR 351.224(e), that we made ministerial errors in our calculations performed for the final determination with respect to Jacobi and CCT. For a detailed discussion of these ministerial errors, as well as the Department's analysis, *see* Memorandum to James C. Doyle from Catherine Bertrand and Anya Naschak: Antidumping Duty Investigation of Certain Activated Carbon from the People's Republic of China: Analysis of Ministerial Error Allegations (''Ministerial Error Memo''). Additionally, in the *Final Determination*, we determined that several companies qualified for a separate rate. The separate rate was the weighted average of the margins for Jacobi and CCT, the mandatory respondents which received a calculated margin. Because the rates of Jacobi and CCT have changed since the *Final Determination*, we have recalculated the separate rate. The separate rate is now 67.14 percent. *See* Ministerial Error Memo at Attachment VI.

Therefore, in accordance with section 735(e) of the Act, we are amending the final determination of sales at LTFV in the antidumping duty investigation of certain activated carbon from the People's Republic of China (''PRC''). For the revisions to the calculations for all companies, *see* Ministerial Error Memo. The revised final dumping margins, some of which did not change, are as follows:

Exporter	Supplier	WA margin
Beijing Pacific Activated Carbon Products Co., Ltd	Alashan Yongtai Activated Carbon Co., Ltd	67.14
Beijing Pacific Activated Carbon Products Co., Ltd	Changji Hongke Activated Carbon Co., Ltd	67.14
Beijing Pacific Activated Carbon Products Co., Ltd	Datong Forward Activated Carbon Co., Ltd	67.14
Beijing Pacific Activated Carbon Products Co., Ltd	Datong Locomotive Coal & Chemicals Co., Ltd	67.14
Beijing Pacific Activated Carbon Products Co., Ltd	Datong Yunguang Chemicals Plant	67.14
Beijing Pacific Activated Carbon Products Co., Ltd	Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd	67.14
Beijing Pacific Activated Carbon Products Co., Ltd	Ningxia Luyuangheng Activated Carbon Co., Ltd	67.14
Calgon Carbon Tianjin Co., Ltd	Calgon Carbon Tianjin Co., Ltd	69.54
Calgon Carbon Tianjin Co., Ltd	Datong Carbon Corporation	69.54
Calgon Carbon Tianjin Co., Ltd	Datong Changtai Activated Carbon Co., Ltd	69.54
Calgon Carbon Tianjin Co., Ltd	Datong Forward Activated Carbon Co., Ltd	69.54
Calgon Carbon Tianjin Co., Ltd	Datong Fuping Activated Carbon Co., Ltd	69.54
Calgon Carbon Tianjin Co., Ltd	Datong Hongtai Activated Carbon Co., Ltd	69.54
Calgon Carbon Tianjin Co., Ltd	Datong Huanqing Activated Carbon Co., Ltd	69.54
Calgon Carbon Tianjin Co., Ltd	Datong Huibao Activated Carbon Co., Ltd	69.54
Calgon Carbon Tianjin Co., Ltd	Datong Kangda Activated Carbon Factory	69.54
Calgon Carbon Tianjin Co., Ltd	Datong Runmei Activated Carbon Factory	69.54
Calgon Carbon Tianjin Co., Ltd	Dushanzi Chemical Factory	69.54
Calgon Carbon Tianjin Co., Ltd	Fangyuan Carbonization Co., Ltd	69.54
Calgon Carbon Tianjin Co., Ltd	Hongke Activated Carbon Co., Ltd	69.54
Calgon Carbon Tianjin Co., Ltd	Huairen Jinbei Chemical Co., Ltd	69.54
Calgon Carbon Tianjin Co., Ltd	Jiaocheng Xinxin Purification Material Co., Ltd	69.54

Exporter	Supplier	WA margin
Calgon Carbon Tianjin Co., Ltd	Ningxia Guanghua Cherishment Activated Carbon Co., Ltd	69.54
Calgon Carbon Tianjin Co., Ltd	Ningxia Guanghua A/C Co., Ltd	69.54
Calgon Carbon Tianjin Co., Ltd	Ningxia Honghua Carbon Industrial Corporation	69.54
Calgon Carbon Tianjin Co., Ltd	Ningxia Luyuanheng Activated Carbon Co., Ltd	69.54
Calgon Carbon Tianjin Co., Ltd	Ningxia Pingluo Yaofu Activated Carbon Factory	69.54
Calgon Carbon Tianjin Co., Ltd	Ningxia Tianfu Activated Carbon Co., Ltd	69.54
Calgon Carbon Tianjin Co., Ltd	Ningxia Yinchuan Lanqiya Activated Carbon Co., Ltd	69.54
Calgon Carbon Tianjin Co., Ltd	Nuclear Ningxia Activated Carbon Co., Ltd	69.54
Calgon Carbon Tianjin Co., Ltd	Pingluo Xuanzhong Activated Carbon Co., Ltd	69.54
Calgon Carbon Tianjin Co., Ltd	Shanxi Xuanzhong Chemical Industry Co., Ltd	69.54
Calgon Carbon Tianjin Co., Ltd	Xingtai Coal Chemical Co., Ltd	69.54
Calgon Carbon Tianjin Co., Ltd	Yuyang Activated Carbon Co., Ltd	69.54
Datong Juqiang Activated Carbon Co., Ltd	Datong Juqiang Activated Carbon Co., Ltd	67.14
Datong Locomotive Coal & Chemicals Co., Ltd	Datong Locomotive Coal & Chemicals Co., Ltd	67.14
Datong Municipal Yunguang Activated Carbon Co., Ltd	Datong Municipal Yunguang Activated Carbon Co., Ltd	67.14
Datong Yunguang Chemicals Plant	Datong Yunguang Chemicals Plant	67.14
Hebei Foreign Trade and Advertising Corporation	Da Neng Zheng Da Activated Carbon Co., Ltd	67.14
Hebei Foreign Trade and Advertising Corporation	Shanxi Bluesky Purification Material Co., Ltd	67.14
Jacobi Carbons AB	Datong Forward Activated Carbon Co., Ltd	61.95
Jacobi Carbons AB	Datong Hongtai Activated Carbon Co., Ltd	61.95
Jacobi Carbons AB	Datong Huibao Activated Carbon Co., Ltd	61.95
Jacobi Carbons AB	Ningxia Guanghua Activated Carbon Co., Ltd	61.95
Jacobi Carbons AB	Ningxia Huahui Activated Carbon Company Limited	61.95
Jilin Bright Future Chemicals Company, Ltd	Shanxi Xinhua Activated Carbon Co., Ltd	228.11
Jilin Bright Future Chemicals Company, Ltd	Tonghua Bright Future Activated Carbon Plant	228.11
Jilin Bright Future Chemicals Company, Ltd	Zuoyun Bright Future Activated Carbon Plant	228.11
Jilin Province Bright Future Industry and Commerce Co., Ltd	Shanxi Xinhua Activated Carbon Co., Ltd	228.11
Jilin Province Bright Future Industry and Commerce Co., Ltd	Tonghua Bright Future Activated Carbon Plant	228.11
Jilin Province Bright Future Industry and Commerce Co., Ltd	Zuoyun Bright Future Activated Carbon Plant	228.11
Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd	Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd	67.14
Ningxia Huahui Activated Carbon Co., Ltd	Ningxia Huahui Activated Carbon Co., Ltd	67.14
Ningxia Mineral & Chemical Limited	Ningxia Baota Activated Carbon Co., Ltd	67.14
Shanxi DMD Corporation	China Nuclear Ningxia Activated Carbon Plant	67.14
Shanxi DMD Corporation	Ningxia Guanghua Activated Carbon Co., Ltd	67.14
Shanxi DMD Corporation	Shanxi Xinhua Chemical Co., Ltd	67.14
Shanxi DMD Corporation	Tonghua Xinpeng Activated Carbon Factory	67.14
Shanxi Industry Technology Trading Co., Ltd	Actview Carbon Technology Co., Ltd	67.14
Shanxi Industry Technology Trading Co., Ltd	Datong Forward Activated Carbon Co., Ltd	67.14
Shanxi Industry Technology Trading Co., Ltd	Datong Tri-Star & Power Carbon Plant	67.14
Shanxi Industry Technology Trading Co., Ltd	Fu Yuan Activated Carbon Co., Ltd	67.14
Shanxi Industry Technology Trading Co., Ltd	Jing Mao (Dongguan) Activated Carbon Co., Ltd	67.14
Shanxi Industry Technology Trading Co., Ltd	Xi Li Activated Carbon Co., Ltd	67.14
Shanxi Newtime Co., Ltd	Datong Forward Activated Carbon Co., Ltd	67.14
Shanxi Newtime Co., Ltd	Ningxia Guanghua Chemical Activated Carbon Co., Ltd	67.14
Shanxi Newtime Co., Ltd	Ningxia Tianfu Activated Carbon Co., Ltd	67.14
Shanxi Qixian Foreign Trade Corporation	Datong Locomotive Coal & Chemicals Co., Ltd	67.14
Shanxi Qixian Foreign Trade Corporation	Datong Tianzhao Activated Carbon Co., Ltd	67.14
Shanxi Qixian Foreign Trade Corporation	Ningxia Huinong Xingsheng Activated Carbon Co., Ltd	67.14
Shanxi Qixian Foreign Trade Corporation	Ningxia Yirong Alloy Iron Co., Ltd	67.14
Shanxi Qixian Foreign Trade Corporation	Ninxia Tongfu Coking Co., Ltd	67.14
Shanxi Qixian Foreign Trade Corporation	Shanxi Xiaoyi Huanyu Chemicals Co., Ltd	67.14
Shanxi Sincere Industrial Co., Ltd	Datong Guanghua Activated Co., Ltd	67.14
Shanxi Sincere Industrial Co., Ltd	Ningxia Guanghua-Cherishmet Activated Carbon Co., Ltd	67.14
Shanxi Sincere Industrial Co., Ltd	Ningxia Pingluo County YaoFu Activated Carbon Factory	67.14
Shanxi Xuanzhong Chemical Industry Co., Ltd	Ningxia Pingluo Xuanzhong Activated Carbon Co., Ltd	67.14
Tangshan Solid Carbon Co., Ltd	Datong Zuoyun Biyun Activated Carbon Co., Ltd	67.14
Tangshan Solid Carbon Co., Ltd	Ningxia Guanghua Activated Carbon Co., Ltd	67.14
Tangshan Solid Carbon Co., Ltd	Ningxia Xingsheng Coal and Active Carbon Co., Ltd	67.14
Tangshan Solid Carbon Co., Ltd	Pingluo Yu Yang Activated Carbon Co., Ltd	67.14
Tianjin Maijin Industries Co., Ltd	Hegongye Ninxia Activated Carbon Factory	67.14
Tianjin Maijin Industries Co., Ltd	Ningxia Pingluo County YaoFu Activated Carbon Plant	67.14
Tianjin Maijin Industries Co., Ltd	Yinchuan Lanqiya Activated Carbon Co., Ltd	67.14
United Manufacturing International (Beijing) Ltd	Datong Fu Ping Activated Carbon Co., Ltd	67.14
United Manufacturing International (Beijing) Ltd	Datong Locomotive Coal & Chemical Co. Ltd	67.14
United Manufacturing International (Beijing) Ltd	Xinhua Chemical Company Ltd	67.14
Xi'an Shuntong International Trade & Industrials Co., Ltd	DaTong Tri-Star & Power Carbon Plant	67.14
Xi'an Shuntong International Trade & Industrials Co., Ltd	Ningxia Huahui Activated Carbon Company Limited	67.14
PRC-Wide Rate		228.11

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (''CBP'') to continue to suspend liquidation of all entries of subject merchandise from the PRC. We will also instruct CBP to require cash deposits or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as indicated in the chart above. These instructions suspending liquidation will remain in effect until further notice.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act, and 19 CFR 351.224(e).

Dated: March 22, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–5927 Filed 3–29–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Canned Pineapple Fruit from Thailand: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: March 30, 2007.

FOR FURTHER INFORMATION CONTACT: Myrna Lobo, Office of AD/CVD Operations 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–2371.

SUPPLEMENTARY INFORMATION:

Background

On August 30, 2006, the Department of Commerce (the Department) published in the **Federal Register** the notice of initiation of the administrative review of the antidumping duty order on canned pineapple fruit from Thailand for Vita Food Factory (1989) Ltd. (Vita). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 71 FR 51573 (August 30, 2006). On October 10, 2006 the Department initiated a review for Tropical Food Industries Co. Ltd. (Trofco). *See Initiation of Antidumping Duty Administrative Review: Canned Pineapple Fruit from Thailand*, 71 FR 59430 (October 10, 2006). The period of review for both companies is July 1, 2005 through June 30, 2006.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and section 351.213(h)(1) of the Department's regulations require the Department to issue the preliminary results of a review within 245 days after the last day of the anniversary month of the order or suspension agreement for which the administrative review was requested, and final results of the review within 120 days after the date on which the notice of the preliminary results is published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within the aforementioned specified time limits, section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend the 245–day period to 365 days and to extend the 120–day period to 180 days.

Due to the initiation of a cost investigation for Trofco, together with the need for further analysis of Vita's questionnaire response, the Department finds that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, the Department is extending the deadline for completion of the preliminary results of this administrative review of the antidumping duty order on canned pineapple fruit from Thailand by 120 days from April 2, 2007 until no later than July 31, 2007.

This notice is issued and published pursuant to sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: March 26, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–5929 Filed 3–29–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–892]

Carbazole Violet Pigment 23 from the People's Republic of China: Notice of Amended Final Determination in Accordance With Court Decision

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

EFFECTIVE DATE: March 30, 2007.

SUMMARY: On December 8, 2006, the United States Court of International Trade (''CIT'') sustained the final remand determination made by the Department of Commerce (''the Department'') pursuant to the CIT's remand of the final determination of the less–than-fair–value investigation of Carbazole Violet Pigment 23 (''CVP 23'') from the People's Republic of China. *See Goldlink Industries Co., Ltd., Trust Chem Co., Ltd., Tianjin Hanchem International Trading Co., Ltd. v. United States, and Nation Ford Chemical Company and Sun Chemical Corporation, and Clariant Corporation*, Consol. Ct. 05–00060 (CIT Dec. 8, 2006). As there is now a final and conclusive court decision in this case, the Department is amending the final determination of this investigation.

FOR FURTHER INFORMATION CONTACT: Charles Riggle at (202) 482–0650, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On November 17, 2004, the Department published in the **Federal Register** its final determination in the above–referenced investigation covering the period of April 1, 2003, through September 30, 2003. *See Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 from the People's Republic of China*, 69 FR 67304 (November 17, 2004) (''*Final Determination*''). In the *Final Determination*, the Department (1) Applied total adverse facts available (''AFA'') to Tianjin Hanchem International Trading Co., Ltd. (''Hanchem''); (2) determined that the subsidies received by Pidilite Industries, Ltd. (''Pidilite''), an Indian producer of CVP 23, did not distort Pidilite's financial ratios; (3) valued benzene sulfonyl chloride using HTS number 2904.10.10; (4) valued calcium chloride based on 70–percent chemical concentration; (5) declined to value steam because the only steam values on the record were based on U.S. price quotes; and (6) did not include terminal charges and brokerage fees in movement costs. In *Goldlink Industries Co., Ltd., Trust Chem Co., Ltd., Tianjin Hanchem International Trading Co., Ltd. v. United States*, 431 F. Supp. 2d 1323 (CIT May 4, 2006), the CIT remanded the underlying *Final Determination* to the Department: to (1) re–examine its determination to apply total AFA to Hanchem; (2) further explain its determination that the subsidies Pidilite

received did not distort Pidilite's financial ratios; (3) re–examine the surrogate values for benzene sulfonyl chloride, calcium chloride and steam; (4) either include terminal charges and brokerage fees in movement costs, or precisely and reasonably explain its decision not to include such costs; and (5) re–open the record and allow parties to submit new information as necessary.

On October 16, 2006, the Department issued to the CIT its final results of redetermination pursuant to remand. In the remand redetermination the Department: (1) Applied partial AFA to Hanchem; (2) explained how the subsidies Pidilite received did not distort Pidilite's financial ratios; (3) re–calculated the surrogate values for benzene sulfonyl chloride, calcium chloride and steam; (4) explained why it is not appropriate to include terminal charges and brokerage fees in movement costs; and (5) calculated a surrogate value for steam. Thus, the Department recalculated the antidumping duty rates applicable to Goldlink Industries Co., Ltd., Trust Chem Co., Ltd., Hanchem, Nantong Haidi Chemicals Co., Ltd., and the PRC–wide entity. On December 8, 2006, the CIT sustained the Department's final redetermination. *See Goldlink Industries Co., Ltd., Trust Chem Co., Ltd., Tianjin Hanchem International Trading Co., Ltd. v. United States, and Nation Ford Chemical Company and Sun Chemical Corporation, and Clariant Corporation*, Ct. No. 05–00060, Slip Op. 06–65 (CIT December 8, 2006).

Consistent with the decision of the United States Court of Appeals for the Federal Circuit in *Timken Company v. United States and China National Machinery and Equipment Import and Export Corporation*, 893 F.2d 337 (Fed. Cir. 1990), on January 4, 2007, the Department published a notice announcing that the CIT's final judgement was not in harmony with the Department's *Final Determination*. No party appealed the CIT's decision. Therefore, there is now a final and conclusive court decision in this case.

Amended Final Determination

As the litigation in this case has concluded, the Department is amending the Final Determination. The revised dumping margins are as follows:

Exporter/Manufacturer	Margin (percent)
Goldlink Industries Co., Ltd.	12.46
Trust Chem Co., Ltd.	39.29
Tianjin Hanchem International Trading Co., Ltd.	85.41
Nantong Haidi Chemicals Co., Ltd.	57.07
PRC–Wide Rate	241.32

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: March 22, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–5859 Filed 3–29–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–122–840

Notice of Final Results of Antidumping Duty Changed Circumstances Review: Carbon and Certain Alloy Steel Wire Rod from Canada

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

SUMMARY: The Department of Commerce (the ''Department'') has determined that (1) Ivaco Rolling Mills 2004 L.P. is the successor–in-interest to Ivaco Rolling Mills L.P.; and (2) Sivaco Ontario, a division of Sivaco Wire Group 2004 L.P., is the successor–in-interest to Ivaco Inc. As a result, Ivaco Rolling Mills 2004 L.P., and Sivaco Ontario, a division of Sivaco Wire Group 2004 L.P., (collectively ''Ivaco'') should receive the same antidumping duty treatment with respect to carbon and certain alloy steel wire rod from Canada as Ivaco Rolling Mills L.P. and Ivaco Inc. as of the date of publication of this notice in the **Federal Register**.

EFFECTIVE DATE: March 30, 2007.

FOR FURTHER INFORMATION CONTACT: Damian Felton or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0133 and (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

In its January 12, 2006 response to Section A of the Department's questionnaire in the 3rd administrative review, Ivaco notified the Department that the assets of Ivaco, Inc. and all of its divisions (*e.g.*, Sivaco Ontario, and Sivaco Quebec) had been purchased on December 1, 2004. As a result, the Department self–initiated a changed circumstances review of the antidumping duty order on carbon and certain alloy steel wire rod from Canada. *See Preliminary Results of Antidumping Duty Administrative Review and Notice of Initiation of Changed Circumstances Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 64921 (November 6, 2006). On June 1, 2006, and October 27, 2006, the Department issued Ivaco supplemental questionnaires requesting further details on Ivaco's successor–in-interest claims. The company's responses were received by the Department on July 6, 2006, and November 20, 2006.

On December 14, 2006, the Department published the preliminary results of this changed circumstances review and preliminarily determined that (1) Ivaco Rolling Mills 2004 L.P. is the successor–in-interest to Ivaco Rolling Mills L.P.; and (2) Sivaco Ontario, a division of Sivaco Wire Group 2004 L.P., is the successor–in-interest to Ivaco Inc. *See Preliminary Results of Antidumping Duty Changed Circumstances Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 75229 (December 14, 2006) (''*Preliminary Results*''). As a result, Ivaco Rolling Mills 2004 L.P., and Sivaco Ontario, a division of Sivaco Wire Group 2004 L.P., should receive the same antidumping duty treatment with respect to carbon and certain alloy steel wire rod from Canada as Ivaco Rolling Mills L.P. and Ivaco Inc. In the *Preliminary Results*, we stated that interested parties could request a hearing or submit case briefs and/or written comments to the Department no later than 30 days after publication of the *Preliminary Results* notice in the **Federal Register**, and submit rebuttal briefs, limited to the issues raised in the case briefs, five days subsequent to the due date of the case briefs. *See Preliminary Results*, 71 FR at 75231. We did not receive any hearing requests or comments on the *Preliminary Results.*

Scope of the Order

The merchandise subject to this order is certain hot–rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross–sectional diameter.

Specifically excluded are steel products possessing the above–noted physical characteristics and meeting the HTSUS definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements:

0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross–sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non–deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross–sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non–deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

For purposes of the grade 1080 tire cord quality wire rod and the grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis - that is, the direction of rolling - of the rod) over thickness (measured on the same inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod. This measurement methodology applies only to inclusions on certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod that are entered, or withdrawn from warehouse, for consumption on or after July 24, 2003.

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end–use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under the order are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Final Results of Changed Circumstances Review

Based on the information provided by Ivaco, and the fact that the Department did not receive any comments during the comment period following the preliminary results of this review, the Department hereby determines that (1) Ivaco Rolling Mills 2004 L.P. is the successor–in-interest to Ivaco Rolling Mills L.P.; and (2) Sivaco Ontario, a division of Sivaco Wire Group 2004 L.P., is the successor–in-interest to Ivaco Inc. for antidumping duty cash deposit purposes.

Instructions to U.S. Customs and Border Protection

The Department will instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all shipments of the subject merchandise produced and exported by Ivaco entered, or withdrawn from warehouse, for consumption, on or after the publication date of this notice and apply a cash deposit rate of 3.08 percent (*i.e.*, Ivaco Rolling Mills L.P. and Ivaco Inc.'s cash deposit rate). This deposit rate shall remain in effect until publication of the final results of the ongoing administrative review, in which Ivaco is participating.

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is in accordance with sections 751(b) and 777(i)(1) of the Tariff Act of 1930, as amended, and section 351.216(e) of the Department's regulations.

Dated: March 22, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–5866 Filed 3–29–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Certain Forged Stainless Steel Flanges from India: Notice of Partial Rescission of New Shipper Review

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

SUMMARY: The Department of Commerce (the Department) is rescinding the new shipper review of Pradeep Metals Limited. We initiated this review on October 6, 2006. *See Stainless Steel Flanges from India: Notice of Initiation of Antidumping Duty New Shipper Reviews*, 71 FR 59081 (October 6, 2006). Our basis for rescinding this new shipper review is described below.

EFFECTIVE DATE: March 30, 2007.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482 4475 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 2006, we received requests from Micro Forge (India) Ltd. (Micro) and Pradeep Metals Limited (Pradeep), two Indian manufacturers of forged stainless steel flanges, for new shipper reviews. On October 6, 2006, based on the certifications and documentation these companies submitted, we initiated a new shipper review for both Micro and Pradeep. *See Stainless Steel Flanges from India: Notice of Initiation of Antidumping Duty New Shipper Reviews*, 71 FR 59081 (October 6, 2006). The period of review for the new shipper review is February 1, 2006, through July 31, 2006.

We issued our antidumping questionnaire for the new shipper review to Pradeep on October 13, 2006. We received a section A response from Pradeep on October 30, 2006. We received Pradeep's response to sections B, C and D of our questionnaire on November 14, 2006.

In its August 31, 2006 request for a new shipper review, Pradeep indicated that its first and only entry of flanges into the United States occurred on March 21, 2006. Subsequent to initiating the new shipper reviews the Department conducted a data query of entry information from Customs and Border Protection (CBP). The data obtained from CBP were placed on the record of this proceeding. *See* November 14, 2006 Memorandum from Fred Baker to the file: ''U.S. entry Documents–Stainless Steel Flanges from India'' (Pradeep Entry Memorandum). We determined, based on our review of the data obtained from CBP, that Pradeep had exported flanges to the United States three to five years prior to the period covered by the new shipper review, and therefore pursuant to 19 CFR 351.214(b)(2)(iv)(A),(B) and (C) did not qualify for a new shipper review for the period February 1, 2006, through July 31, 2006. *See* November 20, 2006 Memorandum from Fred Baker to the File: Intent to Rescind New Shipper Review of Pradeep Metals, Ltd (Department's Rescission Memorandum). The Department's Rescission Memorandum also stated our intent to rescind the new shipper review with respect to Pradeep based on Pradeep having exported subject merchandise to the United States prior to the period covered by the new shipper review. *See ibid*.

We invited parties to submit comments on our intent to rescind. On December 5, 2006 we received comments from Pradeep. In its December 5, 2006, letter, Pradeep maintains that in some instances unaffiliated companies supplied raw materials to Pradeep which were used to make flanges. However, Pradeep asserts that these unaffiliated companies continued to maintain title to the merchandise. Pradeep further maintains that while its name appears on Customs entry documentation, the CBP documentation fails to establish that Pradeep ''sold the subject flanges to the United States as a producer or exporter.'' *See* December 5, 2006 letter from Pradeep to the U.S. Department of Commerce.

Partial Rescission of New Shipper Review

We have determined that Pradeep fails to qualify for a new shipper review. As explained in the Department's Rescission Memorandum, the Department's regulations require that the requester of a new shipper review report the date of its first shipment to the United States. Pradeep has indicated in its August 31, 2006, request for a new shipper review that its first shipment of flanges entered the United States on March 21, 2006. However, information obtained from CBP, including Pradeep's own commercial invoices and shipping documents, indicate Pradeep was the exporter on a number of transactions that entered the United States three to five years before 2006. (The CBP information is not susceptible to public summary. However, the documents obtained from CBP are included in their entirety in the appendices to the Department's November 14, 2006, Pradeep Entry Memorandum.)

In its December 5, 2006, submission, Pradeep suggests it has ''already reported or stated in its submissions to the Department all the cases where Pradeep Metals was the producer *and* exporter to the United States. Under those stated facts Pradeep Metals qualifies for a new shipper review.'' Pradeep's December 5, 2006 letter (emphasis added). While the record indicates the March 21, 2006, entry was the first U.S. entry in which Pradeep was *both* the producer *and* the exporter, it is plainly evident from the entry documents in our Pradeep Entry Memorandum that on numerous occasions prior to that shipment Pradeep acted as the exporter (*i.e.*, the shipper) of subject stainless steel flanges. The evidence indicates these flanges were in some cases produced by other Indian manufacturers, but were clearly shipped and exported to the United States by Pradeep, as evidenced by the commercial invoices and shipping documents issued by Pradeep itself. *See*, *e.g.*, the sales documentation included at Appendices I, II, IV, V, VII and VIII of the Pradeep Entry Memorandum. In addition to the commercial invoices and packing lists, several of these entry packages include a CBP ''Notice of Action'' which identifies Pradeep as the shipper.

Pradeep continues in its comments by suggesting ''another unaffiliated Indian flange company'' may have contracted with Pradeep to provide tolling operations in producing flanges which ''were then owned by that other unaffiliated Indian producer, and returned to that other Indian company for its own disposition.'' But the documentation found in the Pradeep Entry Memorandum contradicts Pradeep's suggestion that someone else may have been shipping flanges that Pradeep manufactured in a tolling operation. The hypothetical scenario posited by Pradeep's December 5, 2006, letter is not consistent with the facts already on the record, which indicate Pradeep was the shipper and exporter of subject flanges (whether or not produced by Pradeep) prior to the instant period of new shipper review.

While Pradeep may not have previously acted as both manufacturer *and* exporter of any given prior shipment, the evidence clearly establishes that on numerous occasions prior to this new shipper review, Pradeep shipped subject stainless steel

flanges to the United States. Therefore, we find that Pradeep is not a new shipper pursuant to section 751(a)(2)(B) of the Act, and that Pradeep's request for new shipper review does not meet the requirements of 19 CFR 351.214(b)(2)(iv)(A),(B) and (C). Accordingly, we are rescinding the new shipper review of Pradeep.

Assessment

The Department will instruct CBP to assess antidumping duties on all appropriate entries. For Pradeep, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(I). The Department will issue liquidation instructions to CBP 15 days after the publication of this notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to any parties that are subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanctions.

This notice is published in accordance with sections 751(a)(1) of the Act and 19 CFR 351.214(f)(3).

Dated: March 23, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–5934 Filed 3–29–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic from the People's Republic of China: Extension of Time Limits for the Final Results of the 11th Administrative Review and New Shipper Reviews

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

EFFECTIVE DATE: March 30, 2007.

FOR FURTHER INFORMATION CONTACT: Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–0413.

SUPPLEMENTARY INFORMATION:

Background

On December 11, 2006, the Department of Commerce (''the Department'') published the preliminary results of the administrative review and new shipper review of fresh garlic from the People's Republic of China (''PRC''), covering the period November 1, 2004, through October 31, 2005. *See Fresh Garlic from the People's Republic of China: Partial Rescission and Preliminary Results of the Eleventh Administrative Review and New Shipper Reviews*, 71 FR 71510 (December 11, 2006).

Extension of Time Limit of Final Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), and section 351.213(h)(1) of the Department's regulations, the Department shall issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of the date of publication of the antidumping duty order. The Act further provides that the Department shall issue the final results of a review within 120 days after the date on which the notice of the preliminary results was published in the **Federal Register**. However, if the Department determines that it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend the 245-day period to 365 days and the 120-day period to 180 days. Section 751(a)(2)(B)(iv) of the Act also provides that we may extend the deadlines in a new shipper review if we determine that the case is extraordinarily complicated.

The Department determines that it would not be practicable to complete the final results of the aligned administrative review and new shipper reviews within the statutory time period. The Department requires additional time to analyze voluminous comments regarding the nine companies involved in the instant reviews. This includes several issues the Department considers to be extraordinarily complicated, including, but not limited to, the intermediate valuation of the garlic bulb. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results of this review by 60 days until June 9, 2007. However, since June 9th falls on a Saturday, the actual due date is June 11, 2007.

This notice is published pursuant to sections 751(c)(3)(A) and 751(a)(2)(B)(iv) of the Act, and section 351.214(h)(i)(1) of the Department's Regulations.

Dated: March 19, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–5861 Filed 3–29–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–807]

Certain Hot–Rolled Carbon Steel Flat Products from the Netherlands: Notice of Rescission of Antidumping Duty Administrative Review

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

SUMMARY: In response to requests from Nucor Corporation (Nucor), Mittal Steel USA Inc. (Mittal) and United States Steel Corporation (USSC) (collectively, petitioners), the U.S. Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products from the Netherlands for Corus Staal BV (Corus) for the period November 1, 2005, through October 31, 2006. No other interested party requested a review of Corus for this period of review. For the reasons discussed below, the Department is rescinding this administrative review.

EFFECTIVE DATE: March 30, 2007.

FOR FURTHER INFORMATION CONTACT: David Cordell or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0408 or at (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2006, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products from the Netherlands, (71 FR 64240). On November 30, 2006, we received requests from USSC, Mittal and Nucor to conduct an administrative review of Corus' sales of certain hot–rolled carbon steel flat products to the United States during the period November 1, 2005, through October 31, 2006. On December 27, 2006, the Department initiated an administrative review of the antidumping duty order on certain hot–rolled carbon steel flat products from the Netherlands for the period November 1, 2005 through October 31, 2006, in order to determine whether merchandise imported into the United States was sold at less than fair value by Corus. *See Initiation of Antidumping and Countervailing Duty Administrative Review*, 71 FR 77720 (December 27, 2006).

On February 27, 2007 USSC Mittal and Nucor withdrew their requests for review. On March 9, 2007, Corus submitted comments in regards to the withdrawal requests. These comments are summarized and addressed in an accompanying memorandum, which is being released in conjunction with this notice. *See* memorandum to Richard Weible, Office Director, through Robert James, Program Manager, from David Cordell, entitled ''Comments on Domestic Interested Parties Requests for Withdrawal.''

Rescission of Review

Section 351.213(d)(1) of the Department's regulations provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws at a later date if the Department determines that it is reasonable to extend the time limit for withdrawing the request. As all parties that requested this review have withdrawn those requests within 90 days of the date of publication of the notice of initiation of the requested review, this review is rescinded. The Department intends to issue appropriate assessment instructions to Customs and Border Protection (CBP) 15 days after the date of the publication of this notice. The Department will direct CBP to assess antidumping duties for Corus Staal BVat the cash deposit rate in effect on the date of entry for entries during the period November 1, 2005, through October 31, 2006.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's assumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: March 23, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–5864 Filed 3–29–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–822]

Stainless Steel Bar from the United Kingdom: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: In response to a timely request by Firth Rixson Ltd., the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on stainless steel bar from the United Kingdom with respect to Enpar Special Alloys Ltd. (Enpar). The period of review (POR) is March 1, 2005, through February 28, 2006.

We preliminarily determine that sales have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries.

In addition, the Department has received information sufficient to warrant a successor–in-interest analysis in this administrative review. Based on this information, we preliminarily determine that Enpar is the successor–in-interest to Firth Rixson Special Steels Ltd. for purposes of determining antidumping duty liability. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 30, 2007.

FOR FURTHER INFORMATION CONTACT: Kate Johnson or Rebecca Trainor, 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) 482–4929 or (202) 482–4007, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 2002, the Department published in the **Federal Register** an antidumping duty order on stainless steel bar from the United Kingdom. *See Antidumping Duty Order: Stainless Steel Bar from the United Kingdom*, 67 FR 10381 (March 7, 2002).

In response to timely requests by manufacturer/exporters, Firth Rixson Ltd.[1] and Corus Engineering Steels (Corus), the Department published a notice of initiation of an administrative review with respect to these companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 71 FR 25145 (April 28, 2006). The POR is March 1, 2005, through February 28, 2006.

On April 25, 2006, we issued antidumping duty questionnaires to the above–mentioned companies. On May 16, 2006, Enpar requested that the Department allow it to limit its reporting of home market sales and cost of production information in this

[1] Firth Rixson Ltd. is the parent company of Enpar, the respondent in this review, which was formerly known as Firth Rixson Special Steels Ltd.

review. In a letter dated May 26, 2006, we permitted Enpar to limit its reporting of home market sales to the six-month contemporaneous window period of October 1, 2005, through March 31, 2006, and to certain grades of stainless steel bar, as long as Enpar reported complete sales and cost information for sales of these grades as well as for sales of the five most similar grades. In addition, we permitted Enpar to limit its cost of production reporting to these same grades, but we required that cost information be reported for the entire POR.

On June 1, 2006, Corus timely withdrew its request for an administrative review of its sales during the above–referenced period. Accordingly, we published a notice rescinding the review with respect to this company. *See Stainless Steel Bar from the United Kingdom: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 34895 (June 16, 2006).

On June 23, 2006, we received Enpar's response to both the sales and cost of production portions of the antidumping questionnaire. We issued a supplemental questionnaire (sales) to Enpar on August 8, 2006, to which Enpar responded on September 8, 2006. We issued supplemental questionnaires (cost) on July 24 and September 18, 2006, and received responses on September 8 and October 12, 2006, respectively.

On October 16, 2006, we extended the time limit for the preliminary results in this review by 120 days. *See Stainless Steel Bar from the United Kingdom: Notice of Extension of Time Limit for Preliminary Results of the 2005–2006 Administrative Review*, 71 FR 60691 (October 16, 2006).

We issued additional supplemental questionnaires (cost) on October 31 and December 19, 2006, and received responses on November 28, 2006 and January 5, 2007, respectively.

During the periods November 13 - 16, 2006, and February 22 - March 2, 2007, we conducted the sales and cost verifications of the questionnaire responses of Enpar.

Scope of the Order

For purposes of this order, the term ''stainless steel bar'' includes articles of stainless steel in straight lengths that have been either hot–rolled, forged, turned, cold–drawn, cold–rolled or otherwise cold–finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold–finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot–rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi–finished products, cut length flat–rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold–formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat–rolled products), and angles, shapes and sections.

The stainless steel bar subject to this order is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 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 scope of this order is dispositive.

Successor–In-Interest Analysis

In accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act), the Department is conducting a successor–in-interest analysis to determine whether Enpar is the successor–in-interest to Firth Rixson Special Steels Ltd. for purposes of determining antidumping liability with respect to the subject merchandise. In making such a successor–in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber from Japan*, 67 FR 58 (January 2, 2002) (*Polychloroprene Rubber from Japan*); *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992) (*Canadian Brass*). While no individual factor or combination of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is not materially dissimilar to that of its predecessor. *See, e.g., Polychloroprene Rubber from Japan*; *Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944 (February 14, 1994); *Canadian Brass*; *Fresh and Chilled Atlantic Salmon from Norway: Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 63 FR 50880 (September 23, 1998) (unchanged in final results, *Fresh and Chilled Atlantic Salmon From Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979 (March 1, 1999)). Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will generally accord the new company the same antidumping duty treatment as its predecessor.

We preliminarily determine that Enpar is the successor–in-interest to Firth Rixson Special Steels Ltd. Enpar explained in its questionnaire response that Firth Rixson Special Steels Ltd. was a subsidiary of the U.K.-based Firth Rixson Ltd. Firth Rixson Special Steels Ltd. and two other subsidiaries of the U.K.-based Firth Rixson Ltd., T.W. Pearson and Enpar, were combined in 2003 to form Enpar. Enpar has the same company registration number as that of Firth Rixson Special Steels Ltd., the registered office is the same for both companies, and three of Enpar's four directors were also directors of Firth Rixson Special Steels Ltd. We confirmed at verification that Enpar's business structure is the same as that of Firth Rixson Special Steels Ltd. Although certain upgrades have been made to the production facility, the supplier and customer bases and relationships remain the same. In fact, the only real change is the name of the subsidiary. Accordingly, we preliminarily find that Enpar should receive the same antidumping duty treatment with respect to stainless steel bar as the former Firth Rixson Special Steels Ltd.

Comparisons to Normal Value

To determine whether sales of stainless steel bar by Enpar to the United States were made below NV, we compared export price (EP) to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice.

Pursuant to section 777A(d)(2) of the Act, we compared the EPs of individual

U.S. transactions to the weighted–average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the ''Cost of Production Analysis'' section below.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent covered by the description in the ''Scope of the Order'' section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(e)(2), we compared Enpar's U.S. sales to sales made in the home market within the contemporaneous window period, which extends from three months prior to the U.S. sale until two months after the sale. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order: finish, grade, remelting, type of final finishing operation, shape and size.

Export Price

We used EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly by Enpar to the first unaffiliated purchaser in the United States prior to importation and constructed export price (CEP) methodology was not otherwise indicated. We based EP on packed prices to unaffiliated purchasers in the United States.

Enpar reported its U.S. sales on a delivered duty paid basis. We made deductions from the starting price, where appropriate, for foreign inland freight, international freight, foreign inland and marine insurance, foreign and U.S. brokerage and handling, U.S. inland freight and U.S. duty, in accordance with section 772(c)(2) of the Act and 19 CFR 351.402.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Enpar's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.

Because Enpar's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that its home market was viable.

Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (''LOT'') as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; *See also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*Plate from South Africa*). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the chain of distribution), including selling activities, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),[2] we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc. v. United States*, 243 F. 3d 1301, 1314 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sales to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, and where the difference affects price comparability, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Plate from South Africa*, 62 FR at 61732–33.

In this administrative review, we obtained information from Enpar regarding the marketing stages involved in making the reported foreign market and U.S. sales, including a description of the selling activities performed for each channel of distribution. Enpar reported that it made EP sales in the U.S. market through a single distribution channel (*i.e.*, sales to end users through a commission agent). We examined the selling activities Enpar performed during the POR for this channel, and based on verification, we found that Enpar performed the following selling activities for its U.S. sales: sales and marketing, freight and delivery, and payment of commissions. Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

Enpar reported that it made sales to the home market through two channels of distribution (*i.e.*, sales to service centers and sales to end users). We examined the selling activities Enpar performed during the POR for both channels, and based on verification, we found that the only selling activities Enpar performed for its home market sales were sales and marketing and freight and delivery. Because Enpar performed identical selling functions for both channels of distribution, we preliminarily determine that there is one LOT in the home market.

Finally, we compared the EP LOT to the home market LOT and found that, with the exception of commission payments in the U.S. market, the core selling activities performed for the U.S. and the home markets are identical. As there were no other differences in selling activities between the two markets, we preliminarily determine that sales to the U.S. and home markets during the POR were made at the same LOT, and as a result, no LOT adjustment is warranted.

Cost of Production Analysis

Because we assigned Firth Rixson Special Steels Ltd. a margin based on total adverse facts available in the first

[2] Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, general and administrative (''SG&A'') expenses, and profit for CV, where possible. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Atlantic Salmon from Chile*, 63 FR 2664 (January 16, 1998) (unchanged in final determination, *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon From Chile*, 63 FR 31411 (June 9, 1998)).

administrative review,[3] which was the most recently completed segment of this proceeding as of the publication date of the initiation of this review,[4] there are reasonable grounds to believe or suspect that Enpar, which we have preliminarily determined is the successor–in-interest to Firth Rixson Special Steels Ltd., made sales in the home market at prices below the cost of producing the merchandise in the current review period. Accordingly, we required that Firth Rixson provide a response to Section D of the questionnaire, in accordance with our normal practice.

A. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated Enpar's cost of production (''COP'') based on the sum of its costs of materials and conversion, plus amounts for general and administrative (''G&A'') expenses and interest expenses. *See* ''Test of Comparison Market Sales Prices'' section below for treatment of home market selling expenses.

The Department relied on the COP data submitted by the respondent in its most recent supplemental section D questionnaire response for the COP calculation, except in the following instances:

1. Based on verification findings, for grades 316 and 304, we recalculated the average material cost using all grade 316 and 304 input materials consumed, rather than using only selected grade 316 and 304 input materials consumed, as reported by Enpar. In addition, when recalculating the average material cost, we weighted input prices using relative consumption quantities rather than relative purchase quantities. We increased the reported material costs for grade 316 and 304 products by the difference between the reported cost and the revised cost we calculated for these products. For all other grades, we increased the reported material costs by the average difference between the reported costs and revised costs for grades 316 and 304.
2. Based on verification findings, we reallocated conversion costs for selected products based on work order times for each process, as opposed to the standard times used by Enpar. As the work order times were used by Enpar to develop its actual hourly processing rates, we deem it appropriate to apply the actual hourly processing rates to the same work order times. For all other products, we increased the reported variable and fixed conversion costs by the average difference between the reported and revised costs of the selected products.
3. Based on verification findings, we adjusted the G&A ratio to exclude the offsets for interest income and foreign exchange gains. In addition, we calculated the G&A ratio as a percentage of cost of goods sold, rather than as a percentage of material costs, as reported by Enpar.

Our revisions to Enpar's COP data are discussed in the Memorandum from Joseph Welton, Senior Accountant, to Neal Halper, Director, Office of Accounting, entitled ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results - Enpar Special Alloys Limited (Enpar),'' dated March 22, 2007.

2. Test of Comparison Market Sales Prices

On a product–specific basis, we compared the adjusted weighted–average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices were inclusive of billing adjustments and exclusive of any applicable movement charges, discounts and rebates, and direct and indirect selling expenses and packing expenses, revised where appropriate.

3. Results of the COP Test

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act: (1) Whether, within an extended period of time, such sales were made in substantial quantities; and (2) whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Where less than 20 percent of a respondent's home market sales of a given product are at prices less than the COP, we do not disregard any below–cost sales of that product, because we determine that in such instances the below–cost sales were not made within an extended period of time and in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below–cost sales because: (1) They were made within an extended period of time in ''substantial quantities,'' in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on our comparison of prices to the weighted–average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of Enpar's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Calculation of Normal Value Based on Comparison Market Prices

We based NV for Enpar on ex–works or CIF prices to unaffiliated customers in the home market. Where appropriate, we made adjustments to the starting price for billing adjustments. We made deductions, where appropriate, from the starting price for discounts and rebates, foreign inland freight, and insurance expenses, under section 773(a)(6)(B)(ii) of the Act. Based on our sales verification findings, we made minor revisions to the billing adjustments and foreign inland freight expenses reported for certain home market sales. *See* the March 22, 2007, memorandum entitled, ''Calculation Memorandum for the Preliminary Results for Enpar Special Alloys Ltd.'' (''Enpar Preliminary Calculation Memorandum'').

We made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale (''COS'') for imputed credit expenses. Using interest rate information provided in Enpar's questionnaire response, we recalculated U.S. and home market imputed credit expenses using the average U.S. and U.K. short–term interest rates for the POR. *See* Enpar Preliminary Calculation Memorandum. As commissions were paid in the U.S. market but not in the home market, we made a downward adjustment to NV for the lesser of (1) the amount of commission paid in the U.S. market, or (2) the amount of indirect selling expenses incurred in the home market. We revised the reported indirect selling expenses to reflect verification findings. *See* Enpar Preliminary Calculation Memorandum. We also deducted home market packing costs and added U.S. packing costs, in

[3] We required that Firth Rixson Special Steels Ltd. provide a response to Section D of the questionnaire in the first administrative review.

[4] No interested party requested a review of Firth Rixson Special Steels Ltd. for the second and third review periods.

accordance with section 773(a)(6)(A) and (B) of the Act.

Currency Conversion

We made currency conversions in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of this review, we preliminarily determine that the weighted–average dumping margin for the period March 1, 2005, through February 28, 2006, is as follows:

Manufacturer/Exporter	Percent Margin
Enpar Special Alloys Ltd. (formerly Firth Rixson Special Steels Ltd.)	33.87

Disclosure and Public Hearing

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication. *See* 19 CFR 351.310(c). Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Issues raised in the hearing will be limited to those raised in the respective case briefs. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless the time period is extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice (*see* 19 CFR 351.309(c)), and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. *See* 19 CFR 351.309(d). Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties, in accordance with 19 CFR 351.303(f).

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. The Department intends to issue assessment instructions for the companies subject to this review to CBP 15 days after the date of publication of the final results of this review.

We will calculate importer–specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review if any importer–specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.*, at or above 0.50 percent). Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). *See* 19 CFR 351.106(c)(1). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*). This clarification will apply to entries of subject merchandise during the POR produced by any company included in the final results of review for which the reviewed company did not know that the merchandise it sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the ''All Others'' rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: 1) the cash deposit rate for the company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; 2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company–specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, or the original less–than-fair–value investigation (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 4.48 percent, the ''All Others'' rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: March 22, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–5860 Filed 3–29–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar from India: Notice of Initiation of Antidumping Duty New Shipper Review

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

SUMMARY: The Department of Commerce has received a request for a new shipper review of the antidumping duty order on stainless steel bar from India. In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR 351.214(d), we are initiating an antidumping duty new shipper review of Sunflag Iron & Steel Co. Ltd.

EFFECTIVE DATE: March 30, 2007.

FOR FURTHER INFORMATION CONTACT: Devta Ohri or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3853 or (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1995, the Department of Commerce (''Department'') published in the **Federal Register** the antidumping duty order on stainless steel bar (''SSB'') from India. *See Antidumping Duty Orders: Stainless Steel Bar form Brazil, India and Japan*, 60 FR 9661 (February 21, 1995).

On February 28, 2007, the Department received a timely request from Sunflag Iron & Steel Co. Ltd. (''Sunflag''), for a new shipper review of the antidumping duty order on SSB from India, in accordance with 19 CFR 351.214(c).

Pursuant to section 751(a)(2)(B)(i)(I) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(b)(2)(i), Sunflag certified in its request that it did not export the subject merchandise to the United States during the period of investigation (''POI''). In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Sunflag certified that it is not currently affiliated and never has been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI (July 1, 1993, through December 31, 1993), including those not individually examined during the investigation.

Pursuant to 19 CFR 351.214(b)(2)(iv), Sunflag also submitted documentation establishing the date on which its stainless steel bar was first shipped for export to the United States, the volume of that shipment, and the date of the first sale to an unaffiliated customer in the United States.

The Department conducted a query of the U.S. Customs and Border Protection (''CBP'') database to confirm that Sunflag's shipment of subject merchandise had entered the United States for consumption and has been suspended for antidumping duties. The Department also corroborated Sunflag's assertion that it made no subsequent shipments to the United States by reviewing CBP data.

Initiation of Review

In accordance with section 751(a)(2)(B) of the Act, and 19 CFR 351.214(d), we find that the request submitted by Sunflag meets the threshold requirements for initiation of a new shipper review. *See* Memorandum to the File from Devta Ohri, International Trade Compliance Analyst, through Susan Kuhbach, Senior Office Director, Office 1: New Shipper Review Initiation Checklist, dated March 23, 2007. Accordingly, we are initiating a new shipper review of the antidumping duty order on stainless steel bar from India.

This review covers the period February 1, 2006 through January 31, 2007. We intend to issue the preliminary results of this review no later than 180 days after the date on which this review is initiated, and the final results within 90 days after the date on which we issue the preliminary results. *See* Section 751(a)(2)(B)(iv) of the Act.

Cash Deposit Requirements

On August 17, 2006, the Pension Protection Act of 2006 (H.R. 4) was signed into law. Section 1632 of H.R. 4 temporarily suspends the authority of the Department to instruct U.S. Customs and Border Protection to collect a bond or other security in lieu of a cash deposit in new shipper reviews during the period April 1, 2006 through June 30, 2009. Therefore, the posting of a bond or other security under section 751(a)(2)(B)(iii) of the Act in lieu of a cash deposit is not available in this case. Importers of subject merchandise manufactured and exported by Sunflag must continue to pay a cash deposit of estimated antidumping duties on each entry of subject merchandise at the current all–others rate of 12.45 percent. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India*, 59 FR 66915 (December 28, 1994).

Interested parties may submit applications for disclosure of business proprietary information under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and this notice are issued and published in accordance with section 751(a)(2)(B) of the Act and sections 351.214(d) and 351.221(c)(1)(i) of the Department's regulations.

Dated: March 23, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–5867 Filed 3–29–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In–Quota Rate of Duty

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

EFFECTIVE DATE: March 30, 2007.

FOR FURTHER INFORMATION CONTACT: Maura Jeffords, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482–3146.

SUPPLEMENTARY INFORMATION: Section 702 of the Trade Agreements Act of 1979 (as amended) (''the Act'') requires the Department of Commerce (the ''Department'') to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in–quota rate of duty, as defined in section 702(h) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's annual list of subsidies on articles of cheese that were imported during the period October 1, 2005, through September 30, 2006.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in–quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available. The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in–quota rate of duty to submit such information in writing to the Assistant

Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: March 22, 2007.

David M. Spooner,

Assistant Secretaryfor Import Administration.

APPENDIX

SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN–QUOTA RATE OF DUTY

Country	Program(s)	Gross[1] Subsidy ($/lb)	Net[2] Subsidy ($/lb)
25 European Union Member States[3]	European Union Restitution Payments	$ 0.00	$ 0.00
Canada	Export Assistance on Certain Types of Cheese	$ 0.31	$ 0.31
Norway	Indirect (Milk) Subsidy	$ 0.00	$ 0.00
	Consumer Subsidy	*$ 0.00*	*$ 0.00*
	Total	$ 0.00	$ 0.00
Switzerland	Deficiency Payments	$ 0.00	$ 0.00

[1]Defined in 19 U.S.C. 1677(5).
[2]Defined in 19 U.S.C. 1677(6).
[3]The 25 member states of the European Union are: Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

[FR Doc. E7–5868 Filed 3–29–07; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In–Quota Rate of Duty

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

EFFECTIVE DATE: March 30, 2007.

FOR FURTHER INFORMATION CONTACT: Maura Jeffords, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230, telephone: (202) 482–3146.

SUPPLEMENTARY INFORMATION: Section 702 of the Trade Agreements Act of 1979 (as amended) (''the Act'') requires the Department of Commerce (''the Department'') to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in–quota rate of duty, as defined in section 702(h) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on articles of cheese that were imported during the period October 1, 2006, through December 31, 2006.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in–quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available. The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in–quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: March 22, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix

Subsidy Programs On Cheese Subject To An In–Quota Rate Of Duty

Country	Program(s)	Gross[1] Subsidy ($/lb)	Net[2] Subsidy ($/lb)
25 European Union Member States[3]	European Union Restitution Payments	$0.00	$ 0.00
Canada	Export Assistance on Certain Types of Cheese	$ 0.31	$ 0.31
Norway	Indirect (Milk) Subsidy	*$ 0.00*	*$ 0.00*
	Consumer Subsidy	$ 0.00	$ 0.00
	Total	$ 0.00	$ 0.00
Switzerland	Deficiency Payments	$ 0.00	$ 0.00

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).
[3] The 25 member states of the European Union are: Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

[FR Doc. E7–5869 Filed 3–29–07; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–839]

Carbazole Violet Pigment 23 from India: Notice of Rescission of Countervailing Duty Administrative Review

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

EFFECTIVE DATE: March 30, 2007.

FOR FURTHER INFORMATION CONTACT: Jun Jack Zhao or Sean Carey, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–1396 or (202) 482–3964, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2006, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the countervailing duty order on carbazole violet pigment 23 (CVP–23) from India. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 69543 (December 1, 2006). On January 3, 2007, Alpanil Industries (Alpanil), an Indian producer and exporter to the United States of CVP–23, timely requested that the Department conduct an administrative review of Alpanil. On February 2, 2007, the Department published a notice of the initiation of the countervailing duty administrative review of CVP–23 from India for the period January 1, 2005 through December 31, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 5005 (February 2, 2007). On March 7, 2007, Alpanil withdrew its request for an administrative review.

Rescission of Review

The Department's regulations at section 351.213(d)(1) provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review. Alpanil withdrew its request before the 90–day deadline, and Alpanil was the only party to request a review. Therefore, we are rescinding this review of the countervailing duty order on CVP–23 from India covering the period January 1, 2005, through December 31, 2005. The Department intends to issue appropriate assessment instructions directly to U.S. Customs and Border Protection 15 days after the date of publication of this rescission.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: March 26, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–5931 Filed 3–29–07; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–507–601]

Certain Roasted In–Shell Pistachios from Iran: Rescission of Countervailing Duty Administrative Review:

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

EFFECTIVE DATE: March 30, 2007.

FOR FURTHER INFORMATION CONTACT: Darla Brown, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2849.

SUPPLEMENTARY INFORMATION:

Background

On October 2, 2006, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the countervailing duty (CVD) order on certain roasted in–shell pistachios (roasted pistachios) from Iran for the period January 1, 2005 through December 31, 2005. See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 71 FR 57920 (October 2, 2006). On October 13, 2006, the California Pistachio Commission (the CPC) requested an administrative review of Tehran Negah–Nima Trading Company, Inc. (Nima), all of the growers and processors of the roasted pistachios that Nima sold in the United States, and the Government of Iran, for the calendar year 2005 period of review. On November 27, 2006, the Department initiated an administrative review of the CVD order on certain roasted pistachios from Iran, covering the period January 1, 2005 through December 31, 2005, and Nima. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 71 FR 68535 (November 27, 2006).

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. On February 20, 2007, the CPC withdrew its request for an administrative review within 90 days of the publication of the notice of initiation of this review. No other interested party requested a review of Nima. Therefore, in accordance with 19 CFR 351.213(d)(1), and consistent with its practice, the Department hereby rescinds the administrative review of roasted pistachios from Iran for the period January 1, 2005, to December 31, 2005. The Department intends to issue assessment instructions to U.S. Customs and Border Protection 15 days after the publication of this notice of rescission of administrative review.

This notice is in accordance with section 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: March 23, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–5863 Filed 3–29–07; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032607G]

Notice of Public Hearings for the Draft Programmatic Environmental Impact Statement for the Marine Mammal Health and Stranding Response Program

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

ACTION: Notice of public hearings.

SUMMARY: NMFS will hold five public hearings in April 2007 to receive public comments on the Draft Programmatic Environmental Impact Statement (DPEIS) for the Marine Mammal Health and Stranding Response Program (MMHSRP).

DATES: The public comment period for the DPEIS is from March 16, 2007, to April 30, 2007. See **SUPPLEMENTARY INFORMATION** under the heading Hearing Dates, Times, and Locations for the dates and locations of the public hearings.

ADDRESSES: The public has the opportunity to submit comments on the document using the following methods:

- E-mail: *mmhsrpeis.comments@noaa.gov*.
- Mail: David Cottingham, Chief, Marine Mammal and Sea Turtle Conservation Division, Attn: MMSHRP DPEIS, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.
- Facsimile (fax) to: (301) 427–2584, Attn: MMHSRP DPEIS.
- Public Hearings: Submit oral or written comments at public hearings for the DPEIS.

FOR FURTHER INFORMATION CONTACT: Sarah Howlett or Sarah Wilkin, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910; telephone: (301) 713–2322.

SUPPLEMENTARY INFORMATION: On March 16, 2007, the U.S. Environmental Protection Agency (EPA) published a Notice of Availability in the **Federal Register** announcing the availability of the DPEIS for the MMHSRP for public comment and review.

NMFS has scheduled five public hearings for the DPEIS. The purpose of these hearings is to provide an opportunity for the public to submit oral or written comments on the DPEIS. The DPEIS and information on these hearings can be found at *http://www.nmfs.noaa.gov/pr/health/eis.htm*.

Hearing Dates, Times, and Locations

The dates, times, and locations of the public hearings are as follows:

1. *Monday, April 2, 2007* – San Francisco, CA 1–4 p.m.– Bay Conservation and Development Commission, 50 California Street, Suite 2600, San Francisco, CA 94111.
2. *Tuesday, April 3, 2007* – Seattle, WA 2–5 p.m.– NMFS Northwest Regional Office, Building 9, 7600 Sand Point Way NE, Seattle, WA 98115.
3. *Friday, April 6, 2007* – Silver Spring, MD 1–4 p.m.– Silver Spring Metro Center, Building 3, Room 1311–B, Silver Spring, MD 20910.
4. *Monday, April 9, 2007* – Boston, MA 1–4 p.m.– New England Aquarium Conference Center, Central Wharf, Boston, MA 02110.
5. *Tuesday, April 10, 2007* – St. Petersburg, FL 4–7 p.m.– NMFS Southeast Regional Office, Dolphin Conference Room, 263 13th Avenue, South, St. Petersburg, FL 33701.

Special Accommodations

These hearings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Sarah Howlett or Sarah Wilkin, 301–713–2322 (voice) or 301–427–2522 (fax), at least 5 working days prior to the hearing date.

Dated: March 27, 2007.

David Cottingham,

Chief, Marine Mammal and Sea Turtle Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E7–5935 Filed 3–29–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032607E]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council), its Research Set Aside (RSA) Committee, its Ecosystem Committee, its Protected Resources Committee, its Squid, Mackerel, and Butterfish Committee, its Executive Committee, and its Surfclam/Ocean Quahog Committee will hold public meetings.

DATES: The meetings will be held on Tuesday, April 17, 2007 through Thursday, April 19, 2007. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: These meetings will be held at the Princess Royale Hotel, 9100 Coastal Highway, Ocean City, MD 21842; telephone: (410) 524–7777.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 674–2331, ext. 19.

SUPPLEMENTARY INFORMATION:

Tuesday, April 17, 2007

8 a.m. until 1 p.m. - The Research Set Aside (RSA) Committee will meet privately with NMFS officials.

9 a.m. until 11 a.m. - The Ecosystems Committee will also meet concurrently with the RSA Committee.

11 a.m. until 1 p.m. - The Protected Resources Committee will meet concurrently with the RSA Committee.

2 p.m. until 5:30 p.m. - The Squid, Mackerel, and Butterfish Committee will meet.

7 p.m. until 8:30 p.m. - NMFS will hold a scoping session on National Standard 1 Guidelines regarding annual catch limits and accountability measures.

Wednesday, April 18, 2007

8 a.m. until 9 a.m. - The Executive Committee will meet.

9 a.m. until 10:30 a.m. - The Council will convene to receive a presentation from the National Fisheries Institute's Scientific Monitoring Committee.

10:30 a.m. until 11:30 a.m. - A Public Hearing for Phase 1 of the New England Council's Essential Fish Habitat Omnibus Amendment will be held.

11:30 a.m. - The 5th District Commander of the U.S. Coast Guard will discuss Coast Guard activities and Command changes.

1 p.m. until 3:30 p.m. - The Council will conduct its regular Council business.

3:30 p.m. until 4:30 p.m. - The Council will discuss and likely approve Framework 7 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP).

4:30 p.m. until 5 p.m. - An update on the Limited Access Privilege Programs will be presented by Council staff.

Thursday, April 19, 2007

8 a.m. until 10 a.m. - The Surfclam and Ocean Quahog Committee will meet with its Advisors.

10 a.m. - The Council will convene to receive an update regarding the Magnuson-Stevens Act (MSA) and National Environmental Policy Act (NEPA) integration.

10:30 a.m. until adjournment - The Council will receive committee reports and address any continuing or new business.

Agenda items for the Council's committees and the Council itself are: The Research Set Aside (RSA) Committee will meet privately with NMFS officials to review 2008 RSA project proposals. The Ecosystems Committee will review responses to the March 9 solicitation letter to member states regarding artificial reefs, and develop a Committee position on the need to create (or not) special management zones (SMZs) for artificial reefs. The Ecosystems Committee will also receive the NMFS' Northeast Fisheries Science Center presentation on the current status of its ecosystem efforts. The Protected Resources Committee will meet with its Advisors to review and discuss the NMFS' Advanced Notice of Proposed Rulemaking (ANPR) on sea turtle conservation, and to also review and discuss impacts of the Atlantic Trawl Gear Take Reduction Team's (ATGTRT) efforts to reduce the incidental take of pilot whales and dolphins. The Squid, Mackerel, and Butterfish Committee will review and update outcomes from its March 21 Committee meeting on Amendment 11. NMFS' will hold a scoping session regarding annual catch limits and accountability measures associated with National Standard 1 Guidelines. The Executive Committee will review outcomes of the meeting of NMFS' Northeast Region (NER) officials regarding impacts of the MSA Reauthorization Act of 2006, review status of the Council's fiscal year 2007 budget, and review the status of the Council's Advisory Panel surveys and related actions. The National Fisheries Institute's Scientific Monitoring Committee will provide a presentation on the results of its Supplemental Finfish Survey and Loligo Net-Testing Study. A Public Hearing will be held regarding Phase 1 of the New England Council's Essential Fish Habitat (EFH) Omnibus Amendment. The Council will conduct its regular business session, and review, select, and approve options/alternatives included in Framework 7 to its Summer Flounder, Scup and Black Sea Bass FMP regarding mechanisms to change biological reference points during the specification setting process following peer reviewed stock assessments. A staff-led discussion will then be held on Limited Access Programs. The Surfclam and Ocean Quahog Committee and its Advisors will review cost recovery options for surfclam and ocean quahog fisheries and solicit input from Advisors regarding 2008, 2009, and 2010 quota specifications. The Council will receive a presentation from its Executive Directors on Section 107 of the MSA Reauthorization Act of 2006. This will be followed by committee reports and any continuing or new business.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Bryan (302) 674–2331 ext. 18 at least 5 days prior to the meeting date.

Dated: March 26, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–5824 Filed 3–29–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032607D]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public committee meetings.

SUMMARY: The New England Fishery Management Council's (Council) Multispecies (Groundfish) Advisory Panel and Committee will hold meetings to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meetings will be held April 19–20, 2007. For specific dates and times, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meetings will be held at the Holiday Inn, One Newbury Street, Peabody, MA 01960; telephone: (978) 535–4600.

Council address: New England Fishery Management Council, 50 Water Street, Mill ı2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978)465–0492.

SUPPLEMENTARY INFORMATION: The advisory panel and committee's schedule and agenda for the following two meetings are as follows:

1. Thursday, April 19, 2007, beginning at 9 a.m. - Groundfish Advisory Panel Meeting

The Groundfish Advisory Panel (Panel) will meet to review scoping comments received for Amendment 16 to the Northeast Multispecies Fishery Management Plan (FMP). This amendment will adopt measures as necessary to continue the rebuilding of several stocks of groundfish, as well as make other changes to the FMP that may be required. The Panel will spend most of its time reviewing two alternative management proposals received during scoping. One proposal, called area management, suggests managing in discrete, finite areas with specific measures tailored to those areas. A second proposal suggests allocating points to commercial fishing vessels that will be deducted based on catch. If time permits, the Panel will also review other comments received during scoping, including suggestions for changes to the days-at-sea (DAS) program and other management measures. The Panel may also consider other business. Panel recommendations will be forwarded to the Multispecies Committee at a meeting on April 20, 2007.

2. Friday, April 20, 2007, beginning at 9 a.m.- Multispecies (Groundfish) Committee Meeting

The Multispecies Committee will meet to develop Amendment 16 to the Northeast Multispecies FMP. This amendment will adopt measures as necessary to continue the rebuilding of several stocks of groundfish, as well as make other changes to the FMP that may be required. The Committee will spend most of its time reviewing two alternative management proposals received during scoping. One proposal,

called area management, suggests managing in discrete, finite areas with specific measures tailored to those areas. A second proposal suggests allocating points to commercial fishing vessels that will be deducted based on catch. The committee will also discuss a proposal for a limited entry program for party/charter vessels fishing in the Gulf of Maine. Other business may also be discussed. Committee recommendations will be forwarded to the Council for action at a future date.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 working days prior to the meeting date.

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

Dated: March 26, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–5823 Filed 3–29–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031607B]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold meetings of its Pelagics Plan Team (PPT), in Honolulu, HI, to discuss fishery issues and develop recommendations for future management.

DATES: The meeting of the PPT will be held on April 17–19, 2007, from 8:30 a.m. to 5 p.m., each day.

ADDRESSES: The meeting will be held at the Council Office Conference Room, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI, 96813; telephone: (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The PPT will meet discuss the following agenda items:

Tuesday April 17, 2007, 8.30 a.m.

1. Introduction
2. Annual Report review
   Review of 2006 Annual Report modules and recommendations
   Commonwealth of the Northern Mariana Islands
3. Teleconference link with Pacific Council

A. Status of longline fisheries and their management

   a. West Coast + potential for expansion and results from current exploratory permit in EEZ
   b. Hawaii and American Samoa fisheries and new fisheries in Micronesia

B. Inter-American Tropical Tuna Commission bigeye tuna (BET) catch limits

   a. Current monitoring of BET allocation by NMFS Pacific Islands Fisheries Science Center (PIFSC)
   b. Timely division of Eastern Pacific Ocean (EPO) BET quota in event of West Coast longline fishery expansion

C. Protected species management

   a. Hawaii and Western Pacific Region (WPR) longline fisheries
   b. West Coast longline and drift gillnet fisheries
4. Continuation of review 2006 Annual Report modules and recommendations
   ii. American Samoa
   iii. Guam
   iv. Hawaii
   v. International
   vi. Recreational
   2006 Annual Report region wide recommendations

Wednesday & Thursday, April 18–19, 2007, 8.30 a.m.

5. Hana community Fish Aggregating Device

6. Guam Fishermen's Cooperative longline project
7. Status of American Samoa longline fishery
8. Pelagics Fishery Management Plan (PFMP) and amendments
   i. Transition from PFMP to Pelagics Fishery Ecosystem Plan
   ii. Status of Amendment 14 (bigeye/yellowfin overfishing)
   iii. Guam longline exclusion modification
   iv. Framework change to incorporate quotas for tunas
9. Status of interactions between protected species and WPR longline fisheries
   i. Hawaii longline fishery
   ii. American Samoa longline fishery
10. Evaluation of swordfish longline fishery management
11. Other business

The order in which the agenda items are addressed may change. The PPT will meet as late as necessary to complete scheduled business.

Although non-emergency issues not contained in this agenda may come before the PPT for discussion, those issues may not be the subject of formal action during these meetings. Plan Team action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: March 27, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–5916 Filed 3–29–07; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee; Twelfth Renewal

The Commodity Futures Trading Commission has determined to renew again for a period of two years its advisory committee designated as the ''Agricultural Advisory Committee.''

The Commission certifies that the renewal of the advisory committee is in the public interest in connection with duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. 1, *et seq.*

The objectives and scope of activities of the Agricultural Advisory Committee are to conduct public meetings and submit reports and recommendations on issues affecting agricultural producers, processors, lenders and others interested in or affected by agricultural commodities markets, and to facilitate communications between the Commission and the diverse agricultural and agriculture-related organizations represented on the Committee. The Committee's membership represents a cross-section of interested and affected groups including representatives of producers, processors, lenders and other interested agricultural groups.

Interested persons may obtain information or make comments by writing to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

Issued in Washington, DC, on March 27, 2007, by the Commission.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 07–1573 Filed 3–29–07; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2007–OS–0024]

Proposed Collection; Comment Request

AGENCY: Defense Technical Information Center (DTIC), DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Technical Information Center announces the proposed revision of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 29, 2007.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Technical Information Center (DTIC), Marketing and Registration Division, 8725 John J. Kingman Road, Suite 0944, ATTN: Ms. Angela Davis, Ft. Belvoir, VA 22060–6218, or call DTIC, Marketing and Registration Division at (703) 767–8207.

Title and OMB Number: Customer Satisfaction Surveys—Generic Clearance; OMB Control Number 0704–0403.

Needs and Uses: The information collection requirement is necessary to assess the level of service the Defense Technical Information Center (DTIC) provides to its current customers. The surveys will provide information on the level of overall customer satisfaction, and on customer satisfaction with several attributes of service that impact the level of overall satisfaction. These customer satisfaction surveys are required to implement Executive Order 12862, ''Setting Customer Service Standards.'' Respondents are DTIC registered users who are components of the Department of Defense, military services, other Federal Government Agencies, U.S. Government contractors, universities involved in federally funded research, and participants. The information obtained by these surveys will be used to assist agency senior management in determining agency business policies and processes that should be selected for examination, modification, and reengineering from the customer's perspective. These surveys will also provide statistical and demographic basis for the design of follow-on surveys. Future surveys will be used to assist monitoring of changes in the level of customer satisfaction over time.

Affected Public: Business or other for-profit; non-profit institutions.

Annual Burden Hours: 965.

Number of Respondents: 19,300.

Responses per Respondent: 1

Average Burden per Response: 3 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The purpose of these surveys is to assess the level of service the Defense Technical Information Center (DTIC) provides to its current customers. The surveys will provide information on the level of overall customer satisfaction and on customer satisfaction with several attributes of service which impact the level of overall satisfaction. The objectives of the survey are to help DTIC (1) gauge the level of satisfaction among users and (2) identify possible areas for improving our products and services. The surveys are designed to assist in evaluating the following knowledge objectives:

To improve customer retention;

To determine the perceived quality of products, service, and customer care;

To indicate trends in products, services, and customer care;

To benchmark our customer satisfaction results with other Federal government agencies.

Dated: March 23, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–1562 Filed 3–29–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0115]

Submission for OMB Review; Comment Request Entitled Notification of Ownership Changes

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0115).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Notification of Ownership Changes. A request for public comments was published at 71 FR 67341, November 21, 2006. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before April 30, 2007.

ADDRESSES: Submit comments, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Michael Jackson, Contract Policy Division, GSA, (202) 208–4949.

SUPPLEMENTARY INFORMATION:

A. Purpose

Allowable costs of assets are limited in the event of change in ownership of a contractor. Contractors are required to provide the Government adequate and timely notice of this event per the FAR clause at 52.215–19, Notification of Ownership Changes.

B. Annual Reporting Burden

Respondents: 100.
Responses Per Respondent: 1.
Total Responses: 100.
Hours Per Response: 125.
Total Burden Hours: 125.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0115, Notification of Ownership Change, in all correspondence.

Dated: March 20, 2007.

Ralph De Stefano,

Director, Contract Policy Division.

[FR Doc. 07–1582 Filed 3–29–07; 8:45 am]

BILLING CODE 6820–EP–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Sunshine Act; Department of Defense Task Force on the Future of the Military Health Care

AGENCY: DoD; Office of the Assistant Secretary of Defense (Health Affairs).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), announcement is made of the following committee meeting:

Name of Committee: Department of Defense Task Force on the Future of the Military Health Care, a duly established subcommittee of the Defense Health Board.

Date of Meetings: April 9 and April 10, 2007

Date of Meeting: April 9, 2007.
Time of Meeting: 1 p.m.–5 p.m.
Place of Meeting: (1 p.m.–3 p.m.) Brooke Army Medical Center, 3851 Roger Brooke Drive, Fort Sam Houston, Texas 78234. US Army Institute of Surgical Research, 3400 Rawley E. Chambers Avenue. (3:10 p.m.–5 p.m.) 3851 Roger Brooke Drive, Fort Sam Houston, Texas 78234, Center for the Intrepid.

Purpose of Meeting: To obtain, review, and evaluate information related to the Task Force's congressionally-directed mission to examine matters relating to the future of military health care. Both Preparatory Meetings will be held at the Brooke Army Medical Center. Pursuant to 41 Code of Federal Regulations, part 102–3.160, the Preparatory Meetings will be closed to the public.

Date of Meeting: April 10, 2007.
Time of Meeting: 9 a.m.–4 p.m.
Place of Meeting: Hyatt Regency, Hill Country Resort, 9800 Hyatt Resort Drive, San Antonio, Texas 78251.

Purpose of Meeting: To obtain, review, and evaluate information related to the Task Force's congressionally-directed mission to examine matters relating to the future of military health care. The Task Force members will receive briefings on topics related to the delivery of military health care during the public meeting.

Agenda: Panel Discussions with active, retired and Guard/reserve forces concerning a variety of issues affecting the military healthcare system.

Prior to the public meeting the Task Force will conduct an Administrative Meeting from 8:30 a.m. to 8:50 a.m. to discuss solely administrative matters of the Task Force. In addition, the Task Force, following its public meeting, will conduct a Preparatory Meeting from 4 p.m. to 4:30 p.m. to solely analyze relevant issues and facts in preparation for the Task Force's next meeting. Both the Administrative and Preparatory Meetings will be held at the Hyatt Regency Hill Country Ballroom, Pursuant to 41 Code of Regulations, Part 102–3.160, both the Administrative and Preparatory Meetings will be closed to the public.

Additional information and meeting registration is available online at the Defense Health Board Web site, *http://www.ha.osd.mil/dhb*.

Due to scheduling difficulties with the meeting facilities in San Antonio, Texas the Task Force was unable to finalize its agenda in time to publish notice of its meeting in the **Federal Register** for the 15-calendar days required by 41 CFR 102–3.150(a). Accordingly, the Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b) waives the 15-calendar day notification requirement.

FOR FURTHER INFORMATION CONTACT: Colonel Christine Bader, Executive Secretary, Department of Defense Task Force on the Future of Military Health Care, Skyline One, 5205 Leesburg Pike, Suite 810, Falls Church, VA 22041, (703) 681–3279, ext. 109 (*christine.bader@ha.osd.mil*).

SUPPLEMENTARY INFORMATION: Open sessions of the meeting will be limited by space accommodations. Any interested person may attend; however, seating is limited to the space available at the Hyatt Regency Hill Country. Individuals or organizations wishing to submit written comments for consideration by the Task Force should provide their comments in an electronic (PDF Format) document to the Executive Secretary of the Department of Defense Task Force on the Future of Military Health Care,

christine.bader@ha.osd.mil, no later than ten (10) business days prior to the scheduled meeting.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–1598 Filed 3–28–07; 11:37 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to Delete a System of Records.

SUMMARY: The Defense Logistics Agency is deleting a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on April 30, 2007, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 26, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion

S322.20

SYSTEM NAME:

Recruitment Eligibility File (November 16, 2004, 69 FR 67112).

Reason: Records previously collected and maintained under this system of records were incorporated into S322.50, Defense Edibility Records last published in the **Federal Register** on January 8, 2007, at 72 FR 730.

[FR Doc. 07–1560 Filed 3–29–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

[No. USN–2006–0064]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by April 30, 2007.

Title, Form, and OMB Number: Application for Commission in the United States Navy/United States Navy Reserve; NAVCRUIT Form 1131/2; OMB Control Number 0703–0029.

Type of Request: Revision.

Number of Respondents: 14,000.

Responses per Respondent: 1.

Annual Responses: 14,000.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 7,000.

Needs and Uses: All persons interested in entering the U.S. Navy or the U.S. Naval Reserve in a commissioned status must provide various personal data in order for a Selection Board to determine their qualifications for naval service and for specific fields of endeavor which the applicant intends to pursue. This information is used to recruit and select applicant who are qualified for commission in the U.S. Navy or U.S. Naval Reserve.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submission received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://ww.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposals should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: March 23, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–1563 Filed 3–24–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

[No. USAF–2007–0003]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by April 30, 2007.

Title, Form, and OMB Number: United States Air Force Academy Candidate Personal Data Record; USAFA Form 146; OMB Control Number 0701–0064.

Type of Request: Extension.

Number of Respondents: 8,500

Responses per Respondent: 1.

Annual Responses: 8,500.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 4,250.

Needs and Uses: This information collection is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy.

Affected Public: Individuals of Households.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulatons.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: March 23, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–1564 Filed 3–29–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

[No. USAF–2007–0002]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by April 30, 2007.

Title, Form, and OMB Number: United States Air Force Academy Candidate Activities Record; USAFA Form 147; OMB Control Number 0701–0063.

Type of Request: Extension.

Number of Respondents: 8,150.

Responses per Respondent: 1.

Annual Responses: 8,150.

Average Burden per Response: 45 minutes.

Annual Burden Hours: 6,383.

Needs and Uses: This information collection is necessary to obtain data on candidates background and aptitude in determining eligibility and selection to the Air Force Academy.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Hillary Jaffe.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503. You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: March 23, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 07–1565 Filed 3–29–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Draft Environmental Impact Statement for the Renewal of Special Use Permit for Military Activities on the De Soto National Forest and Implementation of Installation Mission Support Activities at Camp Shelby, MS

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: This Draft Environmental Impact Statement (DEIS) has been prepared by National Guard Bureau (NGB) and the United States Department of Agriculture—Forest Service (USDA–FS). NGB is the lead agency and the USDA–FS is serving as a cooperating agency in the development of this DEIS for the renewal of the current Special Use Permit (SUP) that authorizes military training activities at Camp Shelby Joint Forces Training Center.

DATES: The public comment period for the DEIS will end 45 days after publication of an NOA in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Written comments or questions regarding the DEIS may be forwarded to Major Danny Blanton, Public Affairs Officer, Joint Forces Headquarters, Mississippi National Guard, P.O. Box 5027, Jackson, MS 39296–5027.

FOR FURTHER INFORMATION CONTACT: Major Danny Blanton, Public Affairs Officer, Joint Forces Headquarters, Mississippi National Guard, at (601) 313–6349. The alternate point of contact for this action is Lieutenant Colonel Robert A. Piazza, Mississippi Army National Guard, Director Environmental Program at (610) 313–6228.

SUPPLEMENTARY INFORMATION: This DEIS discusses in-depth two alternatives: The Preferred Alternative and the No-Action Alternative. Under the Preferred Alternative, the Mississippi National Guard (MSNG) proposes the renewal of the USDA–FS SUP for a 20-year timeframe and authorizes current activities and mission requirements to continue on State of Mississippi, DoD, and National Forest lands. This alternative will help meet the Army requirements associated with the Proposed Action by constructing various new ranges and facilities at Camp Shelby and allowing for the continuation of necessary maintenance, repair, and rehabilitation of the infrastructure at Camp Shelby. The No Action Alternative would authorize the renewal of the SUP for a 10-year timeframe (same as previous SUP) and military activities would continue as currently permitted. This alternative would not authorize the proposed construction of new ranges and facilities and improved management practices. Other alternatives considered but eliminated from detailed study are addressed in the DEIS. The potential for significant impacts exists for both alternatives, however with the implementation of the ongoing and proposed mitigation and monitoring measures, the unavoidable adverse impacts can be mitigated to an acceptable level. Under the preferred

alternative, current activities and mission requirements will continue on State of Mississippi, DoD, and National Forest lands. This alternative includes implementation of the projects discussed in this DEIS, in addition to the continuation of necessary maintenance, repair, and rehabilitation of the military training infrastructure at Camp Shelby. Environmental consequences for the Proposed Action and No Action Alternative, have been analyzed. The new project proposals have the potential for the following significant adverse impacts:

(1) Direct and/or indirect effects on approximately 250 gopher tortoise (federal threatened species) burrows;

(2) Direct and/or indirect effects on habitat for other Proposed, Endangered, Threatened, and Sensitive (PETS) species such as Louisiana quillwort (federal endangered species), black pine snake (federal candidate species), and other state and USDA–FS sensitive plant species. There would be direct positive effects on the red-cockaded woodpecker when colonies are relocated into the proposed Habitat Management Area at some time in the future;

(3) Direct and/or indirect effects on approximately 275 acres of wetlands (requiring fill of an estimated 20 acres of wetlands);

(4) Direct effects by removal of approximately 120 acres for pine and hardwood forested areas;

(5) Direct effects by movement of approximately 250,000 cubic yards of earth, and resulting direct and/or indirect effects from erosion and sedimentation;

(6) The potential environmental impacts associated with the Combined Arms Area (CAA) reconfiguration warrant a separate discussion. The proposed CAA reconfiguration would result in an approximate 4,300-acre reduction in size and the amount of unavoidable potential significant adverse impacts associated with forest clearing/thinning and maneuver area usage from the CAA addressed and approved for construction in the 1994 SUP EIS. This large maneuver area is about 12 percent complete (approximately 5,000 acres) based on the 1994 design. The MSNG and USDA–FS propose to reconfigure the CAA to reduce environmental impacts from the original design while still meeting the military training needs. The proposed reconfigured CAA would still produce potential significant adverse impacts; however, it would definitely be an improvement from an environmental standpoint over the original plan (and within the scope of the effects analyzed and documented in the 1994 SUP EIS). While the wetland acreage (approximately 2,719 acres), gopher tortoise burrow numbers (3,015 burrows), and Louisiana quillwort colonies appear to be significant, the relatively minor impacts to date on the completed portion of the CAA places the potential effect of the reconfiguration into perspective given the overall reduction in acreage.

Additional information on the DEIS is available at the following Web site: *http://www.ngms.state.ms.us/env/Natural%20Resources/nat_resources_06.htm*.

Dated: March 14, 2007.

Addison D. Davis, IV,

Deputy Assistant Secretary of the Army (Environment, Safety, and Occupational Health).

[FR Doc. 07–1571 Filed 3–29–07; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Increase of Cargo Liability Insurance Amount Per Shipment for the Movement of DPS Shipments

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: The Military Surface Deployment and Distribution Command (SDDC), as the Traffic Manager for Department of Defense (DOD) Personal Property Program, is reminding the Transportation Service Provider (TSP) community of SDDC's increase in Cargo Liability Insurance. The Amount Per Shipment increases from $22,500 to $50,000 Amount Per Shipment for all shipment movement of Personal Property (Domestic, International and Mobile Homes/Boats) within the Families First Phase II program utilizing the Defense Personal Property System (DPS). This announcement is made pursuant to Families First, Phase II, Business Rules, E, TSP Qualifications, 2.1.9.

Effective immediately, all shipments moving within the DPS program will move at the minimum Cargo Liability Insurance of $50,000 Amount Per Shipment.

SDDC will require certificates of the higher insurance as the DPS system is capable of accepting such certificates electronically, but this is effective now and will not be delayed due to delay in filing electronically the proof of the higher insurance amount.

DATES: Effective immediately, all shipments moving within the DPS program will move at the minimum Cargo Liability Insurance of $50,000 Amount Per Shipment.

ADDRESSES: The Military Surface Deployment and Distribution Command (SDDC), 200 Stovall Street, Alexandria, VA 22332–5000.

FOR FURTHER INFORMATION CONTACT: Ms. Sylvia Walker, (703) 428–3279.

SUPPLEMENTARY INFORMATION: DPS Cargo Liability Insurance coverage shall be provided at the following limits:

Amount Per Shipment is $50,000 and Amount Per Aggregate is $150,000. Request for additional information may be sent by e-mail to: *ppqual@sddc.army.*

Regulatory Flexibility Act

This action is not considered rule making within the meaning of Regulatory Flexibility Act, 5 U.S.C. 601–612.

Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3051 *et seq.*, does not apply because no information collection or record keeping requirements are imposed on contractors, offerors or members of the public.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 07–1574 Filed 3–29–07; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS) on the Mississippi River—Gulf Outlet, New Lock and Connecting Channels, LA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers (Corps), New Orleans District intends to prepare a Draft Supplemental Environmental Impact Statement (DSEIS) to evaluate potential impacts of the construction of a replacement lock in the Industrial Canal located in New Orleans, LA. The original EIS, Main Report and Final Environmental Impact Statement for the Mississippi River—Gulf Outlet, New Lock and Connecting Channels, Louisiana (Evaluation Report and EIS) issued in March 1998 focused on the potential impacts of construction of a new lock, including impacts to the local community and supporting infrastructure.

After evaluating the March 1998 EIS, the Corps issued a Record of Decision (ROD) on December 18, 1998 selecting the location and construction method of the replacement lock and several additional project components to improve the surrounding project area. The Corps decision was challenged in United States District Court and the Court's Order on Motions for Summary Judgment was issued on October 3, 2006 as part of Case No. 2:03–cv–00370–EEF–KWR, United States District Court Eastern District of Louisiana. The Courts' decision enjoined the Corps from continuing with the project until additional compliance with the National Environmental Policy Act (NEPA) is completed. Accordingly, the Corps is preparing a SEIS.

DATES: The Corps plans to hold a public scoping meeting on April 4, 2007, at 6 p.m. CST.

ADDRESSES: The meeting will be held at Holy Cross School, 4950 Dauphine Street, New Orleans, LA 70117.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DSEIS can be answered by: Mr. Royce Kemp, U.S. Army Corps of Engineers, Environmental Planning and Compliance Branch, P.O. Box 60267, New Orleans, LA 70160–0267, by e-mail at *Royce.B.Kemp@mvn02.usace.army.mil*, or by telephone at (504) 862–2675.

SUPPLEMENTARY INFORMATION:

1. *Project Background and Authorization.* The Inner Harbor Navigation Canal (IHNC) connects the Mississippi River, the Gulf Intracoastal Waterway (GIWW), the Mississippi River—Gulf Outlet (MR–GO), the Industrial Canal (also known as the Inner Harbor Navigation Canal), and Lake Pontchartrain. The existing lock, located between the St. Claude and Claiborne Avenue Bridges, was commissioned in 1923 to allow vessel traffic from the Mississippi River to Lake Pontchartrain and permit industrial development away from the river. During World War II, the GIWW was rerouted through the IHNC. Since the 1960s when a connection was made with the MR–GO, barge and ship traffic has greatly increased and the existing lock can no longer accommodate navigational needs efficiently through the IHNC. Because it was anticipated barge and ship traffic would increase, the lock replacement project was authorized in Chapter 112 of the River and Harbors and Flood Control Act of 1956 for the construction of a new lock when the existing lock was determined to become obsolete.

In March of 1998, the Corps issued a Final EIS analyzing several alternatives and recommending construction of a new lock north of the Claiborne Bridge, replacement of the St. Claude Avenue Bridge, modification of the Claiborne Bridge, extension of the Mississippi River flood protection levees and floodwalls, a socio-economic mitigation plan, and a fish and wildlife mitigation plan. This DSEIS will update and supplement the 1998 Final EIS to determine if any significant changes are necessary to the project and to ensure sufficient environmental analysis of project impacts.

2. *Proposed Action.* The purpose of the proposed lock construction is to provide more efficient navigational traffic through the IHNC by constructing a new, larger lock. The need for this project arises from the long delays in passage through the IHNC occurring from increased traffic and the small size of the current lock which can not accommodate the volume of existing and future traffic. The purpose of the DSEIS is to better evaluate the analysis and handling of dredged material generated during the construction phase, the engineering design of confined disposal areas, and several aspects of the project which may have changed since the original EIS in 1998, to include any significant new circumstances relevant to environmental concerns that have arisen since Hurricane Katrina.

3. *Alternatives.* An evaluation of alternatives, including a ''No Action'' alternative will be done. In this DSEIS, the ''No Action'' alternative will be the course of action as decided upon in the 1998 ROD and as further described in the 1998 EIS. Other alternatives will be determined through scoping, but are expected to include methods of dredging, dredged material handling and disposal alternatives, and construction of the lock by the cast-in-place method versus a float-in construction method.

4. *Scoping.* The Council on Environmental Quality regulations at 40 CFR § 1501.7 require an early and open process for determining the scope of an EIS and for identifying significant issues related to the proposed action. The public will be involved in the scoping and evaluation process through advertisements, notices, and other means. At a minimum, all parties who have expressed interest in the IHNC will be given the opportunity to participate in this process. Federal, State and local agencies, and other interested groups will also be involved. Meetings to address discrete issues or parts or functions of the project area may be called. All parties are invited to participate in the scoping process by identifying any additional concerns on issues, studies needed, alternatives, procedures, and other matters related to the scope of the SEIS.

a. A public scoping meeting is scheduled for (see **DATES**). The Corps will provide additional notification of the meeting time and location through newspaper advertisements and other means. Following a short presentation on the planned SEIS, verbal and written comments on the scope of the SEIS will be accepted. A transcript of verbal comments will be generated to ensure accuracy. To submit comments on the scope of the Mississippi River—Gulf Outlet, New Lock and Connecting Channels, Louisiana SEIS or to request copies of materials related to this effort as they become available to the public, contact: Mr. Royce Kemp, U.S. Army Corps of Engineers, Environmental Planning and Compliance Branch, P.O. Box 60267, New Orleans, LA 70160–0267, by e-mail at *Royce.B.Kemp@mvn02.usace.army.mil*, or by telephone at (504) 862–2675.

b. *Issues.* In addition to updating and supplementing the information from the 1998 EIS, the following issues have been identified for analysis in the SEIS. This list is preliminary and is intended to facilitate public comment on the scope of the SEIS. The SEIS will consider the scope of contamination of sediments to be dredged as a result of this project, reasonable dredging and disposal alternatives and associated impacts, socio-economic changes from the prior EIS and now since Hurricane Katrina. Furthermore, the Corps will ensure that environmental compliance through the NEPA process will be maintained with all applicable environmental laws, regulations, and executive orders governing associated issues such as Federally listed threatened and endangered species, essential fish habitats, health and safety, economics, general environmental concerns, wetlands and other aquatic resources, historic properties, fish and wildlife values, flood hazards, navigation, recreation, water quality, property ownership considerations, and, in general, the needs and welfare of the people, and other issues identified through scoping, public involvement, and interagency coordination. The Corps expects to better define the issues of concern and define the methods that will be used to evaluate those issues through the scoping process.

c. *Coordination.* The proposed action is being coordinated with a number of Federal, state, regional, and local agencies including but not limited to the

following: U.S. Fish and Wildlife Service, National Marine Fisheries Service, U.S. Environmental Protection Agency, Louisiana Department of Environmental Quality, State Historic Preservation Officer, and other agencies as identified in scoping, public involvement, and agency coordination. The Corps invites Federal agencies, American Indian Tribal Nations, state and local governments, and other interested private organizations and parties to attend the public scoping meeting and to comment on the scope of the planned Mississippi River—Gulf Outlet, New Lock and Connecting Channels, Louisiana SEIS.

d. *Other Environmental Review and Consultation.* The proposed action will involve an evaluation for compliance with all applicable guidelines pursuant to section 404(b) of the Clean Water Act. This review will involve a detailed evaluation of all practicable alternatives to the handling and disposal of the dredged material generated from this project.

e. *Agency Role.* The Corps will provide extensive information and assistance on the resources to be impacted, mitigation measures, and alternatives. Although the Corps does not plan to invite any Federal agencies to be cooperating agencies, we expect to receive input and critical information from the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service and other Federal, state, and local agencies.

5. *Public Scoping Meeting.* The Corps plans to hold a public scoping (see **DATES** and **ADDRESSES**).

Special Accommodations: This meeting place is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Royce Kemp, (504) 862–2675 (voice) or (504) 862–2088 (fax), at least 5 business days prior to the meeting date.

6. *Estimated Date of Availability.* It is estimated that the Draft SEIS will be available to the public in July 2008. At least one additional public meeting will be held at that time, during which the public will be provided the opportunity to comment on the Draft SEIS before it becomes final.

Dated: March 19, 2007.

Richard P. Wagenaar,

Colonel, U.S. Army, District Engineer.

[FR Doc. E7–5906 Filed 3–29–07; 8:45 am]

BILLING CODE 3710–84–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Adoption of Alternative Arrangements Under the National Environmental Policy Act for New Orleans Hurricane and Storm Damage Reduction System

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice; correction.

SUMMARY: The notice published in the **Federal Register** on March 13, 2007 (72 FR 11337) contained an incorrect address for the New Orleans East Sub-Basin scoping meeting being held on April 11, 2007. The scoping meeting will be held at the Avalon Hotel & Conference Center, 10100 I–10 Service Road, New Orleans, LA 70121.

FOR FURTHER INFORMATION CONTACT: Mr.Gib Owen, (504) 862–1337.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 07–1572 Filed 3–29–07; 8:45 am]

BILLING CODE 3710–84–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 30, 2007.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to *oira_submission@omb.eop.gov* or via fax to (202) 395–6974. Commenters should include the following subject line in their response ''*Comment:* [insert OMB number], [insert abbreviated collection name, e.g., ''Upward Bound Evaluation'']. Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 26, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services Office of Management.

Office of Postsecondary Education

Type of Review: Revision.
Title: Annual Performance Report for Title III and Title V Grantees.
Frequency: Annually.
Affected Public: Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:

Responses: 762.
Burden Hours: 15,334.

Abstract: Titles III and V of the HEA provide discretionary and formula grant programs that make competitive awards to eligible Institutions of Higher Education and organizations (Title III, Part E) to assist these institutions in expanding their capacity to serve minority and low-income students. Grantees submit a yearly performance report to demonstrate that substantial progress is being made towards meeting the objectives of their project. The driving force for these changes to the Annual Performance Report (APR) is the Government Accountability Office. The Government Accountability Office, in GAO–03–900 ''Distance Education: More Data Could Improve Education's Ability to Track Technology at Minority Serving Institutions,'' found that, ''the Department of Education can further refine its programs for monitoring

technology usage at minority serving institutions.''

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3270. When you access the information collection, click on ''Download Attachments '' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–5892 Filed 3–29–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 29, 2007.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 26, 2007.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Financial Report for Grantees under the Title III Part A, Title III Part B, and the Title V Program Endowment Activities and Endowment Challenge Grant.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 300.

Burden Hours: 900.

Abstract: This financial reporting form will be utilized for Title III Part A, Title III Part B and Title V Program Endowment Activities and Title III Part C Endowment Challenge Grant Program. The purpose of this Annual Financial Report is to have the grantees report annually the kind of investments that have been made, the income earned and spent, and whether any part of the Endowment Fund Corpus has been spent. This information allows us to give technical assistance and determine whether the grantee has complied with the statutory and regulatory investment requirements.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3298. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E7–5893 Filed 3–29–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.038, 84.033, and 84.007]

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs

ACTION: Notice of the 2007–2008 award year deadline dates for the campus-based programs.

SUMMARY: The Secretary announces the 2007–2008 award year deadline dates for the submission of requests and documents from postsecondary institutions for the campus-based programs.

SUPPLEMENTARY INFORMATION: The Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs are collectively known as the campus-based programs.

The Federal Perkins Loan Program encourages institutions to make low-interest, long-term loans to needy undergraduate and graduate students to help pay for their education.

The FWS Program encourages the part-time employment of needy undergraduate and graduate students to help pay for their education and to involve the students in community service activities.

The FSEOG Program encourages institutions to provide grants to exceptionally needy undergraduate students to help pay for the cost of their education.

The Federal Perkins Loan, FWS, and FSEOG programs are authorized by parts E and C, and part A, subpart 3, respectively, of title IV of the Higher Education Act of 1965, as amended.

Throughout the year, in its ''Dear Colleague'' letters, the Department will continue to provide additional information for the individual deadline dates listed, via the Information for Financial Aid Professionals (IFAP) Web site at *http://www.ifap.ed.gov.*

Deadline Dates: The following table provides the 2007–2008 award year deadline dates for the submission of applications, reports, and waiver requests for the campus-based programs. Institutions must meet the established deadline dates to ensure consideration for funding or a waiver, as appropriate.

2007–2008 AWARD YEAR DEADLINE DATES

What does an institution submit?	How is it submitted?	What is the deadline for submission?
1. The Campus-Based Reallocation Form designated for the return of 2006–2007 funds and the request for supplemental FWS funds for the 2007–2008 award year.	The Reallocation Form must be submitted electronically via the Internet and is located in the ''Setup'' section of the FISAP on the Internet at: *http://www.cbfisap.ed.gov*.	August 17, 2007.
2. The 2006–2007 Fiscal Operations Report and 2008–2009 Application to Participate (FISAP).	The FISAP is located on the Internet at the following site: *http://www.cbfisap.ed.gov*. The FISAP must be submitted electronically via the Internet, and the FISAP's signature page must be mailed to: FISAP Administrator, 2020 Company, LLC, 3110 Fairview Park Drive, Suite 950, Falls Church, VA 22042.	October 1, 2007.
3. The Work-Colleges Program Report of 2006–2007 award year expenditures.	The Work-Colleges Program Report can be found in the ''Setup'' section of the FISAP on the Internet at: *http://www.cbfisap.ed.gov*. The report must be submitted electronically via the Internet, and a printed copy with an original signature must be submitted to the Department by one of the following methods: Hand delivery to: United States Department of Education Federal Student Aid Campus-Based Systems and Operations Division, 830 First Street, NE, Room 63B3, Washington, DC 20002 or Mail to: The same above address for hand delivery except use Zip Code 20202–5453.	October 19, 2007.
4. A request for a waiver of the 2008–2009 award year penalty for the underuse of 2006–2007 award year funds.	The request for a waiver can be found in Part II, Section C of the FISAP on the Internet at: *http://www.cbfisap.ed.gov*. The request and justification must be submitted electronically via the Internet.	February 8, 2008.
5. The Institutional Application for Approval to Participate in the Federal Student Financial Aid Programs.	An institution that has not already established eligibility must submit an application to the School Participation Management Team. The application is located on the Internet at the following site: *http://www.eligcert.ed.gov*.	February 8, 2008.
6. The Institutional Application and Agreement for Participation in the Work-Colleges Program for the 2008–2009 award year.	The Institutional Application and Agreement for Participation in the Work-Colleges Program can be found in the ''Setup'' section of the FISAP on the Internet at: *http://www.cbfisap.ed.gov*. The application and agreement must be submitted electronically via the Internet, and a printed copy with original signature must be submitted to the Department by one of the following methods: Hand delivery to: United States Department of Education Federal Student Aid Campus-Based Systems and Operations Division 830 First Street, NE, Room 63B3, Washington, DC 20002 or Mail to: The same above address for hand delivery except use Zip Code 20202–5453.	March 7, 2008.
7. A request for a waiver of the FWS Community Service Expenditure Requirement for the 2008–2009 award year.	The FWS Community Service waiver request and justification must be submitted by one of the following methods: Hand delivery to: FWS Coordinator U.S. Department of Education 830 First Street, NE, Room 62A1, Washington, DC 20002 or Mail to: The same above address for hand delivery except use Zip Code 20202–5453 or Fax to: (202) 275–0950.	April 25, 2008.

Note:

- The deadline for electronic submissions is 11:59 p.m. (Eastern time) on the applicable deadline date. Transmissions must be completed and accepted by 12 midnight to meet the deadline.
- Paper documents that are sent through the U.S. Postal Service must be postmarked by the applicable deadline date.
- Paper documents that are hand delivered by a commercial courier must be received no later than 4:30 p.m. (Eastern time) on the applicable deadline date.

Proof of Mailing or Hand Delivery of Paper Documents

If you submit paper documents when permitted by mail or by hand delivery from a commercial courier, we accept as proof one of the following:

(1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(2) A legibly dated U.S. Postal Service postmark.

(3) A legibly dated shipping label, invoice, or receipt from a commercial courier.

(4) Other proof of mailing or delivery acceptable to the Secretary.

If the paper documents are sent through the U.S. Postal Service, we do not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. All institutions are encouraged to use certified or at least first-class mail.

The Department accepts hand deliveries from commercial couriers between 8 a.m. and 4:30 p.m., eastern time, Monday through Friday except Federal holidays.

Sources for Detailed Information on These Requests

A more detailed discussion of each request for funds or waiver is provided in a specific ''Dear Colleague'' letter, which is posted on the Department's IFAP Web site (*http://www.ifap.ed.gov*) at least 30 days before the established deadline date for the specific request. Information on these items is also found in the Federal Student Aid Handbook.

Applicable Regulations: The following regulations apply to these programs:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673.

(3) Federal Perkins Loan Program, 34 CFR part 674.

(4) Federal Work-Study Programs, 34 CFR part 675.

(5) Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 676.

(6) Institutional Eligibility under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(7) New Restrictions on Lobbying, 34 CFR part 82.

(8) Governmentwide Requirements for Drug-Free Workplace (Financial Assistance), 34 CFR part 84.

(9) Governmentwide Debarment and Suspension (Nonprocurement), 34 CFR part 85.

(10) Drug and Alcohol Abuse Prevention, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT: Sherlene McIntosh, Director of Campus-Based Systems and Operations Division, U.S. Department of Education, Federal Student Aid, 830 First Street, NE., Union Center Plaza, room 64A3, Washington, DC 20202–5453. Telephone: (202) 377–3242 or via the Internet: *sherlene.mcintosh@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*

Dated: March 27, 2007.

Theresa S. Shaw,

Chief Operating Officer Federal Student Aid.

[FR Doc. E7–5925 Filed 3–29–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Technical Assistance on Data Collection—General Supervision Enhancement Grants

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priorities.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes three funding priorities under the Technical Assistance on State Data Collection program. The Assistant Secretary may use these priorities for competitions in fiscal year (FY) 2007 and later years. We take this action to focus attention on an identified national need to provide technical assistance to improve the capacity of States to meet data collection requirements relating to their State academic assessment systems.

DATES: We must receive your comments on or before June 13, 2007.

ADDRESSES: Address all comments about these proposed priorities to Larry Wexler, U.S. Department of Education, 400 Maryland Avenue, SW., room 4053, Potomac Center Plaza, Washington, DC 20204–2700. If you prefer to send your comments through the Internet, use the following address: *larry.wexler@ed.gov.*

You must include the term ''Data Collection Priorities'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Larry Wexler. Telephone: (202) 245–7571.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed priorities. To ensure that your comments have maximum effect in developing the notice of final priorities, we urge you to identify clearly the specific proposed priority that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed priorities in room 4019, 550 12th Street, SW., Potomac Center Plaza, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking

record for these proposed priorities. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

We will announce the final priorities in a notice in the **Federal Register**. We will determine the final priorities after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use any of these proposed priorities, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive preference priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: The Secretary is proposing three separate funding priorities addressing data collected under Part B and Part C of the Individuals with Disabilities Education Act, as amended (IDEA). Although these are being proposed in one notice, we anticipate these priorities would be funded through separate competitions. Eligible entities must submit separate applications under each of the priorities for which they wish to apply.

Priorities

Background of Proposed Priority A—Modified Academic Achievement Standards

On December 15, 2005, the Secretary published a notice of proposed rulemaking in the **Federal Register** (70 FR 74624) requesting public comment on proposed regulations under the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001. The proposed regulations would provide States with flexibility regarding State, local educational agency (LEA), and school accountability for the achievement of a group of students with disabilities who can make significant progress, but may not reach grade-level achievement standards within the same time frame as other students.

The proposed regulations would permit States to develop modified academic achievement standards (and assessments that measure achievement based on those standards) that are aligned with grade-level content standards. States and LEAs would be permitted to include the proficient and advanced scores from assessments based on modified academic achievement standards in adequate yearly progress (AYP) determinations, subject to a cap of 2.0 percent at the district and State levels based on the total number of students in the grades assessed.

The Secretary anticipates issuing final regulations in the near future. We further anticipate that, once these regulations become effective, many States will need support in developing, enhancing, or redesigning their assessment systems to include assessments that are aligned with modified academic achievement standards.

Proposed Priority A—Modified Academic Achievement Standards

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for grants to support States with one or more of the following activities: (1) Development of modified academic achievement standards which must be based on the State's academic content standards for the grade in which a student is enrolled; (2) development of State assessments based on modified academic achievement standards; and (3) development of clear and appropriate guidelines for individualized education program (IEP) Teams to use in determining which students should be assessed based on modified academic achievement standards, and the development and implementation of training on those guidelines.

Assessments based on modified academic achievement standards must be designed to generate valid scores that can be used for AYP accountability purposes under the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB). These data also will be part of the data required by the Part B State Performance Plans and Annual Performance Reports on the performance and participation of children with disabilities on State assessments under section 616 of the Individuals With Disabilities Education Act.

Applicants must include information in their application on how they will work with experts in large-scale assessment and special education to ensure that they are designing modified academic achievement standards, and assessments based on those standards, that: (1) Address the needs of students with disabilities; (2) validly, reliably, and accurately measure student performance; and (3) result in high quality data for use in evaluating the performance of schools, districts, and States. The experts selected should represent the range of skills needed to develop assessments based on modified academic achievement standards for students with disabilities that will meet the peer review guidelines for assessments published by the Department in the spring of 2004 that are available at *http://www.ed.gov/policy/elsec/guid/saaprguidance.pdf*. Skill sets for experts must include experience with one or more of the following: (1) Large scale assessment; (2) standards-setting techniques; (3) assessment and measurement of children with disabilities; (4) accommodations and supports to assess grade-level content; (5) working with States to develop assessments; (6) development of criterion referenced tests and instruments; (7) psychometric evaluation; (8) conducting studies of the technical adequacy of assessment instruments; and (9) research and publishing in the area of assessment and psychometrics.

Projects funded under this priority also must—

(a) Budget to attend a three-day Project Directors' meeting;

(b) If the project maintains a Web site, include relevant information and documents in a format that meets a government or industry-recognized standard for accessibility; and

(c) Provide a written assurance that the State's Assessment Office (e.g., the office that addresses accountability under the ESEA, as amended by the NCLB) was given the opportunity to contribute to the formulation of the application.

Background of Proposed Priority B—Alternate Academic Achievement Standards

The Department's Title I regulations in 34 CFR part 200 regarding children with the most significant cognitive disabilities permit a State to develop alternate academic achievement standards for students with the most significant cognitive disabilities and to include those students' proficient and advanced scores on alternate assessments based on alternate

achievement standards in measuring adequate yearly progress (AYP) at the State and district levels, subject to a cap of 1.0 percent of the total number of students in the grades assessed. Alternate assessments based on alternate achievement standards, as permitted by the Title I regulations, also are recognized as an appropriate assessment method in section 612(a)(16) of the Individuals with Disabilities Education Act (IDEA).

Alternate assessments that are used by States and local educational agencies (LEAs) under Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), must be designed to generate valid data that can be used for purposes of determining AYP. Alternate assessments also must meet the requirements in 34 CFR 200.2 (State Responsibilities for Assessment) and 34 CFR 200.3 (Designing State Academic Assessment Systems), including the requirements relating to validity, reliability, and high technical quality; and fit coherently in the State's overall assessment system under 34 CFR 200.2. The alternate assessment must, among other things: (1) Be valid and reliable for the purposes for which the assessment system is used; (2) be consistent with relevant, nationally-recognized professional and technical standards; and (3) be supported by evidence from test publishers or other relevant sources that the assessment system is of adequate technical quality for each purpose required under the ESEA, as amended by NCLB. States must include alternate assessment data in their State Performance Plan and Annual Performance Reports relative to performance and participation of children with disabilities on State assessments under the IDEA.

The Department proposes the following priority because many States need assistance in: (1) Developing alternate academic achievement standards aligned with the State's academic content standards; (2) developing high-quality alternate assessments that measure the achievement of students with the most significant cognitive disabilities based on those standards; and (3) reporting on the participation and performance of students with disabilities on alternate assessments based on alternate academic achievement standards.

Proposed Priority B—Alternate Academic Achievement Standards

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for grants to support States with one or more of the following activities: (1) Develop alternate academic achievement standards aligned with the State's academic content standards; (2) develop high-quality alternate assessments that measure the achievement of students with the most significant cognitive disabilities based on those standards; and (3) report on the participation and performance of students with disabilities on alternate assessments based on alternate academic achievement standards.

Applicants must include information in their applications on how they will work with experts in large-scale assessment and special education to ensure that they are designing alternate academic achievement standards, and assessments based on those standards, that: (1) Address the needs of students with the most significant cognitive disabilities; (2) validly, reliably, and accurately measure student performance; and (3) result in high quality data for use in evaluating the performance of schools, districts, and States. The experts selected should represent the range of skills needed to develop assessments based on alternate academic achievement standards for students with the most significant cognitive disabilities that will meet the peer review guidelines for assessments published by the Department in the spring of 2004 that are available at *http://www.ed.gov/policy/elsec/guid/saaprguidance.pdf*. Skill sets for experts must include experience with one or more of the following: (1) Large scale assessment; (2) standards-setting techniques; (3) assessment and measurement of children with disabilities; (4) accommodations and supports to assess grade-level content; (5) working with States to develop assessments; (6) development of criterion-referenced tests and instruments; (7) psychometric evaluation; (8) conducting studies of the technical adequacy of assessment instruments; and (9) research and publishing in the area of assessment and psychometrics.

Projects funded under this priority also must—

(a) Budget to attend a three-day Project Directors' meeting;

(b) If the project maintains a Web site, include relevant information and documents in a format that meets a government or industry-recognized standard for accessibility; and

(c) Provide a written assurance that the State's Assessment Office (e.g., the office that addresses accountability under the ESEA, as amended by the NCLB) was given the opportunity to contribute to the formulation of the application.

Background of Proposed Priority C—Outcome Measures

The cornerstone of any accountability system is the development of outcome indicators against which progress can be measured. State performance reports, self-assessments, and other extant data show that most States and Lead Agencies as defined under Part C of the IDEA (Section 635(a)(10)), as well as their local educational agencies and Early Intervention Service programs, do not have well developed systems for measuring the progress of infants, toddlers, and young children with disabilities and their families served under Part B and Part C of IDEA or methods to collect and analyze Part B and Part C outcome indicator data. Therefore, most States lack the capacity to collect sufficient data to determine the impact of early intervention and special education services for these children.

Proposed Priority C—Outcome Measures

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for projects that address the needs of States for technical assistance to improve their capacity to meet Federal data collection requirements in one or both of two focus areas.

Focus Area One. This Focus Area supports the development or enhancement of Part B State systems for collecting, analyzing, and reporting preschool outcome indicator data. Projects funded under this Focus Area must focus on improving the capacity of the State to provide information that could be used to determine the following:

(a) The outcomes associated with preschool children with disabilities participating in State Part B programs.

(b) If the State has standards for preschool disability outcomes, whether preschool children with disabilities are meeting those standards.

(c) Trend data on outcomes associated with preschool children with disabilities and the extent to which preschool children with disabilities are meeting State standards.

Focus Area Two. This Focus Area supports the development or enhancement of Part C systems for collecting, analyzing, and reporting outcome indicator data. Projects funded under this Focus Area must focus on improving the capacity of the State to provide information that could be used to determine the following:

(a) The outcomes associated with infants and toddlers with disabilities and their families participating in State Part C programs.

(b) If the State has standards for early intervention outcomes, whether infants and toddlers with disabilities are meeting those standards.

(c) Trend data on outcomes associated with infants and toddlers with disabilities and their families and the extent to which infants and toddlers with disabilities are meeting State standards.

Projects funded under this priority also must—

(a) Budget to attend a three-day Project Directors' meeting;

(b) If the project maintains a Web site, include relevant information and documents in a format that meets a government or industry-recognized standard for accessibility; and

(c) Provide a written assurance that the State's Assessment Office (e.g., the office that addresses accountability under the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001) was given the opportunity to contribute to the formulation of the application.

Executive Order 12866

This notice of proposed priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this regulatory action are those resulting from statutory and regulatory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits of the proposed regulatory action justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.htm*

(Catalog of Federal Domestic Assistance Number 84.373X Technical Assistance on Data Collection—IDEA General Supervision Enhancement Grant)

Program Authority: 20 U.S.C. 1411(c) and 1416(i)(2).

Dated: March 26, 2007.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–5930 Filed 3–29–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records—Impact Evaluation of Mandatory-Random Student Drug Testing

AGENCY: Institute of Education Sciences, Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) publishes this notice of a new system of records entitled ''Impact Evaluation of Mandatory-Random Student Drug Testing'' (18–13–16). This evaluation was commissioned by the National Center for Education Evaluation and Regional Assistance at the Department's Institute of Education Sciences (IES). It will be conducted under a contract that was awarded by IES in July 2005. IES has been collaborating with the Department's Office of Safe and Drug-Free Schools (OSDFS) to coordinate the study of mandatory-random drug testing interventions in schools.

The study will address the following questions:

(1) Do high school students who are subject to mandatory-random drug testing (e.g., athletes, participants in competitive extra-curricular activities, etc.) report less use of tobacco, alcohol, and illicit substances compared to comparable students in high schools without mandatory-random drug testing policies?

(2) Do students in high schools with mandatory-random drug testing policies, but who are not subject to such testing (e.g., non-athletes, students who do not participate in competitive extra-curricular activities, etc.), report less use of tobacco, alcohol, and illicit substances compared to comparable students in high schools without mandatory-random drug testing policies?

The system will contain information about two cohorts of approximately 200 high school students in each of (i) 26 high schools operating the mandatory-random drug testing program, and (ii) 26 high schools that will not operate the program but that will serve as control high schools for the purposes of this evaluation. The total number of high school students included in this system of records will be approximately 10,400 for each of school years 2006–07 and 2007–08. The 52 participating high schools will be from school districts that are recipients of the Mandatory-Random Drug Testing Program grants that were announced in September 2006 by OSDFS. The system of records will include information about the high school students participating in the evaluation, including the students' names; addresses; demographic information such as race/ethnicity, gender, age, educational background; and attitudes and beliefs concerning substance use, and substance use itself.

DATES: The Department seeks comment on the new system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments on the proposed routine uses for the system of records referenced in this notice on or before April 30, 2007.

The Department filed a report describing the new system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Oversight and Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget

(OMB) on March 27, 2007. This system of records will become effective at the later date of—(1) the expiration of the 40-day period for OMB review on May 7, 2007 or (2) April 30, 2007, unless the system of records needs to be changed as a result of public comment or OMB review.

ADDRESSES: Address all comments about the proposed routine uses to Dr. Ricky Takai, Director, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502D, Washington, DC 20208. *Telephone:* (202) 208–7083. If you prefer to send comments through the Internet, use the following address: *comments@ed.gov.*

You must include the term ''Impact Evaluation of Mandatory-Random Student Drug Testing'' in the subject line of the electronic message.

During and after the comment period, you may inspect all comments about this notice in room 502D, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. Ricky Takai. *Telephone:* (202) 208–7083. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act (5 U.S.C. 552a) requires the Department to publish in the **Federal Register** this notice of a new system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in part 5b of title 34 of the Code of Federal Regulations (CFR).

The Privacy Act applies to information about individuals that contains individually identifiable information and that is retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a ''record,'' and the system, whether manual or computer-based, is called a ''system of records.'' The Privacy Act requires each agency to publish notices of systems of records in the **Federal Register** and to prepare reports to the OMB and Congress whenever the agency publishes a new system of records. Each agency is also required to send copies of the report to the Chair of the Senate Committee on Homeland Security and Governmental Affairs and the Chair of the House Committee on Oversight and Government Reform. These reports are intended to permit an evaluation of the probable effect of the proposal on the privacy rights of individuals.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: March 27, 2007.

Grover Whitehurst,

Director, Institute of Education Sciences.

For the reasons discussed in the preamble, the Director of the Institute of Education Sciences, U.S. Department of Education, publishes a notice of a new system of records to read as follows:

18–13–16

SYSTEM NAME:

Impact Evaluation of Mandatory-Random Student Drug Testing.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

(1) Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502D, Washington, DC 20208.

(2) RMC Research Corporation, 111 SW Columbia Street, Suite 1200, Portland, OR 97201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on high school students attending a high school in school districts that receive grants for School-Based Student Drug-Testing Programs. The goal of this study is to determine if students in high schools with mandatory-random drug testing policies report less use of tobacco, alcohol, and illicit substances compared to comparable students in high schools without mandatory-random student drug testing policies.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system will contain information about two cohorts of approximately 200 high school students each of (i) 26 high schools operating the mandatory-random drug testing program, and (ii) 26 high schools that will not operate the program but that will serve as control high schools for this evaluation. The total number of high school students included in this system of records will be approximately 10,400 for each of school years 2006–07 and 2007–08. The 52 participating high schools will be from school districts that are recipients of the grants for School-Based Student Drug-Testing Programs that were announced in September, 2006 by OSDFS. The system of records will include information about the high school students participating in the evaluation, including the students' names; addresses; demographic information such as race/ethnicity, gender, age, educational background; and attitudes and beliefs concerning substance use, and substance use itself.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The evaluation being conducted is authorized under sections 171(b) and 173 of the Education Sciences Reform Act of 2002 (ESRA) (20 U.S.C. 9561(b) and 9563). The grants for School-Based Student Drug-Testing Programs are authorized under section 4121 of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 7131).

PURPOSE(S):

The information in this system is used for the following purposes: To study the

impact of mandatory-random drug testing policies in high schools and to determine if mandatory-random drug testing policies result in less reported use of tobacco, alcohol, and illicit substances among a group of students in participating high schools compared to a comparable group of students in high schools that do not operate a mandatory-random drug testing program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act, under a computer matching agreement. Any disclosure of individually identifiable information from a record in this system must also comply with the requirements of section 183 of the ESRA (20 U.S.C. 9573) providing for confidentiality standards that apply to all collections, reporting, and publication of data by IES.

Contract Disclosure. If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department shall require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable to this system notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Department maintains records on CD-ROM, and the contractor and subcontractor maintain data for this system on computers and in hard copy.

RETRIEVABILITY:

Records in this system are indexed by a number assigned to each individual that is cross referenced by the individual's name on a separate list.

SAFEGUARDS:

All physical access to the Department's site and to the sites of the Department's contractor and subcontractor, where this system of records is maintained, is controlled and monitored by security personnel. The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a ''need to know'' basis, and controls individual users' ability to access and alter records within the system. The contractor and subcontractor will establish similar sets of procedures at their sites to ensure confidentiality of data. Their systems are required to ensure that information identifying individuals is in files physically separated from other research data. The contractor and subcontractor will maintain security of the complete set of all master data files and documentation. Access to individually identifiable data will be strictly controlled. At each site all data will be kept in locked file cabinets during nonworking hours, and work on hardcopy data will take place in a single room, except for data entry. Physical security of electronic data will also be maintained. *Security features that protect project data include:* password-protected accounts that authorize users to use the contractor's and subcontractor's systems but to access only specific network directories and network software; user rights and directory and file attributes that limit those who can use particular directories and files and determine how they can use them; e-mail passwords that authorize the user to access mail services; and additional security features that the network administrators will establish for projects as needed. The contractor and subcontractor employees who ''maintain'' (collect, maintain, use, or disseminate) data in this system shall comply with the requirements of the confidentiality standards in section 183 of the ESRA (20 U.S.C. 9573).

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the Department's Records Disposition Schedules (Section Ed/RDS, Part 3, Item 2b and Part 3, Item 5a).

SYSTEM MANAGER AND ADDRESS:

Director, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502D, Washington, DC 20208.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the systems manager. Your request must meet the requirements of regulations at 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURE:

If you wish to gain access to your record in the system of records, contact the system manager. Your request must meet the requirements of regulations at 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURE:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.7, including proof of identity.

RECORD SOURCE CATEGORIES:

The system will contain information about two cohorts of approximately 200 high school students each of (i) 26 high schools operating the mandatory-random drug testing program and (ii) 26 high schools that will not operate the program but that will serve as control high schools for this evaluation. The total number of high school students included in this system of records will be approximately 10,400 in each of school years 2006–07 and 2007–08. The 52 participating high schools will be from school districts that are recipients of the grants for School-Based Student Drug-Testing Programs that were announced in 2006 by OSDFS.

The system of records will include information about the high school students participating in the evaluation including the students' names; addresses; demographic information such as race/ethnicity, gender, age, and educational background; and attitudes and beliefs concerning substance use, and substance use itself.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–5933 Filed 3–29–07; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this

notice announces the U.S. Election Assistance Commission's (EAC) intention to request an extension and revision of a currently approved collection. The information collection was previously published in the **Federal Register** on January 24, 2007, at 72 FR 3127. The notice allowed for a 60-day public comment period. No comments were received on this information collection. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until April 27, 2007. This process is conducted in accordance with 5 CFR 1320.10. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments must be submitted on or before April 27, 2007.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to *OMB Reviewer:* Alexander T. Hunt, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call Mr. Brian Hancock at (202) 566–3100.

SUPPLEMENTARY INFORMATION:

Title: EAC Voting System Testing and Certification Program Manual.

OMB Number: 3265–0004.

Type of Review: Extension with change of a currently approved collection.

Needs and Uses: HAVA requires that the EAC certify and decertify voting systems (42 U.S.C. 15371). Section 231(a)(1) of HAVA specifically requires the EAC to ''* * * provide for the certification, decertification and recertification of voting system hardware and software by accredited laboratories.'' The EAC will perform this mandated function through the use of its Voting System Testing and Certification Program. Voting systems certified by the EAC will be used by citizens to cast votes in Federal Elections. Therefore, it is paramount that the program operates in a reliable and effective manner. In order to certify a voting system, it is necessary for the EAC to (1) Require voting system manufacturers to submit information about their organization and the voting systems they submit for testing and certification; (2) require voting system manufacturers to retain voting system technical and test records; and (3) to provide a mechanism for election officials to report events which may effect a voting system's certification.

Affected Public: Business or other for-profit institutions and state and local election officials.

Estimated Number of Respondents: 94 annually.

Total Annual Responses: 99 annually.

Estimated Total Annual Burden Hours: 119 hours.

Donetta L. Davidson,

Chair, U.S. Election Assistance Commission.

[FR Doc. 07–1556 Filed 3–29–07; 8:45 am]

BILLING CODE 6820–KF–M

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: United States Election Assistance Commission.

ACTION: Notice of Public Teleconference Meetings for the Working Subcommittees of the Technical Guidelines Development Committee.

DATES AND TIMES:

Tuesday, April 3, 2007 at 10:30 a.m. ET.
Thursday, April 5 at 11 a.m. ET.
Thursday, April 5 at 1 p.m. ET.
Tuesday, April 10, 2007 at 10:30 a.m. ET.
Thursday, April 12 at 11 a.m. ET.
Friday, April 13 at 11 a.m. ET.
Tuesday, April 17, 2007 at 10:30 a.m. ET.
Thursday, April 19 at 11 a.m. ET.
Friday, April 20 at 11 a.m. ET.
Tuesday, April 24, 2007 at 10:30 a.m. ET.
Thursday, April 26 at 11 a.m. ET.
Thursday, April 26 at 1 p.m. ET.
Tuesday, May 1, 2007 at 10:30 a.m. ET.
Thursday, May 3 at 11 a.m. ET.
Friday, May 4 at 11 a.m. ET.
Tuesday, May 8, 2007 at 10:30 a.m. ET.
Thursday, May 10 at 11 a.m. ET.
Friday, May 11 at 11 a.m. ET.
Tuesday, May 15, 2007 at 10:30 a.m. ET.
Thursday, May 17 at 11 a.m. ET.
Friday, May 18 at 11 a.m. ET.
Tuesday, May 22, 2007 at 10:30 a.m. ET.
Friday, May 25 at 11 a.m. ET.

STATUS: Audio recordings of working subcommittee teleconferences are available upon conclusion of each meeting at: *http://vote.nist.gov/subcomm_mtgs.htm.* Agendas for each teleconference will be posted one week in advance of each meeting at the above Web site.

SUMMARY: The Technical Guidelines Development Committee (the ''Development Committee'') was established to act in the public interest to assist the Executive Director of the U.S. Election Assistance Commission (EAC) in the development of voluntary voting system guidelines. The Committee held their first plenary meeting on July 9, 2004. At this meeting, the Development Committee agreed to a resolution forming three working groups: (1) Human Factors & Privacy; (2) Security & Transparency; and (3) Core Requirements & Testing to gather and analyze information on relevant issues. These working subcommittees propose resolutions to the TGDC on best practices, specifications and standards. Specifically, NIST staff and Committee members will meet via the above scheduled teleconferences to review and discuss progress on tasks defined in resolutions passed at Development Committee plenary meetings. The resolutions define technical work tasks for NIST that will assist the Committee in developing recommendations for voluntary voting system guidelines. The Committee met in its eighth plenary session on March 22–23, 2007. Documents and transcriptions of Committee proceedings are available at: *http://vote.nist.gov/PublicHearingsandMeeting.html.*

SUPPLEMENTARY INFORMATION: The Technical Guidelines Development Committee (the ''Development Committee'') was established pursuant to 42 U.S.C. 15361, to act in the public interest to assist the Executive Director of the Election Assistance Commission in the development of the voluntary voting system guidelines. The information gathered and analyzed by the working subcommittees during their teleconference meetings will be reviewed at future Development Committee plenary meetings.

FOR FURTHER INFORMATION CONTACT: Allan Eustis 301–975–5099. If a member of the public would like to submit written comments concerning the Committee's affairs at any time before or after subcommittee teleconference meetings, written comments should be

addressed to the contact person indicated above, or to *voting@nist.gov.*

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. 07–1609 Filed 3–28–07; 2:07 pm]

BILLING CODE 6820–KF–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

March 26, 2007.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC07–70–000.

Applicants: Calcasieu Power, LLC; Entergy Gulf States, Inc.

Description: Calcasieu Power, LLC and Entergy Gulf States, Inc. submit a Joint application for order authorizing the acquisition and disposition of jurisdictional assets under section 203 of the FPA.

Filed Date: 03/15/2007.

Accession Number: 20070326–0041.

Comment Date: 5 p.m. Eastern Time on Monday, April 30, 2007.

Docket Numbers: EC07–72–000.

Applicants: Brookfield Asset Management Inc.; Horizon Acquisition Co; Longview Fibre Company.

Description: Brookfield Asset Management, Inc. et al. submit an application for authorization under Section 203(a)(2) of the Federal Act.

Filed Date: 03/22/2007.

Accession Number: 20070323–0183

Comment Date: 5 p.m. Eastern Time on Thursday, April 12, 2007.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG07–43–000.

Applicants: Sleeping Bear, LLC.

Description: Sleeping Bear, LLC submits its notice of self-certification for a qualifying facility.

Filed Date: 03/22/2007.

Accession Number: 20070322–5021.

Comment Date: 5 p.m. Eastern Time on Thursday, April 12, 2007.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER06–615–006.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corp submits its Ancillary Service Sub-Regions, and Reliability Must-Run resources & market resources in compliance with FERC's 9/21/06 Order.

Filed Date: 03/20/2007.

Accession Number: 20070323–0181.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 10, 2007.

Docket Numbers: ER06–1474–003.

Applicants: PJM Interconnection LLC.

Description: PJM Interconnection, LLC submits a compliance filing providing additional information and amendments to the Amended and Restated Operating Agreement.

Filed Date: 03/21/2007.

Accession Number: 20070323–0186.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 11, 2007.

Docket Numbers: ER07–95–003.

Applicants: Michigan Electric Transmission Company, LLC; Midwest Independent Transmission System, Inc.

Description: Michigan Electric Transmission Company, LLC et al. submit revised tariff sheets, Substitute Original Sheet 1365Z.16A et al. to FERC Electric Tariff, Third Revised Vol 1, compliance with Commission's 2/21/07 Order.

Filed Date: 03/23/2007.

Accession Number: 20070326–0017.

Comment Date: 5 p.m. Eastern Time on Friday, April 13, 2007.

Docket Numbers: ER07–318–001.

Applicants: National Grid.

Description: Niagara Mohawk Power Corp dba National Grid submits an amendment to its 12/13/06 filing of an Original Service Agreement with New Athens Generating Co, LLC.

Filed Date: 03/21/2007.

Accession Number: 20070323–0182.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 11, 2007.

Docket Numbers: ER07–365–001.

Applicants: ISO New England Inc.; New England Power Pool Participants Committee.

Description: ISO New England and the New England Power Pool Participants Committee submit a joint compliance filing re revisions to Market Rule 1 relating to the Methodology for Calculating Installed Capacity Requirements.

Filed Date: 03/20/2007.

Accession Number: 20070323–0180.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 10, 2007.

Docket Numbers: ER07–482–001.

Applicants: Xcel Energy Services Inc.

Description: Xcel Energy Services Inc, agent for Northern States Power Co et al. submits an errata to its 1/30/07 filing.

Filed Date: 03/21/2007.

Accession Number: 20070323–0185.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 11, 2007.

Docket Numbers: ER07–636–000; ER07–637–000.

Applicants: Calcasieu Power, LLC; Entergy Gulf States, Inc.

Description: Calcasieu Power, LLC submits a notice of termination of rate schedule and Tariff.

Filed Date: 03/15/2007.

Accession Number: 20070326–0041.

Comment Date: 5 p.m. Eastern Time on Thursday, April 05, 2007.

Docket Numbers: ER07–643–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits eight executed Meter Agent Services Agreements with American Electric Power and various participants.

Filed Date: 03/21/2007.

Accession Number: 20070323–0179.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 11, 2007.

Docket Numbers: ER07–644–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc submits proposed revisions to its Market Administration and Control Area Services Tariff.

Filed Date: 03/21/2007.

Accession Number: 20070323–0184.

Comment Date: 5 p.m. Eastern Time on Wednesday, April 11, 2007.

Docket Numbers: ER07–645–000.

Applicants: Sleeping Bear, LLC.

Description: Sleeping Bear LLC submits a petition for order accepting market-based rate tariff for filing and granting waivers and blanket approvals.

Filed Date: 03/22/2007.

Accession Number: 20070326–0018.

Comment Date: 5 p.m. Eastern Time on Thursday, April 12, 2007.

Docket Numbers: ER07–646–000.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Company submits an executed transmission Interconnection Agreement with Southwest Transmission Cooperative, Inc.

Filed Date: 03/23/2007.

Accession Number: 20070326–0015.

Comment Date: 5 p.m. Eastern Time on Friday, April 13, 2007.

Docket Numbers: ER07–647–000.

Applicants: PJM Interconnection, LLC.

Description: PJM Interconnection, LLC submits an executed construction service agreement with Camp Grove Wind Farm, LLC and Commonwealth Edison Co.

Filed Date: 03/22/2007.

Accession Number: 20070326–0020.

Comment Date: 5 p.m. Eastern Time on Thursday, April 12, 2007.

Docket Numbers: ER07–648–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corporation submits a proposed amendment to Section 40.5.2.2 of the ISO tariff.

Filed Date: 03/22/2007.

Accession Number: 20070326–0019.

Comment Date: 5 p.m. Eastern Time on Thursday, April 12, 2007.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St, NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Philis J. Posey,

Acting Secretary.

[FR Doc. E7–5888 Filed 3–29–07; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6685–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 7, 2006 (71 FR 17845).

Draft EISs

EIS No. 20060300, ERP No. D–AFS–J65469–CO, White River National Forest Travel Management Plan, To Accommodate and Balance Transportation Needs, Implementation, Eagle, Garfield, Gunnison, Mesa, Moffat, Pitkin, Rio Blanco, Routt and Summit Counties, CO.

Summary: EPA expressed environmental concerns about the potential for adverse impacts to water quality from non-system roads and from roads needing repair or maintenance. The final EIS should address the strategy for implementing effective enforcement and compliance with new road designations and restrictions, as well as repairing and maintaining existing roads.

Rating EC2.

EIS No. 20060501, ERP No. D–BLM–K65323–00, Yuma Field Office (YFO) Resource Management Plan, Provide Direction Managing Public Lands, Implementation, Yuma, La Paz and Maricopa Counties, AZ and Imperial and Riverside Counties, CA.

Summary: EPA expressed environmental concerns about air quality impacts from off-highway vehicles and requested clarification on the Travel Management Network, and recommends restricting OHV usage and implementing other mitigation measures.

Rating EC2.

EIS No. 20070007, ERP No. D–NPS–G65103–NM, Bandelier National Monument, Ecological Restoration Plan, Reestablish Healthy, Sustainable Vegetative Conditions within the Pinon-Juniper Woodland, Los Alamos and Sandoval Counties, NM.

Summary: EPA does not object to the preferred action.

Rating LO.

EIS No. 20070015, ERP No. D–CDB–C80016–NY, East River Waterfront Esplanade and Piers Project, Revitalization, Connecting Whitehall Ferry Terminal and Peter Minuit Plaza to East River Park, Funding New York, NY.

Summary: EPA expressed environmental concerns about traffic and related air quality impacts.

Rating EC2.

EIS No. 20070016, ERP No. D–COE–F36167–OH, Dover Dam Safety Assurance Program Project, Modifications and Upgrades, Funding, Muskingum River Basin, Tscarawas County, OH.

Summary: EPA expressed environmental concerns about the proposed approach to remediate potential hazardous wastes that may be present in the project area, and recommended that a detailed evaluation and remediation plan be developed and included in the Final EIS to support the proposed approach.

Rating EC2.

EIS No. 20070025, ERP No. D–AFS–L65531–OR, Invasive Plant Treatments within the Deschutes and Ochoco National Forests and the Crooked River National Grassland, Reduction of Invasive Plant Infestation and Protection of Uninfested Areas, Implementation, Several Cos. OR.

Summary: EPA expressed environmental concerns about potential adverse impacts to water quality from both herbicides and sediment. The final EIS should include information about aquatic invasive plant infestations and how these would be treated to prevent deterioration of water quality.

Rating EC1.

EIS No. 20070026, ERP No. D–FRC–G03033–LA, Kinder Morgan Louisiana Pipeline Project, Natural Gas Pipeline Facilities, Construction and Operation, U.S. Army COE Section 10 and 404 Permits, Evangeline, Cameron, and Acadia Parishes, LA.

Summary: EPA does not object to the preferred actions as described in the DEIS.

Rating LO.

Final EISs

EIS No. 20060459, ERP No. F–NPS–J61108–SD, Badlands National Park/North Unit General Management Plan, Implementation, Jackson, Pennington and Shananon Counties, SD.

Summary: The final EIS addressed EPA's concerns about impacts on water quality and riparian habitat; however, we continue to have concerns about the downward trend in air quality, which is believed to be due to human-caused sources and fires within and outside of the Park. EPA encourages the NPS to continue taking actions to mitigate these sources of air pollution in and around the Park.

EIS No. 20060470, ERP No. F–FHW–J40170–CO, I–25 Valley Highway Project, Transportation Improvement from Logan to U.S. 6, Denver County, CO.

Summary: EPA does not object to the proposed project.

EIS No. 20070012, ERP No. F–FHW–K40258–CA, Campus Parkway Project, Construction of a New Expressway from Mission Avenue Interchange to Yosemite Avenue/Lake Road, U.S. Army COE Section 404 Permit, City of Merced, Merced County, CA.

Summary: EPA expressed environmental concerns about potential indirect and cumulative impacts associated with induced growth.

EIS No. 20070022, ERP No. F–AFS–F65062–MN, Echo Trail Area Forest Management Project, Forest Vegetation Management and Related Transportation System, Superior National Forest Land and Resource Management Plan, Implementation, Lacroix Ranger District and Kawishiwi Ranger District, St. Louis and Lake Counties, MN.

Summary: The final EIS addressed previous concerns regarding mitigation for impacts to water quality and operational maintenance of logging equipment; therefore, EPA does not object to the proposed action.

EIS No. 20070037, ERP No. F–FHW–J40165–MT, U.S. Highway 89, Improvements, from Browning to Hudson Bay Divide, Endangered Species Act, NPDES Permit and U.S. Army COE Section 404 Permit, Glacier County, MT.

Summary: EPA expressed environmental concerns about impacts to water quality, wetlands, and aquatic habitat, as well as impacts to wildlife and wildlife movement.

EIS No. 20070040, ERP No. F–DOD–A10076–00, Programmatic—Missile Defense Agency, To Incrementally Develop, Test, Deploy, and Plan for Decommissioning of the Ballistic Missile Defense System (BMDS).

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20070043, ERP No. F–AFS–K65302–CA, Commercial Park Stock Permit Reissuance for the Sierra National Forest and Trail Management Plan for the Dinkey Lakes Wilderness, Application Reissuance Special-Use-Permit, Mariposa, Madera and Fresno Counties, CA.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20070086, ERP No. F–USA–D15000–VA, Fort Lee, Virginia and Fort A.P. Hill, Virginia Project, Implementation of Base Closure and Realignment (BRAC) Recommendations and Other Army Actions, Prince George County, Petersburg, Virginia Hopewell, Virginia; Caroline County, Essex County, VA.

Summary: The Final EIS adequately addressed EPA's comments; therefore, EPA does not object to the proposed project.

Dated: March 27, 2007.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E7–5905 Filed 3–29–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6685–4]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 03/19/2007 through 03/23/2007

Pursuant to 40 CFR 1506.9.

EIS No. 20070108, Final EIS, AFS, AK, Scratchings Timber Sale Project, Timber Harvest up to Approximately 42 Million Board Feet, Suemez Island, Craig Ranger District, Tongass National Forest, AK, Wait Period Ends: 04/30/2007, Contact: Dennis Sylvia 907–826–3271.

EIS No. 20070109, Draft EIS, NGB, MS, Camp Shelby Joint Force Training Center, Implementation of Installation Mission Support Activities, Renewal of Special Use Permit, DeSoto National Forest, in portions of Forrest, George and Perry Counties, MS, Comment Period Ends: 05/14/2007, Contact: Alisa Dickson 703–607–9620.

EIS No. 20070110, Final EIS, FHW, MN, Trunk Highway 23 Improvements Project, From 0.25 Miles West of CSAH 6 in Kandiyohi County to 0.3 Miles Southwest of CSAH 123 Stearns County, City of Paynesville, Kandiyohi and Stearns Counties, MN, Wait Period Ends: 04/30/2007, Contact: Cheryl Martin 651–291–6120.

EIS No. 20070111, Draft EIS, HUD, WA, Westpark Redevelopment Master Plan, Redevelop of 82-acre Site to create a Mixed-Use, Mixed-Income Pedestrian Oriented Urban Community, Funding and U.S. Army COE Section 10 Permit, City of Bremerton, Kitsap County, WA, Comment Period Ends: 05/14/2007, Contact: Andrea Spencer 360–473–5283.

EIS No. 20070112, Draft Supplement, SFW, CA, Coachella Valley, Revision to the Multiple Species Habitat Conservation Plan (MSHCP), Natural Community Conservation Plan, Santa Rosa and San Jacinto Mountains Trails Plan, Issuance of Incidental Take Permit, Riverside County, CA, Comment Period Ends: 05/29/2007, Contact: Therese O'Rourke 760–431–9440.

EIS No. 20070113, Draft Supplement, TVA, TN, Watts Bar Nuclear Plant Unit 2, Completion and Operation, Updated Information on Extensive Environmental Record, Rhea County, TN, Comment Period Ends: 05/14/2007, Contact: Ruth M. Horton 865–632–3719.

EIS No. 20070114, Draft EIS, USA, NM, Cannon Air Force Base (AFB), Proposal to Beddown, or Locate Air Force Special Operations Command (AFSOC), Implementation, Base Realignment and Closure (BRAC), NM, Comment Period Ends: 05/14/2007, Contact: Carl Hoffman 850–884–5984.

EIS No. 20070115, Draft EIS, FAA, FL, Fort Lauderdale-Hollywood International Airport, Proposed Development and Extension of Runway 9R/27L and other Associated Airport Projects, Funding, U.S. Army COE Section 404 Permit and NPDES Permit, Fort Lauderdale, Broward County, FL, Comment Period Ends: 05/14/2007, Contact: Virginia Lane 407–812–6331 Ext. 129.

EIS No. 20070116, Draft EIS, AFS, 00, Norwood Project, Proposes to

Implement Multiple Resource Management Actions, Black Hills National Forest , Hell Canyon Ranger District, Pennington County, SD and Weston and Crook Counties, WY, Comment Period Ends: 05/14/2007, Contact: Michael Lloyd 605–673–4853.

EIS No. 20070117, Final EIS, AFS, PA, Allegheny National Forest, Proposed Revised Land and Resource Management Plan, Preferred Alternative is Cm, Implementation, Elk, Forest, McKean and Warren Counties, PA, Wait Period Ends: 04/30/2007, Contact: William Connelly 814–723–5150.

EIS No. 20070118, Final EIS, IBR, CA, Folsom Dam Safety and Flood Damage Reduction Project, Addressing Hydrologic, Seismic, Static, and Flood Management Issues, Sacramento, El Dorado and Placer Counties, CA, Wait Period Ends: 04/30/2007, Contact: Shawn Oliver 916–989–7256.

EIS No. 20070119, Draft EIS, NOA, AK, Programmatic—Outer Continental Shelf Seismic Surveys in the Beaufort and Chukchi Seas, Proposed Offshore Oil and Gas Seismic Survey, AK, Comment Period Ends: 05/14/2007, Contact: William T. Hogarth 301–713–1632.

EIS No. 20070120, Draft EIS, FRC, SC, Santee Cooper Hydroelectric Project (FERC. No. 199), Relicensing for Existing 130-megawatt (MW), Santee and Cooper Rivers, Berkeley, Calhoun, Clarendon, Orangeburg and Sumter Counties, SC, Comment Period Ends: 05/29/2007, Contact: Monte J. TerHaar 202–502–6035.

EIS No. 20070121, Draft EIS, FHW, UT, Hyde Park/North Logan Corridor Project, Proposed 200 East Transportation Corridor between North Logan City and Hyde Park, Funding, Right-of-Way Acquisitions and U.S. Army COE Section 404 Permit, Cache County, UT, Comment Period Ends: 05/25/2007, Contact: Edward T. Woolford 801–963–0078 Ext 235.

EIS No. 20070122, Draft EIS, BLM, 00, Overland Pass Natural Gas Liquids Pipeline Project (OPP), Construction and Operation of 760 Mile Natural Gas Liquids Pipeline, Right-of-Way Grant, KS, WY and CO, Comment Period Ends: 05/14/2007, Contact: Tom Hurshman 970–240–5345

EIS No. 20070123, Draft EIS, IBR, CA, North Sonoma County Agricultural Reuse Project, Construct and Operate a Recycled Water to Agricultural Lands, Sonona County, CA, Comment Period Ends: 05/29/2007, Contact: Douglas Kleinsmith 916–978–5034.

EIS No. 20070124, Draft EIS, FHW, NY, NY–112 Reconstruction Project, From I–495 to NY–25 Improve Safety and Mobility, Town of Brookhaven, Suffolk County, NY, Comment Period Ends: 05/19/2007, Contact: Robert Arnold 518–431–4127.

EIS No. 20070125, Final EIS, NPS, AZ, Walnut Canyon National Monument, General Management Plan, Implementation, Flagstaff Area, Coconina County, AZ, Wait Period Ends: 04/30/2007, Contact: Sam Henderson 520–526–1157 Ext 227.

Dated: March 27, 2007.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E7–5903 Filed 3–29–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8293–9]

National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a meeting of the National Advisory Committee (NAC) and Governmental Advisory Committee (GAC) to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC). The National and Governmental Advisory Committees advise the EPA Administrator in his capacity as the U.S. Representative to the CEC Council. The Committees are authorized under Articles 17 and 18 of the North American Agreement on Environmental Cooperation (NAAEC), North American Free Trade Agreement Implementation Act, Public Law 103–182, and as directed by Executive Order 12915, entitled ''Federal Implementation of the North American Agreement on Environmental Cooperation.'' The NAC is composed of 12 members representing academia, environmental non-governmental organizations, and private industry. The GAC consists of 12 members representing state, local, and tribal governments. The Committees are responsible for providing advice to the U.S. Representative on a wide range of strategic, scientific, technological, regulatory, and economic issues related to implementation and further elaboration of the NAAEC. The purpose of the meeting is to formulate recommendations on how to make the work of the CEC more relevant and valuable to U.S. stakeholders. The committees will also provide advice on U.S. priorities for the CEC Council Session in June 2007. A copy of the agenda for the meeting will be posted at *http://www.epa.gov/ocem/nacgac-page.htm.*

DATES: The National and Governmental Advisory Committees will hold a two day open meeting on Wednesday, April 18, from 8:30 a.m. to 6 p.m. and Thursday, April 19, from 8:30 a.m. to 2:30 p.m.

ADDRESSES: The meeting will be held at the Hilton Alexandria Mark Center, 5000 Seminary Road, Alexandria, Virginia 22311. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Oscar Carrillo, Designated Federal Officer, *carrillo.oscar@epa.gov*, 202–233–0072, U.S. EPA, Office of Cooperative Environmental Management (1601E), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make oral comments or provide written comments to the Committees should be sent to Oscar Carrillo, Designated Federal Officer, at the contact information above.

Meeting Access: For information on access or services for individuals with disabilities, please contact Oscar Carrillo at 202–233–0072 or *carrillo.oscar@epa.gov.* To request accommodation of a disability, please contact Oscar Carrillo, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: March 21, 2007.

Oscar Carrillo,

Designated Federal Officer.

[FR Doc. E7–5924 Filed 3–29–07; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Friday, April 6, 2007, 10 a.m. Eastern Time.

PLACE: Clarence M. Mitchell, Jr. Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, NW., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes, and

2. FY 2007 Budget Allocations for the State and Local Program.

Note: In accordance with the Sunshine Act, the meeting will be open to public observation of the Commission's deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings. The EEOC provides sign language interpretation at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice and TTY numbers listed above.

FOR FURTHER INFORMATION CONTACT: Stephen Llewellyn, Acting Executive Officer, on (202) 663–4070.

Dated: March 28, 2007.

Stephen Llewellyn,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 07–1607 Filed 3–28–07; 12:36 pm]

BILLING CODE 6570–06–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting: Vaccine Safety Evaluation: Post-Marketing Surveillance

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: The National Vaccine Program Office is hereby giving notice that, in conjunction with the National Institutes of Health, the Food and Drug Administration, the Centers for Disease Control and Prevention, and the Health Resources and Services Administration, is hosting a 2-day meeting titled: Vaccine Safety Evaluation: Post-marketing Surveillance. The meeting is open to the public.

DATES: The meeting will be held on April 10, 2007, from 9 a.m. to 6 p.m., and on April 11, 2007, from 9 a.m. to 5 p.m.

ADDRESS: National Institutes of Health, 9000 Rockville Pike, Natcher Auditorium—Building 45, Bethesda, Maryland 20892.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth Bart, National Vaccine Program Office, Department of Health and Human Services, Room 443–H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; (202) 690–5566, *Kenneth.bart@hhs.gov*.

SUPPLEMENTARY INFORMATION: The principal theme of the meeting is, ''What should an ideal post-licensure vaccine safety system be?'' As part of a continuing effort to maximize the safety of vaccines, the meeting will review what the United States is currently doing in post-marketing surveillance of vaccine safety and their strengths and weaknesses. In addition, with the participation of international experts, we expect to learn about what has worked in other countries, new methodologies that are being experimented with, and areas where new research could be directed.

Public attendance at the meeting is limited to space available. Individuals must provide a photo ID for entry onto the National Institutes of Health (NIH) campus. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person. Members of the public will have the opportunity to provide comments at the meeting. Public comment will be limited to five minutes per speaker. Any members of the public who wish to have printed material distributed to meeting attendees should submit materials to the contact person listed above prior to close of business April 2, 2007. Additionally, should you wish to make a brief presentation, please contact Dr. Kenneth Bart using the contact information provided above.

Due to security measures at the NIH campus, pre-registration will greatly ease entrance onto the campus. Any individual who wish to attend the meeting should submit that request via e-mail to *nvpo-meetings@constellagroup.com*. Please note that registration must be completed by close of business on April 2, 2007.

Additional information, including a draft agenda, can be found at: *http://www.hhs.gov/nvpo*.

Dated: March 27, 2007.

Bruce Gellin,

Director, National Vaccine Program Office.

[FR Doc. E7–5917 Filed 3–29–07; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The Health Department Subcommittee (HDS) of the Board of Scientific Counselors (BSC), Centers for Disease Control and Prevention (CDC), National Center for Environmental Health (NCEH)/Agency for Toxic Substances and Disease Registry (ATSDR): Teleconference Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the CDC, NCEH/ATSDR announces the following teleconference meeting of the aforementioned subcommittee:

Time and Date: 12:30 p.m.–2 p.m., April 23, 2007, Eastern Daylight Saving Time.

Place: Century Center, 1825 Century Boulevard, Atlanta, Georgia 30345.

Status: Open to the public; teleconference access limited only by availability of telephone ports.

Purpose: Under the charge of the BSC, NCEH/ATSDR, the HDS will provide the BSC, NCEH/ATSDR with advice and recommendations on local and State health department issues and concerns that pertain to the mandates and mission of NCEH/ATSDR.

Matters to be Discussed: The meeting will include a review of the agenda; approval of minutes from the last conference call; a review ''matrix'' for recommendations of workforce issues and science issues; a briefing on issues important to schools; pubic comment and the next steps for the HDS.

Items are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: To participate in this teleconference meeting, please dial 877/315–6535 and enter conference code 383520. The public comment period is scheduled from 1:20 p.m.–1:30 p.m. Eastern Daylight Saving Time.

FOR FURTHER INFORMATION CONTACT: Shirley D. Little, Committee Management Specialist, NCEH/ATSDR, CDC, 1600 Clifton Road, Mail Stop E–28, Atlanta, GA 30303; telephone 404/498–0615; fax 404/498–0059; e-mail: *slittle@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 23, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 07–1567 Filed 3–29–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Environmental Health/Agency for Toxic Substances and Disease Registry, Centers for Disease Control and Prevention (CDC)

The Program Peer Review Subcommittee (PPRS) of the Board of Scientific Counselors (BSC), National Center for Environmental Health/ Agency for Toxic Substances and Disease Registry (NCEH/ATSDR): Teleconference.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), CDC, NCEH/ATSDR announces the aforementioned subcommittee teleconference meeting:

Time and Date: 9 a.m.–10:30 a.m. Eastern Daylight Saving Time, April 26, 2007.

Place: The teleconference will originate at NCEH/ATSDR in Atlanta, Georgia. To participate, dial 877/315–6535 and enter conference code 383520.

Purpose: Under the charge of the BSC, NCEH/ATSDR, the PPRS will provide the BSC, NCEH/ATSDR with advice and recommendations on NCEH/ATSDR program peer review. They will serve the function of organizing, facilitating, and providing a long-term perspective to the conduct of NCEH/ATSDR program peer review.

Matters to be Discussed: Review and approve previous meeting minutes; report on Site Specific Activities review; a discussion of Preparedness and Emergency Response peer review: Breadth and approach of the review, areas of expertise required for the review, nominations for a PPRS panel member, a chairperson, peer reviewers, and partners and customers.

Agenda items are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: This meeting is scheduled to begin at 9 a.m. Eastern Daylight Saving Time. To participate, please dial 877/315–6535 and enter conference code 383520. Public comment period is scheduled for 10–10:10 a.m.

FOR FURTHER INFORMATION CONTACT: Sandra Malcom, Committee Management Specialist, Office of Science, NCEH/ATSDR, M/S E–28, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/498–0622.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and NCEH/ATSDR.

Dated: March 23, 2007.

Elaine L. Baker,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 07–1568 Filed 3–29–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10117, 10118, 10119, 10135, 10136 and 10214]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Medicare Advantage Applications: Medicare Advantage (MA) Application Coordinated Care Plans (CMS–10117), Medicare Advantage (MA) Application Private Fee-For-Service Plans (CMS–10118); Medicare Advantage (MA) Application Regional PPO Plans (CMS–10119); Medicare Advantage (MA) Application Service Area Expansion (SAE) for Coordinated Care Plans: Private Fee For Service Plans (CMS–10135); Medical Savings Account Plans (CMS–10136), and Employer Group Waiver Plans (CMS–10214); *Form Number:* CMS–10117, 10118, 10119, 10135, 10136 and 10214 (OMB#: 0938–0935); *Use:* An entity seeking a contract as an MA organization must be able to provide Medicare's basic benefits plus meet the organizational requirements set out under the regulations at 42 CFR Part 422. An applicant must demonstrate that it can meet the benefit and other requirements within the specific geographic area it is requesting. The application forms are designed to give CMS the information needed to determine a health plan's compliance with the regulations at 42 CFR Part 422. The MA application forms will be used by CMS to determine whether an entity is eligible to enter into a contract to provide services to Medicare beneficiaries; *Frequency:* Reporting—Once; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 220; *Total Annual Responses:* 220; *Total Annual Hours:* 5580.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on May 29, 2007.

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—C, *Attention:* Bonnie L Harkless, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 22, 2007.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E7–5748 Filed 3–29–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10091, CMS–1728, CMS–10028 A, B and C, and CMS–10099]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Accepting New Patients Indicator UPIN (Unique Physician Identification Number) Participating Physicians Directory; *Use:* CMS is expanding the Participating Physician Directory to provide additional information about physicians who participate in Medicare. The new data element ''accepting new Medicare patients'' will provide beneficiaries and other users with much needed information about the physicians who participate in the Medicare program. It will also provide a service to physicians who are either seeking new Medicare patients or who wish to reduce the burden of responding to callers when they are no longer accepting new Medicare patients. *Form Number:* CMS–10091 (OMB#: 0938–0905); *Frequency:* Reporting: Daily, Weekly and Yearly; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 109.800; *Total Annual Responses:* 10,980; *Total Annual Hours:* 915.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Home Health Agency Cost Report; *Use:* Providers of services participating in the Medicare program are required under sections 1815(a) and 1861(v)(1)(A) of the Social Security Act, to submit annual information to achieve settlement of costs for health care services rendered to Medicare beneficiaries. The CMS–1728–94 cost report is needed to determine the amount of reimbursable cost, based upon the cost limits, that is due these providers furnishing medical services to Medicare beneficiaries. *Form Number:* CMS–1728–94 (OMB#: 0938–0022); *Frequency:* Reporting: Yearly; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 5069; *Total Annual Responses:* 5069; *Total Annual Hours:* 892,144.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* State Health Insurance Assistance Program (SHIP) Client Contact Form, Pubic and Media Activity Form, and Resource Report Form; *Use:* The information collected is used to fulfill the reporting requirements described in Section 4360(f) of OBRA 1990. Also, the data will be accumulated and analyzed to measure State Health Insurance Assistance Program (SHIP) performance in order to determine whether and to what extent the SHIPs have met the goals of improved CMS customer service to beneficiaries and better understanding by beneficiaries of their health insurance options. Further, the information will be used in the administration of the grants, to measure performance and appropriate use of the funds by the State grantees, to identify gaps in services and technical support needed by SHIPs, and to identify and share best practices. *Form Number:* CMS–10028–A, B and C (OMB#: 0938–0850); *Frequency:* Reporting: Quarterly and Semi-annually; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 12,000; *Total Annual Responses:* 1,056,000; *Total Annual Hours:* 87,965.

4. *Type of Information Collection Request:* Extension of a currently approved information collection; *Title of Information Collection:* Review of National Coverage Determinations and Local Coverage Determinations and Supporting Regulations in 42 CFR 426.400 and 42 CFR 426.500; *Use:* Section 522 of the Benefits Improvement and Protection Act (BIPA) of 2000 requires the implementation of a process for the appeal of National Coverage Determinations (NCDs) and Local Coverage Determinations (LCDs). Sections 426.400 and 426.500, state that an aggrieved party may initiate a review of an LCD or NCD, respectively, by filing a written complaint. These sections also identify the information required in the complaint to qualify as an aggrieved party as defined in § 426.110, as well as the process and information needed for an aggrieved party to withdraw a complaint. The required documentation includes a copy of the written authorization to represent the beneficiary, if the beneficiary has a representative, and a copy of a written statement from the treating physician that the beneficiary needs a service that is the subject of the LCD. *Form Number:* CMS–10099 (OMB#: 0938–0911); *Frequency:* Reporting—On occasion; *Affected Public:* Individuals or Households; *Number of Respondents:* 1,040; *Total Annual Responses:* 1,040; *Total Annual Hours:* 4,160.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed or faxed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: March 22, 2007.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E7–5754 Filed 3–29–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0105]

Agency Information Collection Activities; Proposed Collection; Comment Request; Mental Models Study of Food Bioterrorism Risk Awareness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of the mental models study of food bioterrorism risk awareness.

DATES: Submit written or electronic comments on the collection of information by May 29, 2007.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Mental Models Study of Food Bioterrorism Risk Awareness

The proposed information collection will help FDA protect the public from food bioterrorism by preparing the agency to take appropriate action in the event of a crisis. Under the Federal Food, Drug, and Cosmetic Act of 1938, as amended, FDA has authority to act to protect the safety of the nation's food supply. Under title 42 of the Public Health Service Act (1944), FDA has authority to act to protect the public health. In addition, title III of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188), FDA has authority to act to improve the ability of the United States to prevent, prepare for, and respond to bioterrorism and other public health emergencies.

FDA has crafted and disseminated messages intended to raise the awareness of state and local government agency and industry representatives regarding food defense issues and preparedness, but FDA does not currently have similar initiatives for consumers. Extensive research exists in disaster preparedness and in effective communication to the public of risk or crisis information by government or non-government entities. However, additional research is needed to help FDA design communications that will increase consumer awareness of the potential for food bioterrorism and help consumers to make good decisions in the event of a food bioterrorism emergency.

The project will use ''mental modeling,'' a qualitative research method wherein the decision-making processes of a group of consumer respondents (described in the next paragraph) concerning food bioterrorism are modeled and compared to a model based on expert knowledge and experience in food bioterrorism. The information will be collected via a telephone interview concerning the factors that influence the perceptions and motivations related to the threat of food bioterrorism. A comparison between expert and consumer models based on the collected information may identify ''consequential knowledge gaps'' that can be redressed through messages or information campaigns designed by FDA.

Description of Respondents: Respondents will be adult parents over the age of 18 who have at least one child age 4 to 13 residing in the home at least half-time. The sample will be divided by gender.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
45	1	1	.75	33.75

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The study will involve 45 respondents and take approximately 45 minutes each to complete. These estimates are based on FDA's experience with consumer research.

Dated: March 23, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 07–1577 Filed 3–29–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0089]

Draft Guidance for Industry and Review Staff on Target Product Profile—A Strategic Development Process Tool; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry and review staff entitled ''Target Product Profile—A Strategic Development Process Tool.'' The purpose of this guidance is to inform sponsors and the review staff in the Center for Drug Evaluation and Research (CDER) of the availability and potential usefulness of a target product profile (TPP). A TPP can be prepared by a sponsor and then shared voluntarily with the appropriate FDA review staff to facilitate communication regarding a particular drug development program. This draft guidance describes the purposes of a TPP, provides guidance on how to complete a TPP, makes suggestions on how to best use a TPP, and relates case studies that demonstrate the potential usefulness of a TPP.

DATES: Submit written or electronic comments on the draft guidance and/or on the collection of information by May 29, 2007. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance and/or on the collection of information 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*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Jeanne M. Delasko, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 6474, Silver Spring, MD 20993–0002, 301–796–0900.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry and review staff entitled ''Target Product Profile—A Strategic Development Process Tool.'' In 1997, a Clinical Development Working Group composed of representatives from FDA and pharmaceutical sponsors began discussions on ways to improve sponsor and FDA interactions in the drug development process. The working group recommended use of a template that provides a summary of drug labeling concepts to focus discussions and aid in the understanding between sponsors and FDA. The resulting TPP is a format for a summary of a drug development program described in terms of labeling concepts.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on target product profiles. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act (44 U.S.C. 3501–3520) (the PRA), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth below.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (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 on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Draft Guidance for Industry and Review Staff: Target Product Profile—A Strategic Development Process Tool.

Description: The draft guidance is intended to provide sponsors and FDA review staff with information regarding TPPs. A TPP can be prepared by a sponsor and then shared voluntarily with the appropriate FDA review staff to facilitate communication regarding a particular drug development program. A Clinical Development Working Group recommended use of a template that provides a summary of drug labeling concepts to focus discussions and aid in the understanding between sponsors and FDA. The resulting TPP is a format for a summary of a drug development program described in terms of labeling concepts. With the TPP, a sponsor specifies the labeling concepts that are the goals of the drug development program, documents the specific studies that are intended to support the labeling concepts, and then uses the TPP to assist in a constructive dialogue with FDA. The draft guidance describes the purpose of a TPP, its advantages, and its optimal use. It also provides information on how to complete a TPP and relates case studies that demonstrate a TPP's usefulness.

Sponsors are not required to submit a TPP. The TPP does not represent an implicit or explicit obligation on the sponsor's part to pursue all stated goals. Submission of a TPP summary does not constrain the sponsor to submit draft labeling in a new drug application (NDA) or biologics license application (BLA) that is identical to the TPP. The TPP is part of the proprietary investigational new drug application (IND) file.

The TPP is organized according to the key sections of the drug labeling and links drug development activities to specific concepts intended for inclusion in the drug labeling. The TPP is not a long summary. Generally, the TPP is shorter than the ultimate annotated draft labeling since it captures only a summary of the drug development activities and labeling concepts. Early TPPs can be brief depending on the status of the drug's development process.

The Target Product Profile Template in Appendix C of the draft guidance details the suggested information to be included in each section of the TPP. The TPP includes information from each discipline comprising an NDA/BLA. Within each discipline, the TPP briefly summarizes the specific studies that will supply the evidence for each conclusion that is a labeling concept. A TPP is organized according to key sections in the drug's labeling. Typical key sections are as follows:

- Indications and Usage
- Dosage and Administration
- Dosage Forms and Strengths
- Contraindications
- Warnings and Precautions
- Adverse Reactions
- Drug Interactions
- Use in Specific Populations
- Drug Abuse and Dependence
- Overdosage
- Description
- Clinical Pharmacology
- Nonclinical Toxicology
- Clinical Studies
- References
- How Supplied/Storage and Handling
- Patient Counseling Information

Description of Respondents: Sponsors of applications seeking FDA approval to perform clinical investigations of a human drug before applying for marketing approval of the drug from FDA.

Burden Estimate: FDA estimates that sponsors of approximately 10 percent of the number of active INDs submitted to FDA annually would prepare and submit TPPs. This would equal approximately 132 TPPs per year. Based on data received from the Pharmaceutical Research and Manufacturers of America, we estimate that approximately 20 sponsors would submit TPPs and that each TPP would take approximately 20 hours to prepare and submit to FDA. Based on the previous methodology and assumptions, the following chart provides an estimate of the annual reporting burden for the voluntary submission of TPPs under the draft guidance. FDA requests comments on this analysis of information collection burdens.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
Target product profiles (TPPs)	20	6.6	132	20	2,640

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: March 22, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–5949 Filed 3–29–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA), 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 a proposed continuing information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning the National Flood Insurance Program—Mortgage Portfolio Protection Program (MPPP) that is a mechanism used by lending institutions mortgage servicing companies, and others servicing mortgage loan portfolios to bring the mortgage loan portfolios into compliance with the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973, as amended.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), authorized by the National Flood Insurance Act of 1968, Public Law 90–448, and expanded by the Flood Disaster Protection Act of 1973, Public Law 93–234, as amended, provides federally backed flood insurance for buildings exposed to flood risk. In accordance with Public Law 93–234 the purchase of flood insurance is mandatory when Federal and federally related assistance is being provided for acquisition or construction of buildings located or to be located within FEMA identified Special Flood Hazard Areas of communities which are participating in the program.

Collection of Information

Title: National Flood Insurance Program—Mortgage Portfolio Protection Program (MPPP).

Type of Information Collection: Extension, without change, of a currently approved collection.

OMB Number: 1660–0086.

Form Numbers: None.

Abstract: The MPPP is a mechanism used by lending institutions mortgage servicing companies, and others servicing mortgage loan portfolios to bring the mortgage loan portfolios into

compliance with the flood insurance purchase requirements of the Flood Disaster Protection Act of 1973, as amended. Implementation of various requirements of the MPPP should result in mortgagors, following receipt of notification of the need for flood insurance, showing evidence of such a policy or purchasing the necessary insurance through their local insurance agent or appropriate Write Your Own (WYO) Company. It is intended that NFIP policies be written under the MPPP only as a last resort, and only on mortgages whose mortgagors have failed to respond to the various notifications required by the Program. The requirements of the MPPP are contained in 44 CFR 62.23(l)(1).

Affected Public: Individuals and households; businesses or other for-profit; not-for-profit institutions; farms; Federal agencies or employees; and State, local or tribal governments.

Estimated Total Annual Burden Hours: 2,386 hours.

ANNUAL BURDEN HOURS

Project/activity (survey, form(s), focus group, worksheet, etc.)	Number of respondents	Frequency of responses	Burden hours per respondent	Annual responses	Total annual burden hours
	(A)	(B)	(C)	(D) = (A × B)	(E) = (C × D)
WYO—Lender/Services Coordination	22	1	.5	22	11
Lenders/Mortgagors Service Coordination	250	1	.5	250	125
WYO Company Policy Issuance	6000	1	.25	6000	1500
WYO Company (New Program Entrant Insurance Company)	1	1	*750	1	750
Total	6,273				2,386

*The 750 burden hours per respondent is the amount of time it takes a new program entrant (insurance company) to prepare, train, and compile various needed information.

Estimated Cost: $107,350.

Comments: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall 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 submission of responses. Comments must be submitted on or before May 29, 2007.

ADDRESSES: Interested persons should submit written comments to Chief, Records Management and Privacy, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, 500 C Street, SW., Room 609, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Contact Edward Connor, Deputy Director of Insurance, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security, 202–646–3429, *edward.connor@dhs.gov*, for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347or email address: *FEMA-Information-Collections@dhs.gov*.

Dated: March 26, 2007.

John A. Sharetts-Sullivan,

Chief, Records Management and Privacy, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–5910 Filed 3–29–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form G–146, Nonimmigrant Checkout Letter; OMB Control No. 1653–0020.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 29, 2007.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), Ricardo Lemus, Chief, Records Management Branch, Bureau of Immigration and Customs Enforcement, 425 I Street, NW., Room 1122, Washington, DC 20536; (202) 514–3211.

Comments are encouraged and will be accepted for sixty days until May 29, 2007. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Order to Show Cause.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–146, Bureau of Immigration and Customs Enforcement.

1. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or Households. When an alien (other than one who is required to depart under safeguards) is granted the privilege of voluntary departure without the issuance of an Order to Show Cause, a control card is prepared. If, after a certain period of time, a verification of departure is not received, actions are taken to locate the alien or ascertain his or her whereabouts. Form G–146 is used to inquire of persons in the United States or abroad regarding the whereabouts of the alien.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,000 responses at 10 minutes (.16) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,220 annual burden hours.

Comments and/or questions; requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Ricardo Lemus, Chief, Records Management Branch, Bureau of Immigration and Customs Enforcement, 425 I Street, NW., Room 1122, Washington, DC 20536; (202) 616–2266.

Dated: March 27, 2007.

Ricardo Lemus,

Acting Chief, Records Management Branch, Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E7–5874 Filed 3–29–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form I–901, Fee Remittance for Certain F, J and M Nonimmigrants; OMB Control No. 1653–0034.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until May 29, 2007.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), Ricardo Lemus, Chief, Records Management Branch, Bureau of Immigration and Customs Enforcement, 425 I Street, NW., Room 1122, Washington, DC 20536; (202) 514–3211.

Comments are encouraged and will be accepted for sixty days until May 29, 2007. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Fee Remittance for Certain F, J and M Nonimmigrants.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–901, Bureau of Immigration and Customs Enforcement.

Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individual or Households. Public Law 104–208, Subtitle D, Section 641 directs the Attorney General, in consultation with the Secretary of State and the Secretary of Education, to develop and conduct a program to collect information on nonimmigrant foreign students and exchange visitors from approved institutions of higher education, as defined in section 101(a) of the Higher Education Act of 1965, as amended or in a program of study at any other DHS-approved academic or language-training institution, to include approved private elementary and secondary schools and public secondary schools, and from approved exchange visitor program sponsors designated by the Department of State (DOS). It also authorized a fee, not to exceed $100, to be collected from these students and exchange visitors to support this information collection program. DHS has implemented the Student and Exchange Visitor Information System (SEVIS) to carry out this statutory requirement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 600,000 responses at 19 minutes (.32) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 192,000 annual burden hours.

Comments and/or questions; requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Ricardo Lemus, Chief, Records Management Branch, Bureau of Immigration and Customs Enforcement, 425 I Street, NW., Room 1122, Washington, DC 20536; (202) 616–2266.

Dated: March 27, 2007.

Ricardo Lemus,

Acting Chief, Records Management Branch, Bureau of Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E7–5875 Filed 3–29–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5125–N–13]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, room 7266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to John Hicks, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: COAST GUARD: Commandant, U.S. Coast Guard, Attn: Teresa Sheinberg, 2100 Second St., SW., Rm. 6109, Washington, DC 20593–0001; (202 267–6142; ENERGY: Mr. John Watson, Department of Energy, Office of Engineering & Construction Management, ME–90, 1000 Independence Ave., SW., Washington, DC 20585; (202) 586–0072; GSA: Mr. John E.B. Smith, Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0084; INTERIOR: Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS5512, Washington, DC 20240; (202) 513–0747; NAVY: Mr. Warren Meekins, Associate Director, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9305; (These are not toll-free numbers).

Dated: March 22, 2007.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

Title V, Federal Surplus Property Program Federal Register Report for 03/30/2007

Suitable/Available Properties

Building

California

Old Customs House
12 Heffernan Ave.
Calexico CA 92231
Landholding Agency: GSA
Property Number: 54200710016
Status: Surplus
GSA Number: 9:–G–CA–1658
Comments: 16,108 sq. ft., possible asbestos/lead paint, zoned commercial, major repairs for long term use, historic building

Idaho

Ditchrider's House
411 S. Crestview Rd.
Paul ID 83347
Landholding Agency: GSA
Property Number: 54200710017
Status: Surplus
GSA Number: 9:–I–ID–561
Comments: 832 sq. ft., presence of asbestos/lead paint

Suitable/Available Properties

Building

Maryland

Former USPO/Office Bldg.
2 West Montgomery Ave.
Rockville MD 20850
Landholding Agency: GSA
Property Number: 54200710018

Status: Surplus
GSA Number: MD–598–1
Comments: 7430 sq. ft., roof leaks, property use restrictions, groundwater use prohibition

Washington

Residence
Riverside Road
Yakima WA 98901
Landholding Agency: Interior
Property Number: 61200710010
Status: Unutilized
Comments: 756 sq. ft., off-site use only

Manufactured Home
Riverside Road
Yakima WA 98901
Landholding Agency: Interior
Property Number: 61200710011
Status: Unutilized
Comments: 1458 sq. ft., off-site use only

Suitable/Unavailable Properties

Building

Hawaii

Bldg. 2652
Navy Aloha Center
Pearl Harbor HI 96860
Landholding Agency: Navy
Property Number: 77200710039
Status: Underutilized
Comments: 9125 sq. ft., most recent use—office

Unsuitable Properties

Building

Alaska

FAA Bldg. 300
Lake Minchumina AK 99901
Landholding Agency: GSA
Property Number: 54200710014
Status: Surplus
GSA Number: 9–U–AK–756
Reasons: Within 2000 ft. of flammable or explosive material

Radar Tower
Potato Point Comm Site
Valdez AK
Landholding Agency: Coast Guard
Property Number: 88200710001
Status: Excess
Reasons: Not accessible by road, Within 2000 ft. of flammable or explosive material, Secured Area

Unsuitable Properties

Building

Alaska

Radar Tower
Spit Site Comm Site
Valdez AK
Landholding Agency: Coast Guard
Property Number: 88200710002
Status: Excess
Reasons: Secured Area

California

Bldgs. 29A, 29B, 29C
Lawrence Berkeley Natl Laboratory
Berkeley Co: Alameda CA 94720
Landholding Agency: Energy
Property Number: 41200710008
Status: Excess
Reasons: Extensive deterioration

Bldg. PM 134
Naval Base
Point Mugu Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200710023
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldgs. PH837, PH1372
Naval Base
Port Hueneme Co: Ventura CA 93043
Landholding Agency: Navy
Property Number: 77200710024
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Unsuitable Properties

Building

California

Bldg. 523107
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200710025
Status: Excess
Reasons: Extensive deterioration

6 Bldgs.,
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200710026
Status: Excess
Directions: 523112, 523113, 523114, 523115, 523116, 523117
Reasons: Extensive deterioration

6 Bldgs.
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200710027
Status: Excess
Directions: 523122, 523123, 523124, 523125, 523126, 523127
Reasons: Extensive deterioration

Unsuitable Properties

Building

California

6 Bldgs.
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200710028
Status: Excess
Directions: 523132, 523133, 523134, 523135, 523136, 523137
Reasons: Extensive deterioration

6 Bldgs.
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200710029
Status: Excess
Directions: 523142, 523143, 523144, 523145, 523146, 523147
Reasons: Extensive deterioration

Bldgs. 523156, 523157
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200710030
Status: Excess
Reasons: Extensive deterioration

Bldg. 30726
Naval Air Weapons
China Lake CA 93555
Landholding Agency: Navy
Property Number: 77200710047
Status: Excess
Reasons: Secured Area

Unsuitable Properties

Building

Hawaii

Bldgs. 146, 147
Naval Station
Pearl Harbor HI 96860
Landholding Agency: Navy
Property Number: 77200710031
Status: Excess
Reasons: Extensive deterioration

Bldg. 326
Naval Station
Pearl Harbor HI 96860
Landholding Agency: Navy
Property Number: 77200710032
Status: Excess
Reasons: Extensive deterioration

Bldg. 545
Naval Station
Pearl Harbor HI 96860
Landholding Agency: Navy
Property Number: 77200710033
Status: Excess
Reasons: Extensive deterioration

Bldg. 1247
Naval Station
Pearl Harbor HI 96860
Landholding Agency: Navy
Property Number: 77200710034
Status: Excess
Reasons: Extensive deterioration

Unsuitable Properties

Building

Hawaii

Bldg. 288
Pacific Missile Range
Kekaha HI
Landholding Agency: Navy
Property Number: 77200710035
Status: Excess
Reasons: Extensive deterioration

Bldgs. 301, 305
Pacific Missile Range
Kekaha HI 96752
Landholding Agency: Navy
Property Number: 77200710036
Status: Excess
Reasons: Extensive deterioration

Bldgs. 336, 364
Pacific Missile Range
Kekaha HI 96752
Landholding Agency: Navy
Property Number: 77200710037
Status: Excess
Reasons: Extensive deterioration

Bldg. 434
Pacific Missile Range
Kekaha HI 96752
Landholding Agency: Navy
Property Number: 77200710038
Status: Excess
Reasons: Extensive deterioration

Unsuitable Properties

Building

Illinois

Bldg. B–11J
Naval Station
Great Lakes IL 60088
Landholding Agency: Navy
Property Number: 77200710040
Status: Excess
Reasons: Extensive deterioration, Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. B–219H
Naval Station
Great Lakes IL 60088
Landholding Agency: Navy
Property Number: 77200710041
Status: Excess
Reasons: Secured Area

Bldg. B–912
Naval Station
Great Lakes IL 60088
Landholding Agency: Navy
Property Number: 77200710042
Status: Excess
Reasons: Secured Area

Bldg. B–1991
Naval Station
Great Lakes IL 60088
Landholding Agency: Navy
Property Number: 77200710043
Status: Excess
Reasons: Secured Area

Unsuitable Properties

Building

Illinois

Bldg. B–1938
Naval Station
Great Lakes IL 60088
Landholding Agency: Navy
Property Number: 77200710044
Status: Excess
Reasons: Secured Area

Bldg. B–2600
Naval Station
Great Lakes IL 60088
Landholding Agency: Navy
Property Number: 77200710045
Status: Excess
Reasons: Secured Area

Maryland

Bldg. PR#203210
Stump Neck Annex
Indian Head MD
Landholding Agency: Navy
Property Number: 77200710046
Status: Excess
Reasons: Secured Area

Unsuitable Properties

Building

Pennsylvania

Army Reserve Center 950 Saw Mill Run
Pittsburgh PA 15226
Landholding Agency: GSA
Property Number: 54200710015
Status: Surplus
GSA Number: 4–D–PA–0805
Reasons: Extensive deterioration

South Carolina

Bldgs. 108–1R, 108–2R
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200710010
Status: Unutilized
Reasons: Secured Area

Bldgs. 717–003S, 717–010S
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200710011
Status: Unutilized
Reasons: Secured Area

Unsuitable Properties

Building

Tennessee

Bldg. 2010
Oak Ridge Natl Laboratory
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200710009
Status: Excess
Reasons: Secured Area, Extensive deterioration

Land

California

0.038 acre
Ortega Reservoir
Summerland CA 93067
Landholding Agency: Interior
Property Number: 61200710012
Status: Unutilized
Reasons: Other—inaccessible

[FR Doc. E7–5621 Filed 3–29–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Departmental Non-Retaliation Policy

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior announces adoption of a small business non-retaliation policy. If a small business questions or lodges a complaint regarding a policy or action of the Department or one of its bureaus, or seeks outside help in dealing with a Department or Bureau policy or action, the Department of the Interior will not retaliate in any fashion. The full policy is set out in the body of this notice.

DATES: This policy is effective on March 30, 2007 and remains in effect until modified or rescinded.

ADDRESSES: Although we are not requesting them, you may make comments on this notice. To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

—Mail: John Strylowski, Executive Secretariat, Department of the Interior, MS–7229 MIB, 1849 C Street, NW., Washington, DC 20240.

—E-mail: *John_Strylowski@ios.doi.gov* Include the number 1084–AA00 in the subject line of the message.

—Fax: (202) 219–2100.

—Hand delivery: Executive Secretariat, Department of the Interior, MS–7229 MIB, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: John Strylowski, Executive Secretariat, 1849 C Street, NW., MS 7229 MIB, Washington, DC 20240; telephone: 202–208–3071; e-mail: *john_strylowski@ios.doi.gov.*

SUPPLEMENTARY INFORMATION: The Office of the National Ombudsman of the U.S. Small Business Administration (SBA) has asked each Federal agency to adopt a policy that the agency will not retaliate against small businesses that question or complain about the way the agency does business. In response to this request, the Department hereby establishes the following non-retaliation policy, which applies to any person or organization commenting on any action taken by the Department:

We will not retaliate against you in any fashion if you question or lodge a complaint regarding a policy or action of the Department of the Interior or any of its bureaus. This policy applies if you complain or comment to us or to anyone else, or if you seek outside help in dealing with a Department or bureau policy or action. This policy does not affect the right of the Department or any of its bureaus to impose penalties allowed by a contract or agreement or to terminate for unsatisfactory performance any contract or agreement. This policy does not require the Department or its bureaus to enter into or continue any contract or agreement that is not satisfactory to the Department.

If you think that we have broken this promise, we will investigate, take appropriate action, and make sure that mistakes are not repeated. You may comment, ask questions, or file a complaint about Department of the Interior policies or actions by:

—Contacting any office of Department of the Interior or any of its constituent bureaus;

—Writing to the Small Business Contact, Executive Secretariat, Department of the Interior, MS–7229 MIB, 1849 C Street, NW., Washington, DC 20240;

—Sending an e-mail to: *Exsec@ios.doi.gov.*

If you are a small business, you can also contact the Small Business

Administration Office of the National Ombudsman at 888–REG–FAIR (734–3247), fax: 202–481–5719, e-mail: *ombudsman@sba.gov.*

Small businesses generally are independently owned and operated and are not dominant in their field. If you need help determining whether or not your business qualifies as a ''small business,'' contact SBA's Office of the National Ombudsman using the information in the preceding paragraph.

Dated: February 26, 2007.

R. Thomas Weimer,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. E7–5913 Filed 3–29–07; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Supplement to the Final Environmental Impact Statement for the Coachella Valley Multiple Species Habitat Conservation Plan and Natural Community Conservation Plan, Riverside County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the Recirculated Draft Coachella Valley Multiple Species Habitat Conservation Plan/Natural Community Conservation Plan (MSHCP), Supplement to the Final Environmental Impact Statement/Recirculated Draft Environmental Impact Report (EIS/EIR), and Implementing Agreement for public review and comment. The Coachella Valley Association of Governments (CVAG), Coachella Valley Conservation Commission, County of Riverside, Riverside County Flood Control and Water Conservation District, Riverside County Parks and Open Space District, Riverside County Waste Management District, Coachella Valley Water District, Imperial Irrigation District, California Department of Transportation, California Department of Parks and Recreation, Coachella Valley Mountains Conservancy, and the cities of Cathedral City, Coachella, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs, and Rancho Mirage (Applicants) applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Applicants also seek a Section 2835 permit under the California Natural Community Conservation Planning Act of 2002. The Applicants are requesting a permit to incidentally take 22 animal species and seeking assurances for 5 plant species, including 17 unlisted species should any of them become listed under the Act during the proposed 75-year term of the permit. The permit is needed to authorize incidental take of listed animal species (including harm, injury, and harassment) during development in the approximately 1.10 million-acre (1,719-square mile) Plan Area in the Coachella Valley of Riverside County, California.

The MSHCP also incorporates a Public Use and Trails Plan which includes proposals that address non-motorized recreation activities on Federal and non-Federal lands in the Santa Rosa and San Jacinto Mountains. The Bureau of Land Management (BLM) is a Cooperating Agency in this planning process and will use this EIS/EIR to make decisions on BLM-administered public lands pertaining to trail use in the Santa Rosa and San Jacinto Mountains. The proposals constitute activity (implementation) level actions in furtherance of the California Desert Conservation Area Plan (1980), as amended, and the Santa Rosa and San Jacinto Mountains National Monument Management Plan (2004). The BLM will issue a separate Record of Decision regarding non-motorized recreation activities on public lands.

A Supplement to the Final Environmental Impact Statement, which is the Federal portion of the EIS/EIR, has been prepared jointly by the Service and CVAG, along with the biological consultant, to analyze the impacts of the MSHCP and is also available for public review. The analyses provided in the EIS/EIR are intended to inform the public of the proposed action, alternatives, and associated impacts; disclose the direct, indirect, and cumulative environmental effects of the proposed action and each of the alternatives; and indicate any irreversible commitment of resources that would result from implementation of the proposed action. All of the alternatives in the EIS/EIR are the same as the alternatives identified in the Final MSHCP and Final EIS/EIS, dated February 6, 2006, with one exception: the Preferred Alternative without the City of Palm Springs is no longer included.

The Service and the cooperating agency issued a notice of intent to prepare an EIS/EIR for the proposed MSHCP, on June 28, 2000 (65 FR 39920); a notice of availability of the Draft EIS/EIR for the proposed MSHCP on November 5, 2004 (69 FR 64581); and a notice of availability of the Final EIS/EIR for the proposed MSHCP on April 21, 2006 (71 FR 20719).

The Service is issuing this notice to advise the public of revisions to the MSHCP and associated EIS/EIR which includes the following primary changes:

(1) Removing the City of Desert Hot Springs as an Applicant;

(2) including a Riverside County Flood Control/Water Conservation District flood control project as a Covered Activity within the Morongo Wash area, if the project meets the MSHCP's biological goals and objectives for the Covered Species and the biological goals and objectives for maintaining fluvial sand transport and providing an adequate corridor for habitat connectivity;

(3) identifying the revised Santa Rosa and San Jacinto Mountains Trails Plan as the chosen trails management alternative in the EIS/EIR. The Plan is structured to be consistent with larger recovery efforts for the bighorn sheep and takes an adaptive management approach to balancing its goals of: (a) Minimizing the risk of potential adverse impacts to Peninsular bighorn sheep from recreational activities, and (b) providing recreational opportunities for hikers, equestrians, and mountain bikers; and

(4) identifying changes to conservation area boundaries to reflect ''like exchanges'' approved by the applicants since the publication of the Final MSHCP, dated February 6, 2006. The ''like exchanges'' include Citrus Ranch, Lumkes Family Trust, Nott, Indio Water Authority Reservoirs, and the City of Cathedral City.

DATES: Written comments should be received on or before May 29, 2007.

ADDRESSES: Written comments should be sent to Mr. Jim Bartel, Field Supervisor, Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92011. You may also submit comments by facsimile to 760–431–9624.

FOR FURTHER INFORMATION CONTACT: Ms. Therese O'Rourke, Assistant Field Supervisor, at the Carlsbad Fish and Wildlife Office above; telephone 760–431–9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Documents available for public review include the permit applications, the MSHCP and Appendices I (the Technical Appendix) and II (the Planning Agreement), the accompanying

Implementing Agreement, and the EIS/EIRs.

Individuals wishing copies of the documents should contact the Service by telephone at 760–431–9440, or by letter to the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Copies of the MSHCP, EIS/EIRs, and Implementing Agreement also are available for public review, by appointment, during regular business hours, at the Carlsbad Fish and Wildlife Office or at the Coachella Valley Association of Governments (*see* **ADDRESSES**). Copies are also available for viewing on the Internet at *http://www.cvmshcp.org*, in the Riverside County Planning Departments, and in each of the Applicant cities' public libraries:

(1) *Riverside County Planning Department:* 4080 Lemon Street, 9th Floor Riverside, California 92502.

(2) *Riverside County Planning:* 82675 Hwy 111, Room 209, Indio, California 92201.

(3) *U.S. Bureau of Land Management:* 690 Garnet Avenue, North Palm Springs, California 92258.

(4) *City of Palm Springs:* 3200 E. Tahquitz Canyon Way, Palm Springs, California 92262.

(5) *City of Cathedral City:* 68–700 Avenida Lalo Guerrero, Cathedral City, California 92234.

(6) *City of La Quinta:* 78–495 Calle Tampico, La Quinta, California 92253.

(7) *City of Rancho Mirage:* 69825 Highway 111, Rancho Mirage, California 92270.

(8) *City of Palm Desert:* 73–510 Fred Waring Drive, Palm Desert, California 92260

(9) *City of Indio:* 100 Civic Center Mall, Indio, California 92201

(10) *City of Indian Wells:* 44950 El Dorado Drive, Indian Wells, California 92210

(11) *City of Coachella:* 1515 Sixth Street, Coachella, California 92236

(12) *Cathedral City Public Library:* 33520 Date Palm Drive, Cathedral City, California 92234

(13) *Coachella Branch Library:* 1538 7th Street, Coachella Valley, California 92260

(14) *Indio Public Library:* 200 Civic Center Mall, Indio, California 92201

(15) *Lake Tamarisk Branch Library:* Lake Tamarisk Drive, Desert Center, California 92239

(16) *La Quinta Public Library:* 78080 Calle Estado, La Quinta, California 92253

(17) *Mecca-North Shore Branch Library:* 65250 Cahuilla, Mecca, California 92254

(18) *Palm Springs City Library:* 300 South Sunrise Way, Palm Springs, California 92262

(19) *Rancho Mirage Public Library:* 42–520 Bob Hope Drive, Rancho Mirage, California 92270

(20) *Riverside County Library:* Palm Desert Branch, 73–300 Fred Waring Drive, Palm Desert, California 92260

(21) *Thousand Palms Library:* 72–715 La Canada Way, Thousand Palms, California 92276

Background Information

A permit is needed because section 9 of the Act and Federal regulations prohibit the ''take'' of animal species listed as endangered or threatened (16 U.S.C. 1538). Take of listed animal species is defined under the Act to include kill, harm, harass, pursue, hurt, shoot, wound, capture or collect, or attempt to engage in any such conduct (16 U.S.C. 1532). Harm includes significant habitat modification or degradation that actually kills or injures listed animals by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering [50 CFR 17.3(c)]. Under limited circumstances, the Service may issue permits to authorize incidental take; i.e., take that is incidental to, and not the purpose of, otherwise lawful activity. Although take of plant species is not prohibited under the Act, and therefore cannot be authorized under an incidental take permit, plant species are proposed to be included on the permit in recognition of the conservation benefits provided to them under the MSHCP. Assurances provided under the No Surprises Rule at 50 CFR 17.3, 17.22(b)(5), and 17.32(b)(5) would extend to all species named on the permit. Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22, respectively.

The EIS/EIR analyzes the impacts of the proposed implementation of the MSHCP by the Applicants. The Applicants seek an incidental take permit and assurances to incidentally take 22 animal species and assurances for 5 plants. Collectively, the 27 listed and unlisted species are referred to as ''Covered Species'' by the MSHCP and include 5 plant species (2 endangered, 3 unlisted); 2 insect species (both unlisted); 1 fish species (endangered); 1 amphibian species (endangered); 3 reptile species (2 threatened, 1 unlisted); 11 bird species (3 endangered, 8 unlisted); and 4 mammal species (1 endangered and 3 unlisted). [c1]

The MSHCP is intended to protect and sustain viable populations of native plant and animal species and their habitats in perpetuity through the creation of a reserve system, while accommodating continued economic development and quality of life for residents of the Coachella Valley. The MSHCP plan area includes the following eight incorporated cities: Cathedral City, Coachella, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs, and Rancho Mirage. It is one of two large, multiple-jurisdictional habitat planning efforts in Riverside County, each of which constitutes a ''subregional'' plan under the State of California's Natural Communities Conservation Planning Act, as amended.

The MSHCP identifies the proposed reserve system which will be established from lands within 21 conservation areas that are either adjacent or linked by biological corridors. When completed, the reserve system will include core habitat for Covered Species, essential ecological processes, and biological corridors and linkages to provide for the conservation of the proposed Covered Species.

The Final MSHCP was approved by the CVAG's Executive Committee on February 6, 2006, and by all local Permittees except one between March and June 2006. No action was taken by State Permittees. The MSHCP is being revised at the direction of the Executive Committee, following the City of Desert Hot Springs' decision not to approve the MSHCP on June 20, 2006. After Desert Hot Springs declined to approve the MSHCP, the Executive Committee rescinded its approval. The Recirculated Draft MSHCP includes the Applicants identified above with the exception of Desert Hot Springs.

Public Comments

The Service and CVAG invite the public to comment on the MSHCP, Implementing Agreement, and EIS/EIR during a 60-day public comment period beginning the date of this notice. Our practice is to make comments, including names, home addresses, home phone numbers, and email addresses of respondents, available for public review. Individual respondents may request that we withhold their names and /or homes addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organization or businesses, and from

individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

This notice is provided pursuant to section 10(a) of the Act and Service regulations for implementing NEPA. The Service will evaluate the application, associated documents, and comments submitted thereon to prepare a Final Supplemental EIS. A permit decision will be made no sooner than 30 days after the publication of the Final Supplemental EIS.

Dated: March 16, 2007.

Ken McDermond,

Deputy Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. E7–5914 Filed 3–29–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

M/V Selendang Ayu Natural Resource Damage Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to conduct restoration planning.

SUMMARY: On December 8, 2004, the shipping vessel M/V *Selendang Ayu* ran aground and broke apart between Skan Bay and Spray Cape on Unalaska Island, in Alaska's Aleutian Islands. The vessel was carrying approximately 446,280 gallons of Intermediate Fuel Oil 380 (IFO) and 21,058 gallons of Marine Diesel Oil (MDO). Although a portion of the oils were eventually removed from the vessel, 339,538 gallons of the IFO 380 and 14,680 gallons of marine diesel were discharged into the environment over time. This Notice of Intent to Conduct Restoration Planning (Notice), issued pursuant to 15 CFR 990.44, pertains to the discharge of oil from the M/V *Selendang Ayu* described above (the Incident). The Unified Command for the Incident undertook response activities to clean up the discharged oil.

Under section 1006(b) of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2706(b), the President has designated the Secretary of the U.S. Department of the Interior (DOI), represented by the Regional Director of the Fish & Wildlife Service (FWS), Alaska Region, and the Secretary of the U.S. Department of Commerce (DOC), represented by the National Oceanic Atmospheric Administration, as Federal trustees of natural resources for this Incident. The Governor of the State of Alaska has designated the Commissioners of the Alaska Departments of Fish & Game, Environmental Conservation and Natural Resources, and the Alaska Attorney General as State trustees of natural resources. The Federal and State trustees for the Incident will be referred to herein collectively as the Trustees.

The Trustees have determined that they have jurisdiction to enter into the restoration planning phase of a Natural Resource Damage Assessment under OPA and its implementing regulations and that it is appropriate to do so. The purpose of this phase is to prepare a plan for the restoration, rehabilitation, replacement or acquisition of the equivalent of the natural resources and services injured, destroyed or lost as a result of the Incident.

ADDRESSES: Alaska Regional Office, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: Jenifer Kohout, (907) 786–3687 (phone); *Jenifer_Kohout@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION: One of the goals of OPA is to make the environment and the public whole for injuries to natural resources and services resulting from an incident involving a discharge or substantial threat of a discharge of oil from a vessel into or upon navigable waters or adjoining shorelines. This goal is achieved through the return of the injured natural resources and services to baseline and the compensation for interim losses of such natural resources and services from the date of the incident until recovery.

To facilitate achievement of this goal, the Trustees are responsible for assessing the damages to natural resources under their trusteeship that have resulted from the Incident, developing a plan for the restoration of these resources, and pursuing from the parties responsible for the Incident (Responsible Parties) funding for the implementation of this plan or the implementation of the plan by the Responsible Parties themselves. The Trustees are proceeding in accordance with the regulations for Natural Resource Damage Assessments at 15 CFR Part 990.

The Responsible Parties include, but are not necessarily limited to, Ayu Navigation Sdn, Bhd, and IMC Shipping Pte, Ltd, which were the owner and the operator, respectively, of the M/V *Selendang Ayu* at the time of the Incident. The guarantor of financial responsibility for the liability of these Responsible Parties is SverigesÅngfartygs Assurans Förening (The Swedish Club).

The Trustees have performed preassessment activities in connection with the Incident, including data collection and preliminary analysis. These activities included conducting shore and skiff-based surveys to collect information about potential impacts to birds, marine mammals, fish, intertidal and subtidal biota, and associated habitats; aerial coastal and pelagic surveys and counts to determine species at risk from the Incident; surveys of subtidal habitats; surveys of anadromous fish streams; and collecting and cataloging marine bird carcasses found on beaches following the Incident. To date, the Responsible Parties have cooperated with the Trustees in the performance and/or funding of certain response, cleanup and data collection activities.

Determination of Jurisdiction

Under 15 CFR 990.41, the Federal and State natural resource trustees have determined that they have jurisdiction to pursue restoration under OPA and its implementing regulations, finding:

a. The discharge of oil beginning on or about December 8, 2004 from the M/V *Selendang Ayu* into the Bering Sea, off the coast of Spray Cape on Unalaska Island, was an ''Incident'' as defined at 15 CFR 990.30.

(1) The M/V *Selendang Ayu*, a ''Vessel'' as defined at 33 U.S.C. 2701(37), discharged the entire quantity of oil involved in this Incident.

(2) The M/V *Selendang Ayu* discharged oil into or upon navigable waters of the United States and adjoining shorelines, including federal and state waters adjacent to Unalaska Island, Alaska, the shoreline of Unalaska Island, and anadromous streams.

b. The Trustees have also determined that:

(1) This Incident was not permitted under Federal, State or local law;

(2) The M/V *Selendang Ayu* is not a ''public vessel'' as defined at 33 U.S.C. 2701(2), as the vessel was not owned or bareboat chartered and operated by the United States or a State or political subdivision thereof, or by a foreign nation; and

(3) The discharge of oil did not occur from an onshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. 1651, *et seq.*

c. Based upon information gathered during the response, cleanup and preassessment phases, the Trustees have determined that, due to the amount and type of oil discharged, the known toxicity of the oil, the location of the discharge and the living and non-living natural resources and services in the

area at the time of the discharge (including but not limited to resident and anadromous fish, shellfish, riparian and upland vegetation, invertebrates, birds marine mammals and other wildlife, stream sediments and soils, water, and public and/or cultural uses), natural resources and natural resource services under Federal and State trusteeship have been or may have been injured as a result of the Incident.

Determination to Conduct Restoration Planning

Under 15 CFR 990.42, the Federal and State natural resource trustees have determined to conduct restoration planning under OPA and its implementing regulations, finding:

a. Based on data collected and analyzed under 15 CFR 990.43, injuries to natural resources and services have resulted or are likely to result from the Incident, including, but not necessarily limited to, injuries to waterfowl, seabirds, intertidal biota, marine mammals, terrestrial vegetation, subtidal resources, fish and shellfish and associated cultural uses.

b. Response actions have not adequately addressed the injuries resulting from the Incident. Response efforts included, but were not limited to, attempting to boom sensitive fish streams; removing oil from the wreck; removing dead bird and sea otter carcasses; capturing, cleaning and rehabilitating live oiled birds; temporarily closing fisheries; sampling marine waters that might affect ongoing fisheries; recovering stranded oil on shorelines; performing manual and mechanical cleanup operations; and testing fish and invertebrates used for commercial and subsistence purposes. While these actions may have reduced the number and magnitude of future injuries, they did not adequately address the mortality and possible sublethal effects to natural resources and services injured from the Incident. Further, cleanup activities likely caused additional injuries to certain natural resources, including, but not necessarily limited to, terrestrial vegetation and intertidal biota.

c. Feasible primary and/or compensatory restoration actions exist to address injuries from the Incident. Feasible restoration actions relevant to the injuries may include, but are not limited to:

(1) Waste oil recovery at Dutch Harbor/Unalaska to restore sea ducks, marine mammals, intertidal and subtidal biota, fish and shellfish and human uses of those resources;

(2) Removal of introduced terrestrial invasive species, such as rats or fox, that prey on or compete with marine birds on certain islands of the Alaska Maritime National Wildlife Refuge to restore marine birds and their habitat;

(3) Debris removal on Unalaska Island or elsewhere in the Aleutians to restore habitat for intertidal biota and marine mammals;

(4) Habitat protection in the nesting areas of waterfowl injured by the spill;

(5) Salmon restoration in Unalaska (sockeye) or Summers Bay (coho) lakes; and

(6) Education and outreach on Unalaska Island related to subsistence and cultural resources.

Data supporting these determinations are contained in the Administrative Record established for this case (see below).

Based upon the foregoing determinations, the Trustees have determined to conduct restoration planning for the Incident.

Opportunity To Comment

Under 15 CFR 990.14(d), the Trustees will seek public involvement in restoration planning for this Incident through, at minimum, public review of and comment on the Draft Restoration Plan. When the Draft Restoration Plan is prepared, the public will be notified of the opportunity to comment. Questions regarding this Notice may be directed to: Jenifer Kohout, (907) 786–3687 (phone); *Jenifer_Kohout@fws.gov* (e-mail).

Administrative Record

The Trustees have opened an Administrative Record (Record) in compliance with 15 CFR 990.45. The Record will include documents relied upon by the Trustees during the natural resource damage assessment performed in connection with this Incident. The Record is on file at the FWS Alaska Regional Office (see **ADDRESSES**). To review the Record, contact Jenifer Kohout (see **FOR FURTHER INFORMATION CONTACT**). In addition, the index and other key elements of the Record will be posted at *http://www.r7.fws.gov/fisheries/contaminants/spill/sa_record.htm* on the FWS Alaska Region Web site.

Thomas O. Melius,

Regional Director.

[FR Doc. E7–5130 Filed 3–29–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Information Collection to Office of Management and Budget

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is submitting this information collection request to the Office of Management and Budget for review and renewal. The collection is: 25 CFR 162 Leases and Permits, 1076–0155.

DATES: Comments must be received on or before April 30, 2007, to be assured of consideration.

ADDRESSES: Comments should be sent to the Desk Officer for the Department of the Interior at the Office of Management and Budget. You may submit comments either by facsimile at (202) 395–6566, or by e-mail to *OIRA_DOCKET@omb.eop.gov.* Please send a copy to Ben Burshia, Chief, Division of Real Estate Services, Bureau of Indian Affairs, 1849 C Street, NW., Mail Stop 4639–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Interested persons may obtain a copy of the information collection requests without charge by contacting Ben Burshia at (202) 219–1195.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 provides an opportunity for interested parties to comment on proposed information collection requests. This collection covers 25 CFR part 162 as presently approved. The Bureau of Indian Affairs, Division of Real Estate Services, is obtaining a normal information collection clearance from OMB. The request contains (1) Type of review, (2) title, (3) summary of the collection, (4) respondents, (5) frequency of collection, (6) reporting and record keeping requirements and (7) reason for response.

A **Federal Register** notice was published on January 25, 2007 (72 FR 3406) requesting comments on our proposed submission of renewal to OMB. No comments were received. The information collected is used by the Bureau of Indian Affairs to determine:

(a) Whether or not a lease may be approved or granted;

(b) The value of each lease;

(c) The appropriate compensation to landowners; and

(d) Provisions for violations of trespass.

Request for Comments

The Bureau of Indian Affairs requests you to send your comments on this collection to the locations listed in the **ADDRESSES** section. Your comments should address:

(a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used;

(c) Ways we could enhance the quality, utility and clarity of the information to be collected; and

(d) Ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

OMB has up to 60 days to make a decision on the submission for renewal, but may make the decision after 30 days. Therefore, to receive the best consideration of your comments, you should submit them closer to 30 days than 60 days.

25 CFR 162—Leases and Permits

Type of review: Extension of a currently approved collection.

Title: 25 CFR 162, Lease and Permits.

Summary: This collection of information is being renewed with substantially no change. Generally trust and restricted land may be leased by Indian land owners, with the approval of the Secretary of the Interior, except when specified by a specific statute. The Secretary requests information on the documentation collected when processing a lease on land held in trust or restricted status by an individual Indian or tribe. The information is used to determine approval of a lease, amendment, assignment, sublease, mortgage or related document. No specific form is used, however, in order to satisfy the Federal Law, regulation and policy the respondents supply information and data, in accordance with 25 CFR part 162.

Respondents: Possible respondents include: Land owners of trust or restricted Indian land, both tribal and individual, wanting to lease their land or someone wanting to lease trust or restricted Indian land.

Number of Respondents: 14,500.

Estimated Time per Response: The time per response varies from 15 minutes to 3 hours.

Frequency of Response: This is a one-time collection per lease approval.

Total Annual Responses: 121,140.

Total Annual Burden to Respondents: 106,065 hours.

Total Annual Fees from Respondents: BIA collects fees for processing submitted documents, as set forth in section 162.241 or 162.616. The minimum administrative fee is $10.00 and the maximum administrative fee is $500.00. The average total administrative fees collected is $250.00, which is collected approximately 7,252 times, totaling $1,813,000.

Dated: March 28, 2007.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. 07–1606 Filed 3–28–07; 12:55 pm]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–030–1320–EL, MTM 94378]

Notice of Federal Competitive Coal Lease Sale, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Competitive Coal Lease Sale, lease application MTM 94378.

SUMMARY: Notice is hereby given that the United States Department of Interior (DOI), Bureau of Land Management (BLM), Montana State Office, will offer coal reserves in the lands described below in Big Horn County, Montana, hereinafter described as Federal coal lease application (LBA) MTM 94378 for competitive lease by sealed bid in accordance with the provisions for competitive lease sales in 43 CFR part 3422.2(a), and the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*)

DATES: The lease sale will be held at 11 a.m., Tuesday, April 17, 2007. Sealed bids must be sent by certified mail, return receipt requested, or be hand delivered to the address indicated below, and must be received on or before 10 a.m., April 17, 2007.

ADDRESSES: The lease sale will be held in the BLM Montana State Office, 920 Conference Room, 5001 Southgate Drive, Billings, Montana 59101–4669. Sealed bids clearly marked ''Sealed Bid for MTM 94378 Coal Sale—Not to be opened before 11 a.m., Tuesday, April 17, 2007'' must be submitted to the Cashier, BLM Montana State Office, at the address given above. The cashier will issue a receipt for each hand delivered sealed bid. Any bid received after the time specified will not be considered and will be returned.

FOR FURTHER INFORMATION CONTACT: Connie Schaff, Land Law Examiner, or Rebecca Spurgin, Coal Coordinator, at 406–896–5060 or 406–896–5080, respectively.

SUPPLEMENTARY INFORMATION: This sale is being held in response to a LBA filed by Spring Creek Coal Company on March 7, 2005. All coal LBAs submitted to BLM for processing prior to November 7, 2005, are not subject to cost recovery on a case-by-case basis (See 43 CFR 3000.10(d)(1), 70 FR 58872, October 7, 2005). The Federal coal resource to be offered consists of all recoverable reserves in the following described lands:

Tract 1:

T. 8 S., R. 39 E., P.M.M.

Sec. 13: SW¼NW¼NW¼, SW¼NW¼, SW¼SE¼NW¼, N½SW¼, N½SW¼SW¼, N½SE¼SW¼SW¼, SE¼SE¼SW¼SW¼, SE¼SW¼, NW¼NW¼SE¼, S½NW¼SE¼, N½SW¼SE¼, SW¼SW¼SE¼

Sec. 14: Beginning at a point bearing S. 60°25′06″ E., 2299.67 feet from the section corner of sections. 10, 11, 14, and 15 and on the N–S center line of the NE¼NW¼ of section 14 and at 528.30 feet southerly from the NE–NW1/64 section corner of section 14; thence on the exclusion boundary line, S. 90°00′00″ E., 317.70 feet; thence S. 55°21′33″ E., 1741.06 feet; thence N. 38°32′16″ E., 1422.65 feet, to a point on the N–S center line of the NE¼NE¼ of said section; thence northerly on the N–S center line of the NE¼NE¼ of said section to the NE–NE1/64 section corner of said section; thence easterly on the E–W center line of the NE¼NE¼ of said section to the N–N1/64 section corner of sections 13 and 14; thence southerly on the section line between sections 13 and 14 to the N–S–S1/256 section corner of sections 13 and 14; thence westerly on the E–W center line of the NE¼SE¼SE¼ of section 14 to the NE–SE–SE1/256 section corner of said section; thence northerly on the N–S center line of the NE¼SE¼SE¼ of said section to the C–E–E–SE1/256 section corner of said section, on the E–W center line of the SE¼ of said section; thence westerly on the E–W center line of the SE¼ of said section to the C–E–SE1/64 section corner of said section; thence northerly on the N–S center line of the NE¼SE¼ of said section to the C–S–NE–SE1/256 section corner of said section; thence westerly on the E–W center line of the SE¼NE¼SE¼ of said section to the C–S–N–SE1/256 section corner of said section; thence northerly on the N–S center line of the SE¼ of said section to

the C–E1/16 section corner of said section; thence westerly on the E–W center line of said section to the C1/4 section corner of said section; thence northerly on the N–S center line of said section to the C–S–N1/64 section corner of said section; thence westerly on the E–W center line of the S1/2 of the NW1/4 of said section to the SW–NW1/64 section corner of said section; thence northerly on the N–S center line of the SW1/4NW1/4 of said section to the C–W–NW1/64 section corner of said section; thence easterly on the E–W center line of the NW1/4 of said section to the C–E–NW1/64 section corner of said section; thence northerly on the N–S center line of the NE1/4NW1/4 of said section to the point of beginning, containing 137.70 acres, more or less.

Sec. 24: N1/2NE1/4NW1/4

Total: 425.2 acres

Tract 2:

T. 8 S., R. 39 E., P.M.M.

Sec. 15: W1/2SW1/4SE1/4, SE1/4SW1/4SE1/4

Sec. 22: NE1/4NE1/4, N1/2NW1/4NE1/4, SE1/4NW1/4NE1/4, NE1/4SE1/4NE1/4, NE1/4NE1/4NW1/4

Sec. 23: SW1/4SW1/4NW1/4NE1/4, S1/2N1/2NW1/4, S1/2NW1/4

Total: 242.5 acres

Tract 3:

T.8S., R. 39E., P.M.M.

Sec. 25: SW1/4SW1/4

Sec. 26: SW1/4NE1/4NE1/4SW1/4, W1/2NW1/4NE1/4SW1/4, SE1/4NW1/4NE1/4SW1/4, S1/2NE1/4SW1/4, NW1/4SW1/4, N1/2SE1/4SW1/4, S1/2NW1/4SE1/4, S1/2SE1/4

Sec. 27: SW1/4NW1/4SE1/4NE1/4, S1/2SE1/4NE1/4, NW1/4NE1/4SW1/4NE1/4, S1/2NE1/4SW1/4NE1/4, W1/2SW1/4NE1/4, SE1/4SW1/4NE1/4, E1/2SE1/4NW1/4, N1/2NE1/4SE1/4, SE1/4NE1/4SE1/4, NE1/4NW1/4SE1/4

Total: 350.0 acres

Tract 4

T. 8 S., R. 40 E., P.M.M.

Sec. 30: S1/2NW1/4SE1/4, S1/2SE1/4

Total: 100.0 acres

Containing approximately 1,117.700 acres in Big Horn County, Montana.

The LBA's total recoverable coal reserves are estimated to be 108.6 million tons (averaging 79.5 feet in thickness) and the average overburden depth is 234.2 feet.

The estimated coal quality on an as-received basis is as follows:

BTU	9,331 BTU/lb.
Volatile Matter	32.02
Fixed Carbon	38.53
Moisture	25.71
Sulphur Content	0.35
Ash Content	3.80
Sodium	8.38

The tracts will be leased to the qualified bidder of the highest cash amount, provided that the high bid meets or exceeds the BLM's pre-sale estimate of fair market value (FMV). No bid that is less than $100 per acre, or fraction thereof, will be considered. The DOI has established a minimum bid of $100 per acre or fraction thereof for Federal coal tracts. The minimum bid is not intended to represent FMV. The FMV will be determined by the BLM after the sale. In the event identical high sealed bids are received, the tying high bidders will be requested to submit follow-up bids until a high bid is received. All tie-breaking sealed-bids must be submitted within 15 minutes following the Sale Official's announcement at the sale that identical high bids have been received.

A lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof; and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods and 8.0 percent of the value of coal mined by underground methods. The value of the coal will be determined in accordance with 30 CFR 206.250.

Bidding instructions for the tracts offered and the terms and conditions of the proposed coal lease are included in the Detailed Statement of Lease Sale. Copies of the Detailed Statement and the proposed coal lease are available at the Montana State Office at the address given above. Casefile MTM 94378 is available for inspection at the Montana State Office during normal business hours at the address above.

Dated: February 22, 2007.

Randy D. Heuscher,

Chief of Solid Minerals.

[FR Doc. E7–5883 Filed 3–29–07; 8:45 am]

BILLING CODE 4310–DK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–027–1020–PI–020H–07–048]

Notice of Call for Nominations for the Steens Mountain Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Call for Nominations.

SUMMARY: The Bureau of Land Management (BLM) is publishing this notice under section 9(a)(2) of the Federal Advisory Committee Act. Pursuant to the Steens Mountain Cooperative Management and Protection Act of 2000 (Pub. L. 106–399), the BLM gives notice that the Secretary of the Interior intends to call for nominations for vacating positions on the Steens Mountain Advisory Council. This notice requests the public to submit nominations for membership on the Steens Mountain Advisory Council.

Any individual or organization may nominate one or more persons to serve on the Steens Mountain Advisory Council. Individuals may nominate themselves or others for Steens Mountain Advisory Council membership. Nomination forms may be obtained from the BLM Burns District Office (*see* address below). To make a nomination, submit a completed nomination form, letters of reference from the represented interests or organizations, as well as any other information that speaks to the nominee's qualifications, to the BLM Burns District Office. Nominations may be made for the following categories of interest:

- A person who has no financial interest in the Cooperative Management and Protection Area to represent Statewide interests (appointed from nominees submitted by the Governor of Oregon);
- A member of the Burns Paiute Tribe (appointed from nominees submitted by the Burns Paiute Tribe);
- A person who participates in what is commonly called mechanized or consumptive recreation, such as hunting, fishing, off-road driving, hang gliding, or parasailing (appointed by the BLM Oregon State Director); and
- A person who is a grazing permittee on Federal lands in the Cooperative Management and Protection Area (appointed by the county court for Harney County, Oregon).

The specific category the nominee will represent should be identified in the letter of nomination. The BLM Burns District will collect the nomination forms and letters of reference and distribute them to the officials responsible for submitting nominations (County Court of Harney County, the Governor of Oregon, and the BLM). The BLM will the forward recommended nominations to the Secretary of the Interior, who has responsibility for making the appointments.

DATES: Nominations should be submitted to the address listed below no later than 30 days after publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Rhonda Karges, Management Support Specialist, Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738 (541) 573–4433, or *Rhonda_Karges@blm.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the Steens Mountain Advisory Council is to advise the BLM on the management of the Steens

Mountain Cooperative Management and Protection Area as described in Title 1, Subtitle D of Public Law 106–399. Each member will be a person who, as a result of training and experience, has knowledge or special expertise that qualifies him or her to provide advice from among the categories of interest listed above.

Members of the Steens Mountain Advisory Council are appointed for a 3-year term. Appointment to these four positions will begin on earlier than October 2007 and will end October 2010.

Members will serve without monetary compensation, but will be reimbursed for travel and per diem expenses at current rates for Government employees. The Steens Mountain Advisory Council shall meet only at the call of the Designated Federal Official, but not less than once per year.

Dated: January 10, 2007.

Dana R. Shuford,

Burns District Manager, Bureau of Land Management, Burns, Oregon.

[FR Doc. 07–1534 Filed 3–29–07; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–07–5101–ER–K087; WYW–166510]

Notice of Availability (NOA) To Announce the Release of the Overland Pass Natural Gas Liquids Pipeline Draft Environmental Impact Statement (DEIS)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Overland Pass (OP) Natural Gas Liquids (NGL) Pipeline DEIS. The DEIS analyzes the consequences of granting a Right-of-Way (ROW) to the Overland Pass Pipeline Company, LLC for locating a 760-mile, 14-inch and 16-inch diameter NGL pipeline on Federal land.

DATES: The BLM will review all public comments if they are submitted within 45 days following the date the Environmental Protection Agency (EPA) publishes this NOA in the **Federal Register**. All public meetings or other involvement activities for the OP NGL Pipeline project will be announced to the public by the BLM at least 15 days in advance through public notices, media news releases, Web site announcements, or mailings. The BLM will not be holding formal public hearings on this DEIS.

ADDRESSES: Copies of the DEIS have been sent to affected Federal, State, and local governments and to interested parties that previously requested a copy. The DEIS and supporting documents will be available electronically on the following Web site: *http://www.wy.blm.gov/nepa/index.htm.*

Copies of the DEIS are available for public inspection during normal business hours at the following locations:

- Bureau of Land Management, Wyoming State Office, Public Room, 5353 Yellowstone, Cheyenne, Wyoming 82003;
- Bureau of Land Management, Rawlins Field Office, 1300 North Third St, Rawlins, Wyoming 82301;
- Bureau of Land Management, Rock Springs Field Office, 280 Highway 191 N., Rock Springs, Wyoming 82901;
- Bureau of Land Management, Kemmerer Field Office, 312 Highway 189 N., Kemmerer, Wyoming 83101; and
- U.S. Department of Agriculture, Pawnee National Grasslands, 660 O Street, Greeley, Colorado 80631.

Copies of the DEIS will also be delivered to public libraries in the following communities:

- Green River, Rock Springs, Rawlins, Laramie, and Cheyenne, Wyoming;
- Greeley, Fort Collins, Yuma, and Wray, Colorado; and
- Colby, WaKeeney, Hays, and McPherson, Kansas.

A limited number of copies of the document will be available as long as supplies last. To request a copy, contact Tom Hurshman, Project Manager, as described below.

Written comments may be submitted by the following methods:

- *Web site: http://www.blm.gov/rfo/nepa.htm.*
- *E-mail: overland_pipeline_wy@blm.gov.*
- *Facsimile:* (307) 328–4224 *Attn:* Tom Hurshman, or
- *Mail:* Tom Hurshman, Project Manager, Bureau of Land Management, Rawlins Field Office, 1300 North Third St, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT: Tom Hurshman, Project Manager, Bureau of Land Management, Uncompahgre Field Office, 2465 South Townsend Ave., Montrose, CO 81401. Mr. Hurshman may be reached by telephone at (970) 240–5345.

SUPPLEMENTARY INFORMATION: The project would transport up to 150,000 barrels per day of NGL. The proposed OP Pipeline would originate in Opal, Wyoming, and terminate at existing NGL processing facilities in Conway, Kansas. The OP Pipeline route would cross approximately 123 miles of Federal land in Wyoming and Colorado. In Wyoming, approximately 98 miles of the proposed pipeline route would cross public lands administered by three BLM Field Offices: Kemmerer, Rock Springs, and Rawlins.

In addition, the OP Pipeline location would cross two units of the National Forest System administered by the United States Department of Agriculture, Forest Service. The proposed pipeline location includes approximately 2 miles of the Flaming Gorge National Recreation Area, and approximately 23 miles of the Pawnee National Grassland north of Greeley, Colorado. No Federal land in Kansas would be affected by this proposal.

In the fall of 2005, Williams Field Services, doing business as Overland Pass Pipeline Company LLC (Overland Pass Company), submitted to the BLM an application for a ROW grant across Federal lands to locate a pipeline up to 20 inches in diameter that would be used to transport NGLs from Opal, Wyoming, to an existing processing facility in Conway, Kansas. (NGLs are naturally occurring heavier hydrocarbon liquids that are associated with the production of natural gas such as methane. NGLs include ethane and are primarily used to produce plastics, propane, butanes, and natural gasoline.) On March 24, 2006, the BLM published in the **Federal Register** a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) and as required by 43 Code of Federal Regulations Part 2880. To allow the public an opportunity to review the proposal and project information, the BLM held public meetings during April 2006 in Rock Springs and Cheyenne, Wyoming; Greeley, Colorado; and Hays, Kansas. Potential impacts to specific resources such as water quality and quantity, threatened and endangered and sensitive species, construction impacts to vegetation communities and historic trails, and pipeline route and location near residential development were identified during scoping and analyzed in the DEIS. Overland Pass Company made a number of minor re-routes to their original proposal as submitted.

Three actions were analyzed in the DEIS: No Action Alternative; Proposed Action Alternative, and the Southern Energy Corridor. The No Action Alternative means that the project as proposed by Overland Pass Company in its ROW application would be rejected by the BLM. Under the No Action

Alternative, the BLM would not issue a ROW grant for the OP Pipeline. The project, including the pipeline, temporary access roads, and temporary use areas during construction, would not be approved or authorized as described in the ROW application. The BLM's preferred alternative is the Proposed Action Alternative. The Proposed Action Alternative analyzed in the DEIS reflects minor revisions to the original route as proposed by Overland Pass Company. The Southern Energy Corridor Alternative reflects the Green River Resource Management Plan's preferred locations for future proposed ROWS. Other alternatives, including transportation system alternatives and route variations, were considered, but not studied in detail.

The DEIS analyzes the potential environmental consequences of granting Overland Pass Company a ROW to construct an approximately 760-mile pipeline that would transport NGLs from Opal, Wyoming, to its terminus at the company's existing facilities in Conway, Kansas. The pipeline would be approximately 14 inches in diameter between Opal and Echo Springs, Wyoming, and 16 inches in diameter from Echo Springs, Wyoming, to Conway, Kansas.

As part of the proposed action, the OP Pipeline would be routed across southern Wyoming from Opal to Echo Springs along various existing utility or pipeline ROWs. From Echo Springs, the pipeline ROW would run in a southeasterly direction, paralleling the existing Southern Star Pipeline, and proceed to the south of Cheyenne, Wyoming, before entering Colorado. A major portion of the proposed route in Wyoming would cross public lands administered by the BLM.

From the Colorado border, the pipeline ROW would continue to parallel Southern Star Pipeline southeasterly crossing the Pawnee National Grassland, which is administered by the USDA Forest Service, and then into Kansas. From the Colorado-Kansas state line, the OP Pipeline would continue to run parallel to the Southern Star Pipeline to south of WaKeeney, Kansas. It would then follow an existing BP Amoco pipeline to Bushton, Kansas. From this point, the OP Pipeline would not parallel existing pipelines until reaching Mitchell, Kansas, where it would then follow an existing Williams Pipeline to the termination point at Conway, Kansas.

At Bushton and Conway, Kansas, the transported NGL would be processed at existing facilities and distributed through an existing transportation infrastructure to consumer markets in the Midwest and Texas Gulf of Mexico coast. About 82 percent of the proposed 760-mile pipeline would be co-located within existing pipeline ROW corridors. In addition to the pipeline, three electric pump stations would be needed to move the NGL at a maximum pressure of 1,440 pounds per square inch gauge (psig) through the pipeline. The pump stations are proposed to be located near Echo Springs and Laramie, Wyoming, and near WaKeeney, Kansas. The pipeline would have manual or self-actuating shut-off valves at regular intervals, as well as cleaning facilities and meter stations.

The OP Pipeline would be constructed and installed within a 75-foot-wide construction area. After construction and reclamation, the permanent ROW would be 50 feet wide, centered on the pipeline. All temporary workspace areas needed for construction activities outside the 50 foot wide permanent ROW would require Temporary Use Permits.

All comment submittals must include the commenter's name and street address. Comments, including the names and street addresses of respondent, will be available for public review at the Rawlins Field Office during its business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except for Federal holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment, including your personal identifying information may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Dated: February 21, 2007.

Robert A. Bennett,

State Director.

[FR Doc. E7–5575 Filed 3–29–07; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–07–5110–CF05 1990–EX–1990; N82888]

Notice of Intent To Prepare an Environmental Impact Statement for an Expansion of Mining Operations at Barrick Gold Corporation's Bald Mountain and Money Basin Mines, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: In accordance with section 102(2)(c) of the National Environmental Policy Act of 1969 and 43 CFR part 3809, the Bureau of Land Management (BLM) Ely Field Office, Nevada intends to prepare an Environmental Impact Statement (EIS) for a proposed consolidation and expansion of the existing Plans of Operation for Barrick Gold Corporation's Bald Mountain Mine and Mooney Basin Mine located in White Pine County, Nevada. The two existing mines would be combined into one new expanded operation which would be called the North Operations Area. The EIS will analyze anticipated impacts of the expansion under this new consolidated Plan of Operation, and will incorporate analysis from a previous EIS and environmental assessments associate with the existing disturbance.

DATES: Publication of this notice initiates the public scoping process. Scoping meetings will be held in Ely, Elko, and Eureka, Nevada. All public meetings will be announced through local news media, newsletters or flyers, and will be posted on the BLM Web site, *http://www.nv.blm.gov/ely/2007_releases.htm* at least 15 days prior to each event.

The minutes and list of attendees for each meeting will be available to the public and open for 30 days after the meeting to any participants who wish to clarify the views they expressed. Comments and resource information should be submitted to the BLM within 30 days of publication of this notice in the **Federal Register**.

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

- *E-mail: lynn_bjorklund@nv.glm.gov.*
- *Fax:* 775–189–1910.
- *Mail:* Bureau of Land Management, Ely Field Office, Attention: Lynn Bjorklund, HC33 Box 33500, Ely, Nevada, 89301.

Documents pertinent to this proposal may be examined at the Ely Field Office.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Lynn Bjorklund, Ely Field Office, at 775 289–1893 or by e-mail to *lynn_bjorklund@nv.blm.gov.*

SUPPLEMENTARY INFORMATION: Barrick Gold Corporation has submitted a proposal to expand and consolidate their existing Bald Mountain and Mooney Basin Mines, which are located approximately 65 air miles northwest of the town of Ely, Nevada. The project (consolidating the existing Bald Mountain Mine N–68193 and Mooney

Basin Mine N–46–94–010P into one unified operation called the North Operations Area) would consist of extending existing open pits, expanding existing rock disposal areas and heap leach facilities, construction of a truck shop, and continuing the operation, reclamation, and closure of the existing Bald Mountain Mine and Mooney Basin Mine operations (to include mine offices, truck shops/warehouse, haul roads, ore stockpiles, access roads, diversion ditches, power transmission lines, water wells and pipelines, process solution transmission pipelines and a landfill). This proposed expansion is entirely on unpatented mining claims on BLM-administered public land. Project access would continue to be via existing public roads. The projected life of the existing mine operation would increase approximately 10 years under this proposed project.

Under the proposed action, there would be an additional disturbance of 3,808 acres. The BLM previously authorized Barrick Gold Corporation to disturb 3,418 acres within the Bald Mountain Mine Plan boundary and 742 acres within the Mooney Basin Plan boundary (for a total of approximately 4,160 acres) associated with pits, rock disposal areas, heap leaching, roads, growth media stockpiles, exploration, and underground mining activities. The Proposed North Operations Area would include the 4,160 acres of previously permitted disturbance and 3,808 acres of new disturbance, for a final disturbance footprint of 7,968 acres. The North Operations Area EIS would incorporate existing analysis that includes several environmental assessments and the 1995 Bald Mountain Mine Expansion EIS.

Combining the Mooney Basin Mine and the Bald Mountain Mine into one project area would result in the new North Operations Area project boundary expanding to include an additional 3,738 acres of public land. The original boundaries of the two mines encompassed 12,737 acres of public land. The proposed project boundary for the North Operations Area would encompass 16,475 acres. These project boundaries define an area of potential operations although not all of the acreage within these boundaries would be disturbed.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis and EIS alternatives. Federal, state, and local agencies, and other individuals or organizations that may be interested in or affected by the BLM's decision on this Plan of Operations amendment are invited to participate in the scoping process. To be most helpful, you should submit formal scoping comments within 30 days after publication of this notice in the **Federal Register**.

Individual respondents may request confidentiality. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so. All submissions from organizations, businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses will be available for public inspection in their entirety. The minutes and list of attendees for each public meeting will be available to the public and open for 30 days after the meeting to any participants who wish to clarify the views they expressed. All comments will be available to the public for review at the Ely Field Office BLM throughout the EIS process.

Potentially significant direct, indirect, residual, and cumulative impacts from the proposed action will be analyzed in the EIS and will include wildlife, BLM sensitive species, socioeconomics, and cultural resources. Additional issues to be addressed may arise during the scoping process.

Dated: February 26, 2007.

John R. Ruhs,

Field Manager.

[FR Doc. 07–1589 Filed 3–29–07; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA 14340]

Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service has filed an application with the Bureau of Land Management (BLM) that proposes to extend the duration of Public Land Order (PLO) No. 6652 for an additional 20-year term. PLO No. 6652 withdrew 30 acres of National Forest System land from the mining laws, but not from other forms of disposition as may by law be authorized on National Forest System land or the mineral leasing laws to protect the Petersburg Administrative Site in Siskiyou County. This notice also gives an opportunity to comment on the proposed action and to request a public meeting.

DATES: Comments and requests for a public meeting must be received by June 28, 2007.

ADDRESSES: Comments and meeting requests should be sent to Duane Marti, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office, (916) 978–4675, or at the above address and Jan Ford, Klamath National Forest, (530) 841–4483.

SUPPLEMENTARY INFORMATION: The withdrawal created by PLO No. 6652 (52 FR 27552) will expire on July 21, 2007, unless extended. The Forest Service has filed an application requesting the Secretary of the Interior to extend PLO No. 6652 for an additional 20-year term. The withdrawal was made to protect the Petersburg Administrative Site of the Forest Service on National Forest System land described as follows.

Klamath National Forest

Mount Diablo Meridian

T. 38 N., R. 11 W.,
Sec. 34, E½E½SW¼SW¼ and W½SE¼SW¼.

The area described contains 30 acres in Siskiyou County.

The purpose of the proposed extension is to continue the withdrawal created by PLO No. 6652 for an additional 20-year term to protect the Petersburg Administrative Site.

The use of a right-of-way, interagency, or cooperative agreement would not provide adequate protect of the Federal investment.

There are no suitable alternative sites as the land described contains permanent Federal facilities.

No additional water rights would be needed to fulfill the purpose of the requested withdrawal extension.

Records relating to the application may be examined by contacting Curt Hughes at the above address or 530–842–6131.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed extension may present their views in writing to the Forest Supervisor, Klamath National Forest, at the address noted above.

Comments, including names and street addresses of respondents, will be available for public review at the BLM California State Office, 2800 Cottage Way, Sacramento, California 95825 and the Klamath National Forest Office, 1312 Fairlane Road, Yreka, California 96097, during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested persons who desire a public meeting for the purpose of being heard on the proposed extension must submit a written request to the Forest Supervisor, Klamath National Forest within 90 days from the date of publication of this notice. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

This withdrawal extension proposal will be processed in accordance with the regulations set forth in 43 CFR 2310.4.

(Authority: 43 CFR 2310.3–1)

Dated: February 7, 2007.

J. Anthony Danna,

Deputy State Director, Natural Resources.

[FR Doc. E7–5877 Filed 3–29–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–921–07–5870–HN]

Call for Nominations of Lands or Interest in Lands for Potential Purchase by the Federal Government in the State of Utah; Identification of Procedures for Identifying and Prioritizing Acquisition of Lands or Interest in Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Federal Land Transaction Facilitation Act of 2000 (43 U.S.C. 2303) (FLTFA), this notice seeks the nomination of property for possible acquisition by Federal agencies. The notice also provides information on the procedures established for (1) the identification of lands or interests in lands for which a landowner has indicated a desire to sell the lands or interest therein to the United States; and (2) the prioritization for acquisition of the in-holdings.

DATES: Nominations may be submitted at any time following the publication of this notice.

ADDRESSES: Nominations should be mailed to the agency listed below having jurisdiction over the federally designated area where the property is located. The nominations should be sent to the attention of the FLTFA Program Coordinator.

Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, UT 84145–0155.

National Park Service, Intermountain Region, P.O. Box 728, Santa Fe, NM 87504–0728.

USDA Forest Service, Intermountain Region, 324 25th Street, Ogden, UT 84401.

U.S. Fish and Wildlife Service, Mountain Prairie Region, Division of Realty, P.O. Box 25486, DFC, Lakewood, CO 80225–04868.

FOR FURTHER INFORMATION CONTACT: Joy Wehking, FLTFA Program Coordinator, BLM Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, UT 84101; Phone: 801–539–4114; E-mail: *joy_wehking@blm.gov*.

SUPPLEMENTARY INFORMATION: In accordance with FLTFA, the four Federal agencies noted above are offering to the public an opportunity to nominate lands in the State of Utah for possible Federal acquisition. Under the provisions of FLTFA, only the following non-Federal lands are eligible for nomination: (1) Inholdings within a federally designated area; or (2) Lands or interests in lands adjacent to federally designated areas that contain exceptional resources. The term inholdings in lands means any right, title, or interest held by a non-Federal entity, in a tract of land that lies within the boundary of a federally designated area. A federally designated area is an area set aside for special management on or before July 25, 2000, including national parks, national wildlife refuges, national forests, national monuments, national conservation areas, national riparian conservation areas, national recreation areas, national scenic areas, areas of critical environmental concern, national outstanding natural areas, national natural landmarks, research natural areas, wilderness or wilderness study areas, and units of the Wild and Scenic Rivers System or National Trails System. The term exceptional resource refers to a resource of scientific, natural, historic, cultural or recreational value that has been documented by a Federal, state, or local government authority, and for which there is a compelling need for conservation and protection under the jurisdiction of a Federal agency in order to maintain the resource for the benefit of the public. Nominations meeting the above criteria may be submitted by any individual, group or governmental body. If submitted by a party other than the landowner, the nomination must be accompanied with a written confirmation from the landowner of their desire to sell. Nominations will only be considered eligible by the agencies if: (1) The nomination package is complete; (2) a Federal land use plan calls for acquisition of the land or interest in land being nominated; (3) the land does not contain a hazardous substance or is not otherwise contaminated; (4) the land would not be difficult or uneconomic to manage as Federal land; and (5) acceptable title can be conveyed in accordance with Federal title standards. The agencies will assess the nominations for public benefits in accordance with a jointly prepared State level Interagency Implementation Agreement for FLTFA and a National level Interagency Memorandum of Understanding among the agencies and will rank the nominations. The nomination and identification of an inholding does not obligate the landowner to convey the property nor does it obligate the United States to acquire the property. All Federal land acquisitions must be at fair market value consistent with applicable provisions of the Uniform Appraisal Standards for Federal Land Acquisitions.

Further information, including the required contents for a nomination package, and details of the Statewide Interagency Implementation Agreement, may be obtained by contacting Joy Wehking at the address noted above.

Authority: Sec. 204, Pub. L. 106–248 (43 U.S.C. 2301).

Selma Sierra,

State Director, Utah.

[FR Doc. E7–5881 Filed 3–29–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–BJ–TRST; Group No. 174, Wisconsin]

Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; Wisconsin.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM-Eastern States, Springfield, Virginia, 30 calender days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs. The lands we surveyed are:

Fourth Principal Meridian, Wisconsin

T. 40 N., R. 7 W.

The plat of survey represents the dependent resurvey of a portion of the north boundary, (Fourth Standard Parallel North) a portion of the east boundary, and a portion of the subdivisional lines; and the survey of the subdivision of sections 5–7, 16–20 and 26–36, Township 40 North, Range 7 West, of the Fourth Principal Meridian, Wisconsin.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest.

We will not officially file the plat until the day after we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: March 22, 2007.

Jerry L. Wahl,

Chief Cadastral Surveyor, Acting.

[FR Doc. E7–5882 Filed 3–29–07; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention to Request Clearance of Collection Information; Opportunity for Public Comment

AGENCY: The Department of the Interior; National Park Service.

ACTION: Notice of request for comments.

SUMMARY: Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the National Park Service (NPS) invites public comments on an extension of a currently approved collection of information (OMB# 1024–0233).

DATES: Public comments will be accepted on or before May 29, 2007.

ADDRESSES: Send comments to Jo A. Pendry, Concession Program Manager, National Park Service, 1849 C Street NW., (2410), Washington, DC 20240, e-mail *jo_pendry@nps.gov.* Also, you may send comments to Leonard Stowe, NPS Information Collection Clearance Officer, 1849 C St., NW., (2605), Washington, DC 20240, or by e-mail at *leonard_stowe@nps.gov.* All responses to this notice will be summarized and included in the request for the Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Jo A. Pendry, Concession Program Manager, National Park Service, 1849 C Street, NW., Washington, DC 20240. Phone: 202/513–7144; Fax: 202/371–2090.

SUPPLEMENTARY INFORMATION:

Title: Leasing Regulations—36 CFR 18.

OMB Control Number: 1024–0233.

Expiration Date of Approval: June 30, 2007.

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

Description of Need: The information is being collected to meet the requirements of Section 802 of the NPS Omnibus Management Improvement Act of 1998, concerning the legislative authority, policies, and requirements for the solicitation, award and administration of National Park Service leases for property located within area of the national park system.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the agency's burden hour estimate; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Frequency of collection: Once.

Description of Respondents: Persons or entities seeking a leasing opportunity with the National Park Service.

Estimated Annual Responses: 627.

Estimated Average Burden Hours per Response: 7.

Estimated Total Annual Burden Hours: 4,392.

Dated: March 23, 2007.

Leonard E. Stowe,

NPS Information Collection Clearance Officer.

[FR Doc. 07–1570 Filed 3–29–07; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Citizen Advisory Commission Meeting

AGENCY: National Park Service; Interior.

ACTION: Notice of public meeting.

SUMMARY: This notice announces two public meetings of the Delaware Water Gap National Recreation Area Citizen Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2).

DATES: Thursday, May 3, 2007, 7 p.m.

ADDRESSES: Dingmans Township Office, 961 Fisher Lane, Milford, PA 18337.

The agenda will include reports from Citizen Advisory Commission members including committees such as Recruitment, Natural Resources, Inter-Governmental, Cultural Resources, By-Laws, Special Projects, and Public Visitation and Tourism. Superintendent John J. Donahue will give a report on various park issues, including cultural resources, natural resources, construction projects, and partnership ventures. The agenda is set up to invite the public to bring issues of interest before the Commission.

FOR FURTHER INFORMATION CONTACT: Superintendent John J. Donahue, 570–426–2418.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizen Advisory Commission was established by Public Law 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

Dated: February 26, 2007.

John J. Donahue,

Superintendent.

[FR Doc. E7–5873 Filed 3–29–07; 8:45 am]

BILLING CODE 4312–JG–P

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), of a meeting of the Native American Graves Protection and Repatriation Review Committee (Review Committee). The Review Committee will meet on April 19–20, 2007, at the Sidney R. Yates Auditorium, Main Interior Building, 1849 C Street NW, Washington, DC 20240. Meeting sessions will begin at 8:30 a.m. each day. Meeting sessions will end at 5 p.m. on April 19 and noon on April 20.

The agenda for the meeting includes an overview of activities of the National NAGPRA Program during the first half of fiscal year 2007; preparation of the Review Committee's Report to Congress for 2006; consultation regarding regulations for disposition of unclaimed cultural items excavated or removed from Federal lands after November 16, 1990 (43 CFR 10.7); requests for recommendations regarding the disposition of culturally unidentifiable human remains from the University of Florida and the Intermountain Region, National Park Service; and presentations and statements by Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and the public.

To schedule a presentation to the Review Committee during the meeting, submit a written request with an abstract of the presentation and contact information for the presenters. Persons also may submit written statements for consideration by the Review Committee during the meeting. Send requests and statements to the Designated Federal Officer, NAGPRA Review Committee by U.S. Mail to the National Park Service, 1849 C Street NW (2253), Washington, DC 20240; or by commercial delivery to the National Park Service, 1201 Eye Street NW, 8th floor, Washington, DC 20005. Because increased security in the Washington, DC, area may delay delivery of U.S. Mail to Government offices, copies of mailed requests and statements should also be faxed to (202) 371–5197.

Transcripts of Review Committee meetings are available approximately eight weeks after each meeting at the National NAGPRA Program office, 1201 Eye Street NW, 8th floor, Washington, DC. To request electronic copies of meeting transcripts, send an e-mail message to *Tim__McKeown@nps.gov*. Information about NAGPRA, the Review Committee, and Review Committee meetings is available at the National NAGPRA Web site, *http://www.cr.nps.gov/nagpra*; for the Review Committee's meeting procedures, select ''Review Committee,'' then select ''Procedures.''

The Review Committee was established by the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), 25 U.S.C. 3001 *et seq.* Review Committee members are appointed by the Secretary of the Interior. The Review Committee is responsible for monitoring the NAGPRA inventory and identification process; reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items; facilitating the resolution of disputes; compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such human remains; consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the committee affecting such tribes or organizations; consulting with the Secretary of the Interior in the development of regulations to carry out NAGPRA; and making recommendations regarding future care of repatriated cultural items. The Review Committee's work is completed during meetings that are open to the public.

Dated: March 12, 2007

C. Timothy McKeown,

Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee.

[FR Doc. E7–5969 Filed 3–29–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[DES 07–09]

Navajo-Gallup Water Supply Project

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Availability and Notice of Public Meetings for the Planning Report and Draft Environmental Impact Statement for the Navajo-Gallup Water Supply Project.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended) and the general authority to conduct water resources planning under the Reclamation Act of 1902 and all acts amendatory thereof and supplementary thereto, the Bureau of Reclamation (Reclamation) has prepared a Planning Report and Draft Environmental Impact Statement (PR/DEIS). This document was undertaken to provide a discussion for the (1) various ways to provide a municipal and industrial (M&I) water supply to the Navajo Nation; City of Gallup, New Mexico; and Jicarilla Apache Nation; (2) identification of a preferred alternative; and (3) associated environmental impacts and costs of such an endeavor, should it be undertaken.

The PR/DEIS presents alternatives for providing an anticipated year 2040 M&I water supply for the project area. Alternatives considered include diverting and distributing water from the San Juan River using various configurations, water conservation using existing groundwater supplies, and no action.

DATES: A 90-day public review period commences with the publication of this notice. Comments on the PR/DEIS should be submitted no later than June 28, 2007, to Mr. Rege Leach, Bureau of Reclamation, Western Colorado Area Office, 835 East Second Avenue, Suite 300, Durango, Colorado 81301. Comments may also be submitted electronically at *navgal@uc.usbr.gov*.

Reclamation will conduct five public meetings to obtain public input on the PR/DEIS. All of the meetings will take place from 6 p.m. to 9 p.m. The public meetings schedule is as follows:

- Tuesday, May 22, 2007—University of New Mexico, Calvin Hall Room 248, 200 College Drive, Gallup, New Mexico
- Wednesday, May 23, 2007—Crownpoint Chapter House, Building CO23–001, East Crownpoint Road, Crownpoint, New Mexico
- Thursday, May 24, 2007—St. Michaels Chapter House, St Michaels, Arizona
- Tuesday, June 5, 2007—Shiprock Chapter House, Highway 61, Shiprock, New Mexico
- Wednesday, June 6, 2007—San Juan College, IT Building, Room 7103, 5001 College Blvd., Farmington, New Mexico

ADDRESSES: Copies of the PR/DEIS are available for public inspection and review at the following locations:

- Albuquerque/Bernalillo County Library, 501 Copper Avenue, NW., Albuquerque, New Mexico
- Aztec Public Library, 319 South Ash, Aztec, New Mexico
- Bloomfield City Library, 333 South First Street, Bloomfield, New Mexico
- Cortez Public Library, 202 N. Park, Cortez, Colorado
- Diné College Library, 1228 Yucca Street, Shiprock, New Mexico
- Durango Public Library, 1188 E. 2nd Avenue, Durango, Colorado
- Farmington Public Library, 2101 Farmington Avenue, Farmington, New Mexico
- Fort Lewis College Library, 1000 Rim Drive, Durango, Colorado
- Navajo Nation Library, Window Rock, Arizona
- New Mexico State Library, 1209 Camino Carlos Rey, Santa Fe, New Mexico
- New Mexico State University Library, Las Cruces, New Mexico
- San Juan College Library, 4601 College Boulevard, Farmington, New Mexico
- University of Colorado Libraries, Government Publications, 1720 Pleasant Street, Boulder, Colorado
- Zimmerman Library, Government Information Department, University of New Mexico, Albuquerque, New Mexico

The PR/DEIS is also available electronically at the following internet location: *http://www.usbr.gov/uc/rm/navajo/nav-gallup/index.html.* Alternatively, a hard copy or CD–ROM version is available upon written request to Mr. Rege Leach, Bureau of Reclamation, Western Colorado Area Office, 835 East Second Avenue, Suite 300, Durango, Colorado 81301.

FOR FURTHER INFORMATION CONTACT: Mr. Rege Leach, Bureau of Reclamation, Western Colorado Area Office, 835 East Second Avenue, Suite 300, Durango, Colorado 81301; telephone 970–385–6500; facsimile 970–385–6539; e-mail: *navgal@uc.usbr.gov.* If special assistance is required regarding accommodations for attendance at any of the public meetings, please contact Mr. Leach no less than 5 working days prior to the applicable meeting(s).

SUPPLEMENTARY INFORMATION: The proposed project is to provide a long-term supply, treatment, and transmission of M&I water to the Navajo Nation, the Jicarilla Apache Nation, and the City of Gallup, New Mexico. A sustainable water supply is needed for the area to support current and future populations. The proposed project would be designed to serve a future population of approximately 250,000 people by the year 2040. The existing groundwater supplies are dwindling and have limited capacity and poor quality. More than 40 percent of Navajo households rely on water hauling to meet daily water needs. The City of Gallup's groundwater levels have dropped approximately 200 feet over the past 10 years and the supply is not expected to meet current water demands within the decade. The Jicarilla Apache people are currently not able to live and work outside the Town of Dulce, New Mexico, on the reservation because of a lack of water supply.

The cost analysis contained in this PR/DEIS is based on an appraisal level of analysis. As part of Reclamation's efforts to attain greater transparency and accountability with regards to its engineering analyses, the cost estimate is being repriced. This means that instead of updating the 2005 cost estimates using engineering cost indices, the components of the project will be individually repriced in order to gain greater confidence in the estimate. Once the repricing is completed, which we anticipate to occur during the 90-day public comment period, Reclamation will update the PR/DEIS through an addendum or potentially the use of errata sheets.

Reclamation historically supports projects for construction after a feasibility report is completed which includes a feasibility level cost estimate. This appraisal level cost estimate does not meet that requirement. Additional analysis, detail, and updating of the appraisal level cost estimate presented in this draft report are needed before project construction authorization can be supported. Failure to complete this additional effort may result in reliance on a cost estimate for the project which is not sufficient to characterize the expected project cost. The appraisal level design must be upgraded to feasibility level before Reclamation would begin construction. The cost of, and time for completing this additional work, would be substantial.

Reclamation has developed this PR/DEIS pursuant to Public Law 92–199 and the general authority to conduct water resources planning under the Reclamation Act of 1902 and all acts amendatory thereof and supplementary thereto. This document was undertaken to provide a discussion for the (1) various ways to provide an M&I water supply to the Navajo Nation; City of Gallup, New Mexico; and Jicarilla Apache Nation; (2) identification of a preferred alternative; and (3) associated environmental impacts and costs of such an endeavor, should it be undertaken. Reclamation, however, does not have the current substantive or budgetary authorization that is required to construct, operate, and maintain any proposed facilities discussed in this PR/DEIS, and it will take an act of Congress to provide such authority. In addition, Reclamation takes no position on whether such a project should be authorized. The indication of a preferred alternative is solely to meet the requirements of NEPA and is not an indication that a particular alternative should be pursued since, as noted earlier, there is no project authorization that would allow Reclamation to commence this project.

Finally, we are aware that the Navajo Nation and the State of New Mexico have reached an agreement concerning the settlement of the Navajo's water rights in the San Juan River Basin in New Mexico and that a part of the settlement is the construction, operation, and maintenance of the Navajo-Gallup Water Supply Project. We wish to be clear that neither Reclamation, the Department of the Interior, or the Administration have taken a position on the Navajo-San Juan Settlement executed between the Navajo Nation and the State of New Mexico and that nothing herein is any indication of any position regarding the overall settlement.

Public Disclosure

It is our practice to make comments, including names, home addresses, home telephone numbers, and e-mail addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: March 22, 2007.

Rick L. Gold,

Regional Director—Bureau of Reclamation, Upper Colorado Region.

[FR Doc. E7–5776 Filed 3–29–07; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Delta-Mendota Canal Recirculation Project, Calaveras, Contra Costa, Fresno, Kings, Merced, San Benito, San Joaquin, Santa Clara, Stanislaus, and Tuolumne Counties, CA

AGENCY: Bureau of Reclamation, Interior

ACTION: Notice of intent to prepare an Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) and notice of public scoping meetings.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation) and the California Department of Water Resources (DWR) intend to prepare an EIS/EIR for the Delta-Mendota Canal (DMC) Recirculation Project. Reclamation is the Federal lead agency for NEPA and DWR is the State lead agency for CEQA.

The purpose of the project is to prepare a feasibility study of the DMC Recirculation Project that will evaluate the costs, benefits, feasibility, and impacts of possibly recirculating water from the DMC Canal for release to the San Joaquin River. Recirculation may provide additional flows for fishery objectives and may help to meet San Joaquin River water quality objectives, while reducing the reliance on the New Melones Reservoir for water releases. As part of the feasibility study process, a Draft EIS/EIR is expected to be available in 2008.

DATES: Public scoping meetings will be held to solicit public input on the alternatives, concerns, and issues to be addressed in the EIS/EIR. The meetings dates and times are as follows:

- Monday, April 16, 2007, 10 a.m.–12 p.m, Sacramento, CA.
- Monday, April 16, 2007, 6 p.m.–8 p.m., Los Banos, CA.
- Tuesday, April 17, 2007, 6 p.m.–8 p.m., Modesto, CA.

Written comments on the scope of the EIS/EIR should be mailed to the Bureau of Reclamation at the address below by May 9, 2007.

ADDRESSES: The public scoping meeting locations are:

- Sacramento at the Federal Building, 2800 Cottage Way, Cafeteria Conference Rooms C–1001 and C–1002.
- Los Banos at the Miller and Lux Senior Center Building, 830 6th Street.
- Modesto at the Modesto Centre Plaza, 1000 L Street, Pistache Room.

Written comments on the scope of the EIS/EIR should be sent to: Ms. Sammie Cervantes, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825, via e-mail *scervantes@mp.usbr.gov,* or faxed to 916–978–5094.

FOR FURTHER INFORMATION CONTACT: Mr. Maury Kruth, Reclamation Project Manager, at the above address, at 916–978–5078, TDD 916–978–5608, via fax at 916–978–5094, or e-mail at *mkruth@mp.usbr.gov.*

SUPPLEMENTARY INFORMATION: The DMC is located on the western side of Central California's San Joaquin Valley and runs for approximately 120 miles, beginning near the City of Tracy at the southern edge of the Sacramento River and San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Delta) and terminating at the Mendota Pool of the San Joaquin River. The project study area can be defined as the lower main stem of the San Joaquin River below its confluence with the Merced River, the areas served by the Merced, Tuolumne, and Stanislaus Rivers on the western side of the Sierra Nevada Mountains, and the areas served by the DMC, including approximately 30 water agencies. Immediately downstream from the confluence with the Stanislaus River, the San Joaquin River becomes part of the Delta, which serves as a source of water supply for agricultural, environmental, municipal, and urban uses. The south Delta will be considered part of the project study area.

The SWRCB has established Delta water quality and flow objectives that are to be met as a condition of the operation of the C.W. ''Bill'' Jones Pumping Plant (formerly the Tracy Pumping Plant) and the State Water Project Harvey O. Banks Pumping Plant. The current objectives for operation of the Central Valley Project and the State Water Project facilities in the Delta are the SWRCB's 1995 *Water Quality Control Plan for the San Francisco Bay/ Sacramento-San Joaquin Delta Estuary,* and the SWRCB's Water Rights D–1641, as amended.

In D–1641, SWRCB required Reclamation to prepare a Plan of Action (POA) to evaluate the potential impacts of recirculating water from DMC through the Newman Wasteway, in consultation with National Marine Fisheries Service, U.S. Fish and Wildlife Service, California Department of Fish and Game, DWR, and the South Delta Water Agency. The POA has been completed and is being implemented by this feasibility study.

Federal authorization comes from Public Law 108–361, Section 103(d)(2)(D)(ii) of the CALFED Bay-Delta Authorization Act, which states in part that ''* * * the Secretary [of the Interior] shall include, to the maximum extent feasible, the measures described in clauses (iii) through (vii).'' Section 103(d)(2)(D)(iii) states ''the Secretary shall incorporate into the program a recirculation program to provide flow, reduce salinity concentrations in the San Joaquin River, and reduce the reliance on the New Melones Reservoir for meeting water quality and fishery flow objectives through the use of excess capacity in export pumping and conveyance facilities.'' Section 103(f)(1)(G) states ''* * * funds may be used to conduct feasibility studies, evaluate, and if feasible, implement the recirculation of export water to reduce salinity and improve dissolved oxygen in the San Joaquin River.''

Previous recirculation studies have consisted of modeling and physically discharging water from the DMC to the San-Joaquin River via one of the wasteways that connect the DMC to the river. Ongoing studies that might affect the DMC Recirculation Project include Vernalis Adaptive Management Plan, CALFED Conveyance Program—South Delta Improvements Program, the New Melones Revised Plan of Operations, and the West Side Regional Drainage Plan. A recent litigation settlement regarding the San Joaquin River from Friant Dam to the Merced River may also affect the DMC Recirculation Project.

If special assistance is required at the scoping meetings, please contact Ms. Sammie Cervantes at 916–978–5189, TDD 916–978–5608, or via e-mail at *scervantes@mp.usbr.gov.* Please notify Ms. Cervantes as far in advance of the meetings as possible to enable Reclamation to secure the needed services. If a request cannot be honored, the requestor will be notified. A telephone device for the hearing impaired (TDD) is available at 916–978–5608.

Comments received in response to this notice will become part of the administrative record and are subject to public inspection. Our practice is to make comments, including names, home addresses, home phone numbers, and e-mail addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if you wish us to consider withholding this information, you must state this prominently at the

beginning of your comments. In addition, you must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: February 23, 2007.

Kenneth Lentz,

Acting Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. E7–5889 Filed 3–29–07; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0089

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for 30 CFR part 702, Exemption for Coal Extraction Incidental to the Extraction of Other Minerals has been forwarded to the Office of Management and Budget (OMB for review and approval. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by April 30, 2007, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, by telefax at (202) 395–6566 or via e-mail to *OIRA_Docket@omb.eop.gov.* Also, please send a copy of your comment to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 202—SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request contact John A. Trelease at (202) 208–2783. You may also contact Mr. Trelease at *jtrelease@osmre.gov.*

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 320.8(d)]. OSM has submitted a request to OMB to renew its approval for the collection of information found at 30 CFR Part 702. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number of this collection of information is 1029–0089, and may be found in OSM's regulations at 702.10.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on December 8, 2006 (71 FR 71189). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR part 702—Exemption for Coal Extraction Incidental to the Extraction of Other Minerals.

OMB Control Number: 1029–0089.

Summary: This part implements the requirement in Section 701(28) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), which grants an exemption from the requirements of SMCRA to operators extracting not more than 16⅔ percentage tonnage of coal incidental to the extraction of other minerals. This information will be used by the regulatory authorities to make that determination.

Bureau Form Number: None.

Frequency of Collection: Once and annually thereafter.

Description of Respondents: Producers of coal and other minerals and the State regulatory authorities.

Total Annual Responses: 120.

Total Annual Burden Hours: 535.

Total Non-wage Costs: $200.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection burden on respondents, such as use of automated means of collection of the information, to the addresses listed under **ADDRESSES.** Please refer to OMB control number 1029–0089 in all correspondence.

Dated: February 8, 2007.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. 07–1575 Filed 3–29–07; 8:45 am]

BILLING CODE 4310–05–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Revision of Certain Dollar Amounts in the Bankruptcy Code Prescribed Under Section 104(b) of the Code

AGENCY: Judicial Conference of the United States.

ACTION: Notice.

SUMMARY: Modification of **Federal Register** notice that certain dollar amounts in title 11 and title 28, United States Code, are increased. [Original notice appeared in the **Federal Register** of February 14, 2007].

SUPPLEMENTARY INFORMATION: The following provides (1) An updated list of the adjustments to 11 U.S.C. Section 707(b) and (2) an updated list of the Bankruptcy Forms which will be amended to reflect the adjusted dollar amounts.

11 U.S.C.	Dollar amount to be adjusted	New (adjusted) dollar amount
707(b)—dismissal of a case or conversion to a case under chapter 11 or 13 (means test):		
(1)—in paragraph (2)(A)(i)(I)	$6,000	$6,575
(2)—in paragraph (2)(A)(i)(II)	10,000	10,950
(3)—in paragraph (2)(A)(ii)(IV)	1,500	1,650

11 U.S.C.	Dollar amount to be adjusted	New (adjusted) dollar amount
(4)—in paragraph (2)(B)(iv)(I)	6,000	6,575
(5)—in paragraph (2)(B)(iv)(II)	10,000	10,950
(6)—in paragraph (5)(B)	1,000	1,100
(7)—in paragraph 6(C)	525	575
(8)—in paragraph 7(A)(iii)	525	575

Official Bankruptcy Forms 1, 6C, 6E, 7, 10, 22A, and 22C also will be amended to reflect these adjusted dollar amounts.

FOR FURTHER INFORMATION CONTACT: Francis F. Szczebak, Chief, Bankruptcy Judges Division, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1900.

Dated: March 26, 2007.

Francis F. Szczebak,

Chief, Bankruptcy Judges Division.

[FR Doc. E7–5922 Filed 3–29–07; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,123]

A.O. Smith Electrical Products Company, Mcminnville, TN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 16, 2007 in response to a petition filed by a company official on behalf of workers of A.O. Smith Electrical Products Company, McMinnville, Tennessee.

This petition is a duplicate of an earlier petition (TA–W–61,080) filed on March 8, 2007, that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would serve no purpose. Therefore, the investigation under this petition has been terminated.

Signed at Washington, DC, this 20th day of March, 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–5851 Filed 3–29–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,958]

Alcan Global Pharmaceutical Packaging, Inc.; Plastics American Division; Centralia, IL; Notice of Negative Determination on Remand

On December 18, 2006, the U.S. Court of International Trade (USCIT) granted the Department of Labor's motion for a voluntary remand in *Former Employees of Alcan Global Pharmaceuticals Packaging, Inc.* v. *U.S Secretary of Labor*, Court No. 06–00180. SAR 47.

Case History

On March 2, 2006, the Glass, Molders, Pottery, Plastics & Allied Workers International Union, Local 267, (Union) filed a petition for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) with the U.S. Department of Labor (Department) on behalf of workers and former workers of Alcan Global Pharmaceutical Packaging, Inc., Plastics Americas Division, Centralia, Illinois (subject firm). AR 2–18.

Alcan, Inc. (Alcan) is a Canadian company and the subject firm is part of Alcan's North American pharmaceutical packaging network (''Plastics Americas Division''). The closure of the subject firm was announced on November 30, 2005. AR 72.

The initial investigation revealed that the subject firm produced plastic bottles; sales and production increased in 2005 from 2004 levels; the subject firm shut down on June 30, 2006; the subject firm did not import plastic bottles in 2004, 2005, or during January through February 2006; and subject firm production shifted to other domestic Alcan facilities. AR 21, 26, 37–40, 43, 69–71.

Because subject firm sales and production did not decline in 2005 from 2004 levels, the Department did not consider it to be a declining company. However, because the subject firm closed, the Department conducted a survey of the subject firm's major declining customers. The survey revealed no increased import purchases of plastic bottles during the relevant period. AR 65, 67, 68.

The negative determination, issued April 11, 2006, stated that the subject firm did not shift production abroad and that neither the subject firm nor its major declining customers imported plastic bottles during the relevant period. AR 77–80. The Department's notice of determination was published in the **Federal Register** on April 24, 2006 (71 FR 21044–5). AR 85–87.

In its request for administrative reconsideration, the Union alleging that ''the company is sending their mold equipment to Puerto Rico * * * has reported losses * * * likely as a result of competing manufacturers from overseas.'' AR 88.

The Department's May 12, 2006 letter informed the Union that the request for reconsideration was being dismissed because no evidence was presented that the Department erred in its interpretation of facts or of the law. The dismissal letter also stated that because Puerto Rico is a U.S. Territory, a shift of production to Puerto Rico is not considered to be a shift of production abroad, for purposes of the Trade Act of 1974. AR 90–91.

The Dismissal of Application for Reconsideration applicable to the subject firm was issued on May 15, 2006, AR 92, and published in the **Federal Register** on May 24, 2006 (71 FR 29981). AR 94. Subsequent to the dismissal of the request for reconsideration, SAR 46, the Department received additional information from the Union. SAR 2–45.

In a letter dated May 30, 2006, the Union appealed the Department's action to the USCIT. Plaintiff alleged that ''[t]here is word that the company is sending their mold equipment to Puerto Rico * * * Also, the company has reported losses for years from the Centralia facility, likely as a result of competing manufacturers from overseas.'' SAR 1.

In order to consider the additional information and make a redetermination regarding Plaintiff's eligibility to apply for worker adjustment assistance, the Department sought, and was granted, a voluntary remand. SAR 47.

Remand Investigation

The group eligibility requirements for directly-impacted (primary) workers under Section 222(a) the Trade Act of 1974, as amended, can be satisfied in either one of two ways:

(A)(1) A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated; and (2) the sales or production, or both, of such firm or subdivision have decreased absolutely; and (3) increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision;

or

(B)(1) A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated, and (2) there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision.

Further, one of the following must be satisfied:

1. the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States, or

2. the country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Because the subject firm shut down, AR 21, the Department determines that a significant number or proportion of workers at the subject firm have become totally separated and that the sales or production of the subject firm decreased absolutely.

In order for criterion (A)(3) to be satisfied, it must be shown that increased imports of plastic bottles during the relevant period ''contributed importantly'' to the workers'' separations and subject firm sales and/or production declines.

Per 29 CFR 90.2, ''increased imports'' means that imports have increased, absolutely or relative to domestic production, compared to a representative base period. The regulation also establishes the representative base period as the one-year period proceeding the relevant period (the twelve-month period prior to the date of the petition).

Because subject firm sales and production increased in 2005 from 2004 levels, there were no apparent sales and/or production declines during the relevant period. Rather, subject firm's sales and production declines occurred after the relevant period. Therefore, there were no sales or production declines at the subject firm to which increased imports could have contributed importantly.

Assuming, however, that there were subject firm sales and/or production declines during the relevant period, the Department conducted a survey of the subject firm's major declining customers regarding their import purchases of plastic bottles. SAR 50–51, 189–199, 207–221, 226–227. None of the respondents reported increased imports, either direct or indirect, of plastic bottles or articles like or directly competitive with plastic bottles during the relevant period. SAR 49–50, 207, 215–216, 219–220, 226–227, 233.

Further, the subject firm did not have any imports of plastic bottles during the relevant period. AR 43.

During the remand investigation, Alcan explained that the subject firm's sudden closure (sales and production increased in 2005 from 2004 levels and the plant closure was announced in November 2005, AR 72) was the result of the loss of two major contracts. SAR 49, 71–72, 74–75. When the Department contacted the two ''lost'' customers, the Department was informed by both customers that the contracts were not ''lost'' because of any import factors and that the contracts were awarded to other domestic vendors. SAR 52, 216, 226–227.

Given the above-stated reasons, the Department determines that TAA criterion (A)(3) has not been met.

The Department affirms that a shift of production to Puerto Rico is not considered a shift of production abroad, for purposes of the Trade Act, because it is a U.S. Territory. Therefore, a shift of production to Puerto Rico cannot be a basis for satisfaction of TAA criterion (B)(2).

In response to Plaintiff's allegation that subject firm production shifted abroad, the Department requested that Alcan identify those domestic facilities to which subject firm production shifted and explain the documents which indicate that machines were shipped to Brazil and Australia. SAR 49, 52–71.

Alcan stated that subject firm production was either discontinued or shifted to Alcan production facilities in Des Plaines, Illinois or Youngsville, North Carolina, SAR 73, 228. Alcan also stated that the machines identified by Plaintiff were surplus equipment, SAR 49, 71; that the surplus equipment sent to Alcan's Brazilian facility was used to produce articles for the Brazilian market, SAR 49, 71; and that the surplus equipment sent to Australia was sold to third-party vendors only. SAR 71.

Given the above-stated reasons, the Department determines that TAA criterion (B)(2) has not been met.

In addition, in accordance with Section 246 of the Trade Act of 1974, as amended, the Department herein presents the results of its investigation regarding certification of eligibility to apply for ATAA.

In order to apply the Department to issue a certification of eligibility to apply for ATAA, the subject worker group must be certified eligible to apply for TAA. Since the workers are denied eligibility to apply for TAA, they cannot be certified eligible to apply for ATAA.

Conclusion

After careful review of the findings of the remand investigation, I affirm the notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Alcan Global Pharmaceutical Packaging, Inc., Plastics Americas Division, Centralia, Illinois.

Signed at Washington, DC this 19th day of March 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–5843 Filed 3–29–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has

instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 9, 2007.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 9, 2007.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 20th day of March 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX—TAAPETITIONS INSTITUTED BETWEEN 3/12/07 AND 3/16/07

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
61089	Commercial Vehicle Group a/k/a Trim Systems (Comp)	Vancouver, WA	03/12/07	03/09/07
61090	Easton Sports Inc (State)	Van Nuys, CA	03/12/07	03/09/07
61091	Esselte Corporation (Comp)	Kankakee, IL	03/12/07	03/09/07
61092	Hillerich and Bradsby Company (Wkrs)	Loomis, CA	03/12/07	03/08/07
61093	Collins and Aikman (UAW)	Morristown, IN	03/12/07	03/01/07
61094	Pine River Plastics (Comp)	St. Clair, MI	03/12/07	03/09/07
61095	Freightliner PMP (Wkrs)	Gastonia, NC	03/12/07	03/07/07
61096	Portac, Inc (UNION)	Tacoma, WA	03/12/07	03/06/07
61097	Fleetwood Travel Trailers (Wkrs)	Longview, TX	03/12/07	03/07/07
61098	Indera Mills Company (Comp)	Yadkinville, NC	03/12/07	03/12/07
61099	Wright's Hosiery (Comp)	Fort Payne, AL	03/12/07	03/12/07
61100	Performance Sports Apparel (Wkrs)	Reading, PA	03/13/07	03/12/07
61101	Ameridrives International (UNION)	Erie, PA	03/13/07	03/02/07
61102	Springs Global (Comp)	Hartwell, GA	03/13/07	03/12/07
61103	Delbar Products Inc (IAM)	Perkasie, PA	03/13/07	03/12/07
61104	Bay State Circuits Inc. (Comp)	Millbury, MA	03/13/07	03/12/07
61105	Kidde Fenwal (Comp)	Ashland, MA	03/13/07	03/12/07
61106	Hoke Inc (Comp)	Berlin, CT	03/13/07	03/07/07
61107	Boise Cascade LLC (UNION)	Vancouver, WA	03/13/07	03/12/07
61108	Fleetwood Travel Trailers (State)	Williamsport, MD	03/13/07	03/13/07
61109	Laufen International Inc/U.S. Ceramic Tile Company (Comp)	Canton, OH	03/14/07	03/14/07
61110	DENT Manufacturing (GMP)	Northampton, PA	03/14/07	03/11/07
61111	Bodine Electric Company (Comp)	Peosta, IA	03/15/07	03/14/07
61112	Modine Manufacturing Company (Union)	Clinton, TN	03/15/07	03/13/07
61113	Jabil (Comp)	St. Petersburg, FL	03/15/07	03/13/07
61114	Vestal Manufacturing Enterprises, Inc. (Union)	Sweetwater, TN	03/15/07	03/14/07
61115	Hoke, Inc (State)	Berlin, CT	03/15/07	03/14/07
61116	Alsons Coproration (Comp)	Hillsdale, MI	03/15/07	03/15/07
61117	Hanes Brands (Wkrs)	Rockingham, NC	03/15/07	02/28/07
61118	Progressive Service Die Company (Comp)	New Kingstown, PA	03/15/07	03/15/07
61119	Northcutt Woodworks, L.P. (Comp)	Crockett, TX	03/15/07	03/13/07
61120	ConAgra Foods (Union)	King City, CA	03/16/07	03/14/07
61121	Ardel, Inc (Wkrs)	Shelby, NC	03/16/07	03/15/07
61122	Snap-on Tools (Union)	Johnson City, TN	03/16/07	03/15/07
61123	A.O. Smith Electrical Products Company (Comp)	McMinnville, TN	03/16/07	03/01/07
61124	Topflite Golf Co (The) (IBB)	Chicopee, MA	03/16/07	03/14/07
61125	Jones NY Apparel Group Inc (Wkrs)	New York, NY	03/16/07	03/04/07
61126	U.S. Axle, Inc. (Comp)	Pottstown, PA	03/16/07	03/05/07
61127	ICT (Comp)	Calvert City, KY	03/16/07	03/15/07
61128	Kvaerner Willfab (IUE)	Williamsport, PA	03/16/07	03/15/07
61129	Romar Textile Co Inc (Comp)	Wampum, PA	03/16/07	03/13/07
61130	Bauhaus USA Inc (Comp)	Iuka, MS	03/16/07	03/15/07
61131	Excel Technical Services (Wkrs)	Fishers, IN	03/16/07	03/15/07

[FR Doc. E7–5852 Filed 3–29–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,566]

E*Trade Mortgage Corporation; Including Leased Workers From Manpower and Radian; Coraopolis, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(c) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at E*Trade Mortgage Corporation, including leased workers from Manpower and Radian, Coraopolis, Pennsylvania. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

*TA–W–60,566; E *Trade Mortgage Corporation Including Leased Workers From Manpower and Radian, Coraopolis, Pennsylvania (March 15, 2007).*

Signed at Washington, DC, this 21st day of March 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–5846 Filed 3–29–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,048]

Emerson Network Power, Formerly Artesyn Communication Products, Madison, WI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 1, 2007 in response to a petition filed by a company official on behalf of workers of Emerson Network Power, formerly Artesyn Communications Products, Madison, Wisconsin.

The petitioner has requested that this petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 16th day of March, 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–5849 Filed 3–29–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,368]

Formica Corporation; Wildon Industries, Inc.; Rocklin, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on May 17, 2006, applicable to workers of Formica Corporation, Rocklin, California. The notice was published in the **Federal Register** on June 9, 2006 (71 FR 33488).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of high pressure laminates.

New information shows that during 2004, workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for a subsidiary company, Wildon Industries, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Formica Corporation who were adversely affected by increased company imports.

The amended notice applicable to TA–W–59,368 is hereby issued as follows:

''All workers of Formica Corporation, Wildon Industries, Inc., Rocklin, California, who became totally or partially separated from employment on or after May 9, 2005, through May 17, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 30th day of March 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–5844 Filed 3–29–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of March 12 through March 16, 2007.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–60,788; Hearth and Home Technologies, Division of HNI Industries, Mt. Pleasant, IA: January 16, 2006

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA–W–60,893; Wayne Wire Air Bag Components, Inc., Div. of Wayne Wire Cloth Products, Inc., Kalkaska, MI: February 1, 2006

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–61,006; CST, Inc., Job Works, Inc., Mt. Carmel, IL: February 14, 2006

TA–W–61,060; Latronics Corporation, Latrobe, PA: March 4, 2007

TA–W–61,084; Renfro Corporation, Mt. Airy Riverside Plant, Mt. Airy, NC: November 19, 2006

TA–W–60,687; Wheatland Tube Co., Sharon Plant, Sharon, PA: February 5, 2007

TA–W–60,695; Longview Fibre Company, Winton Sawmill, Leavenworth, WA: December 28, 2005

TA–W–60,906; Weyerhaeuser—Veneer Technologies, Cobury Veneer Division, Eugene, OR: February 2, 2006

TA–W–61,005; United States Sugar Processing, LLC, a Subsidiary of United States Sugar Corporation, Pahokee, FL: February 16, 2006

TA–W–60,663; Sang Choy Fashion, Inc., New York, NY: December 21, 2005

TA–W–60,813; New State Fashion, Inc., New York, NY: January 22, 2006

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,818; Case New Holland, LLC, Goodfield Manufacturing Operations, Goodfield, IL: January 23, 2006

TA–W–60,867; Polymer Group, Inc.—Chicopee, Gainesville, GA: January 30, 2006

TA–W–60,991; Heinz North America, Lea and Perrins Division, Fairlawn, NJ: February 14, 2006

TA–W–61,025; Methode Electronics, Inc., Automotive Electronic Controls Division, Golden, IL: February 23, 2006

TA–W–61,038; Delphi Corporation, Automotive Holdings Group, Moraine, OH: February 26, 2006

TA–W–61,045; Eaton Corporation, Electrical Components Division, Selma, NC: February 6, 2006

TA–W–61,066; ITW Plastic, A Subdivision of Illinois Tool Works, Inc., Shelby Township, MI: February 19, 2006

TA–W–60,865; Garrity Industries, Inc., Madison, CT: January 29, 2006

TA–W–60,933; Gerson and Gerson, Inc., Middlesex, NC: February 8, 2006

TA–W–60,951; Hartford Technologies, Rocky Hill, CT: November 18, 2006

TA–W–60,967; Masco Corporation of Indiana, Delta Faucet Company, Greensburg, IN: February 5, 2006

TA–W–60,972; Parlex Polymer Flexible Circuits, Inc., PTF Division, Cranston, RI: February 15, 2006

TA–W–60,976; Federal Mogul, Inc, Globab Distribution and Logistics Division, Berkeley, MO: February 13, 2006

TA–W–60,978; First Alert/BRK Brands, Inc., Aurora, IL: February 16, 2006

TA–W–60,997; Employment Solutions, Working on Site at Water Pik, Inc., Fort Collins, CO: February 21, 2006

TA–W–61,004; Seydel Companies (The), Pendergrass, GA: February 12, 2006

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–60,855A; Ixtlan Technology, LLC, Adrian, MI: January 15, 2006

TA–W–60,870; Lear Corporation, Interior Systems Division, Sidney, OH: January 25, 2006

TA–W–60,959; Appalachian Veneer and Lumber, dba Mundy's Lumber and Veneer, Marble, NC: February 12, 2006

TA–W–61,031; Hitachi Transport System (America), Ltd., Greenville, SC: February 26, 2006

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

None

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–60,788; Hearth and Home Technologies, Division of HNI Industries, Mt. Pleasant, IA.

TA–W–60,893; Wayne Wire Air Bag Components, Inc., Div. of Wayne Wire Cloth Products, Inc., Kalkaska, MI.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–61,015; Dan D Company, Tillamook, OR.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

None

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–59,773; Euro Matic Plastics, Wilson, NC.

TA–W–60,623; Holiday Housewares, Inc., Leominster, MA.

TA–W–60,734; Primary Staffing Services, Inc., Workers Employed at Pearson Artworks, York, PA.

TA–W–60,801; Collins and Aikman—Tooling and Equipment Group, Dover, NH.

TA–W–60,821; Hillsdale Automotive, A Subsidiary of Eaglepicher, Traverse City, MI.

TA–W–60,882; CAMACO, LLC, Mariana Division, Marianna, AR.

TA–W–60,883; Gleason Works (The), Rochester, NY.

TA–W–60,894; Carpenter Company, Leominster, MA.

TA–W–60,827; Sun Microsystems, Inc., Louisville, CO.

TA–W–60,886; Liebert Corporation, Irvine, CA.

The investigation revealed that the predominate cause of worker separations is unrelated to criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.C) (shift in production to a foreign country under a free trade agreement or a beneficiary country under a preferential trade agreement, or there has been or is likely to be an increase in imports).

None

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–60,086; Ford Motor Company, Product Development and Engineering Center, Dearborn, MI.

TA–W–60,843; Clorox Services Company, A Subsidiary of the Clorox Company, Oakland, CA.

TA–W–60,971; PHD Michigan, LLC, A Subsidiary of PHD Media, LLC, Troy, MI.

TA–W–61,027; World Aviation Rewind, Santa Ana, CA.

TA–W–61,052; Allied Systems, Chesapeake, VA.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None

I hereby certify that the aforementioned determinations were issued during the period of March 12 through March 16, 2007. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 23,2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E7–5853 Filed 3–29–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,115]

Hoke, Inc.; Berlin, CT; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 15, 2007 in response to a petition filed on behalf of workers of Hoke, Inc., Berlin, Connecticut.

The petitioning group of workers is covered by a duplicate petition (TA–W–61,106) instituted on March 15, 2007 that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts; therefore the investigation under this petition has been terminated.

Signed at Washington, DC, this 16th day of March 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–5850 Filed 3–29–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,808]

Invista, S.A.R.L., Nylon Apparel Filament Fibers Group, a Subsidiary of Koch Industries, Inc., Chattanooga, TN; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Invista, S.A.R.A., Nylon Apparel Filament Fibers Group, a subsidiary of Koch Industries, Inc., Chattanooga, Tennessee. The application did not contain new information supporting a conclusion that the determination was erroneous, and also did not provide a justification for reconsideration of the determination that was based on either mistaken facts or a misinterpretation of facts or of the law. Therefore, dismissal of the application was issued.

TA–W–60,808; Invista, S.A.R.L., Nylon Apparel Filament Fibers Group, a Subsidiary of Koch Industries, Inc., Chattanooga, Tennessee (March 15, 2007).

Signed at Washington, DC, this 21st day of March 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–5848 Filed 3–29–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,619]

Alcan Packaging, Inc.; d/b/a Pechiney Plastic Packaging, Inc.; Lincoln Park, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 19, 2007, applicable to workers of Alcan Packaging, Inc., Lincoln Park, New Jersey. The notice was published in the **Federal Register** on February 7, 2007 (72 FR 5748).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of plastic cosmetic packaging.

New information shows that plastic tube and the laminate tube unit of Alcan Packaging is doing business as Pechiney Plastic Packaging, Inc. Workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Pechiney Plastic Packaging, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Alcan Packaging, Inc. who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA–W–60,619 is hereby issued as follows:

''All workers of Alcan Packaging, Inc., d/b/a Pechiney Plastic Packaging, Inc., Lincoln Park, New Jersey, who became totally or partially separated from employment on or after December 1, 2005, through January 19, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 20th day of March 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–5847 Filed 3–29–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,195]

Walter Kidde Portable Equipment, Inc.; Kidde Residential and Commercial Division; Including On-Site Temporary Workers of Special Teams Power; Mebane, NC; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on October 12, 2006, applicable to workers of Walter Kidde Portable Equipment, Inc., Kidde Residential and Commercial Division, Mebane, North Carolina. The notice was published in the **Federal Register** on October 25, 2006 (71 FR 62490).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of portable fire extinguishers.

New information shows that temporary workers of Special Teams Power were employed on-site at Walter Kidde Portable Equipment, Inc., Kidde Residential and Commercial Division, Mebane, North Carolina.

Based on these findings, the Department is amending this certification to include temporary workers of Special Teams Power working on-site at the Mebane, North Carolina location of the subject firm.

The intent of the Department's certification is to include all workers employed at Walter Kidde Portable Equipment, Inc., Kidde Residential and Commercial Division, Mebane, North Carolina who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA–W–60,195 is hereby issued as follows:

''All workers of Walter Kidde Portable Equipment, Inc., Kidde Residential & Commercial Division, including on-site temporary workers of Special Team Power, Mebane, North Carolina, who became totally or partially separated from employment on or after October 1, 2005, through October 12, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 16th day of March 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–5845 Filed 3–29–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

RIN 1219–AB46

Emergency Mine Evacuation

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of SCSR availability.

SUMMARY: This notice informs the mining community of the availability of

realistic self-contained self-rescue (SCSR) training units to conduct annual SCSR expectations training.

DATES: Underground coal mine operators must have a purchase order for realistic SCSR training units by April 30, 2007 and conduct this component of expectations training within 60 days of receipt of the units.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939. Ms. Silvey can be reached at 202–693–9440 (voice), 202–693–9441 (facsimile), or *silvey.patricia@dol.gov* (Internet e-mail).

SUPPLEMENTARY INFORMATION: On December 8, 2006, the Mine Safety and Health Administration (MSHA) published a final rule on Emergency Mine Evacuation. The majority of the requirements applied to underground coal mines. [71 FR 71430] Section 75.1504(c) of the final rule is a new provision that requires underground coal mine operators to provide annual SCSR expectations training to miners. Expectations training requires the miner to breathe through a realistic SCSR training unit or an equivalent device that provides the sensation of airflow resistance and heat that the miner would experience when using an SCSR during an emergency.

When the final rule was published, realistic SCSR training units were not available. MSHA did not require compliance with expectations training until the training units became available. MSHA also stated that the Agency would notify mine operators of the availability of the training units by publishing a notice in the **Federal Register**.

MSHA has determined that realistic SCSR training units are now available. These units are now manufactured by CSE, Ocenco, and Draeger. Mine operators can purchase these units directly from the manufacturers at the addresses below:

CSE CORPORATE HEADQUARTERS
600 Seco Road,
Monroeville, PA 15146
Phone: 800–245–2224
Fax: 412–856–9203

Product Description	*Part Number*
Complete SR–T Live Training Unit	Q152501001
Canister Assembly with Cap in Storage	Q152502001
SR–T mouthpiece with plug	Q152050226
SR–T Parts Kit	Q152552001

OCENCO, INC.
Lake View Corporate Park,
10225 82nd Avenue,
Pleasant Prairie, WI
53158–5801 U.S.A.
Phone: 262–947–9000
Fax: 262–947–9020

Product Description	*Part Number*
Expectations Mouthpiece	900060
Expectations Trainer Cartridge	900059

DRAEGER SAFETY, INC.
101 Technology Drive,
Pittsburgh, PA 15275–1057
Phone: 412–787–8383
Fax: 412–787–2207

Product Description	*Part Number*
Practice Simulator for OXY K Plus Training Unit	6303646

Dated: March 22, 2007.

Richard E. Stickler,

Assistant Secretary for Mine Safety and Health.

[FR Doc. E7–5920 Filed 3–29–07; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Cyberinfrastructure; 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 Cyberinfrastructure (#25150).

Date/Time: May 3, 2007, 10 a.m. to 5 p.m.; May 4, 2007, 10 a.m. to 2 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1235, Arlington, VA. The Advisory Committee members will attend virtually.

Type of Meeting: Open.

Contact Person: Deborah White-Wilkins, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 292–8970.

If you are attending the meeting and need access to the NSF, please contact the individual listed above so you name may be added to the building access list.

Purpose of Meeting: To provide advice concerning issues related to the oversight, integrity, development and enhancement of NSF's Office of Cyberinfrastructure.

Agenda:

May 3, 2007:

AM: Introductions and Updates—Office of Cyberinfrastructure activities.

PM: Presentation and Discussion—ACCI Subcommittee meetings and meeting with the Director and Deputy Director, NSF.

May 4, 2007:

AM: Presentation and Discussion—Office of Cyberinfrastructure.

PM: Discussion—Planning for next meeting; feedback; other business.

Dated: March 27, 2007.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E7–5876 Filed 3–29–07; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Engineering (1170).

Date/Time: April 19–20, 2007, 8:30 a.m.–5 p.m.

Place: National Science Foundation, Room 375.

Type of Meeting: Open.

Contact Person: Deborah Young, Program and Management Analyst, Office of the Assistant Director for Engineering, 703–292–8301.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to engineering programs and activities.

Agenda: The principal focus of the meeting will be a discussion of emerging issues and opportunities for the Directorate for Engineering and its divisions.

Dated: March 27, 2007.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E7–5887 Filed 3–29–07; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–754]

General Electric Company—Vallecitos Nuclear Center: Notice of Consideration of Approval of Transfer of Special Nuclear Material License and Conforming Amendment and Opportunity for Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of approval of transfer of special nuclear material license and conforming amendment and opportunity for hearing.

DATES: Requests for a hearing must be filed by April 19, 2007. Comments must be provided by April 30, 2007.

FOR FURTHER INFORMATION CONTACT: Mary T. Adams, Senior Project Manager, Fuel Manufacturing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission (NRC), Washington, DC 20555. Telephone: (301) 415–7249; fax number: (301) 415–5955; e-mail: *mta@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (the Commission) is considering approval of an application (the application) from General Electric Company (GE), submitted on January 19, 2007, for consent to direct transfer of Special Nuclear Material License-960 (SNM–960), currently held by GE to GE-Hitachi Nuclear Energy Americas, LLC. The application was supplemented by letters dated January 25, 2007, February 23, 2007, and March 2, 2007. The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer. Renewed License No. SNM–960 was issued on September 14, 2000, to GE under 10 CFR Part 70, and authorizes GE to possess and use specified licensed material at the Vallecitos Nuclear Center located near Pleasanton, California.

According to the application for approval, and supplements filed by GE, GE-Hitachi Nuclear Energy Americas, LLC, a newly formed entity, would acquire ownership of the facilities following approval of the proposed license transfer, and would be responsible for the operation and maintenance of the facilities. This new entity will be wholly owned by GE-Hitachi Nuclear Energy Holdings, LLC, created as a parent company. A U.S. subsidiary or subsidiaries of Hitachi Ltd., a Japanese company, will hold a 40% ownership interest. GE, through various subsidiaries, will hold a 60% ownership interest.

The proposed amendment would replace references to GE in the license with references to GE-Hitachi Nuclear Energy Americas, LLC., to reflect the proposed transfer.

Pursuant to 10 CFR 70.36, no right to possess or utilize special nuclear material granted by any license, issued pursuant to the regulations in Part 70 shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license, to any person, unless the Commission shall, after securing full information, find that the transfer is in accordance with the provisions of the Atomic Energy Act of 1954, as amended, and shall give its consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto. An Environmental Assessment (EA) will not be performed because this action is categorically excluded from the requirement to perform an EA pursuant to 10 CFR 51.22(c)(21).

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended, and the Commission's regulations.

II. Opportunity To Request a Hearing

In accordance with the general requirements in Subparts C and M of 10 CFR Part 2, any person whose interest may be affected by this proceeding, and who desires to participate as a party, must file a written request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing.

In accordance with 10 CFR 2.309(b)(1), to be timely, hearing requests and petitions to intervene must be filed no later than April 19, 2007.

Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(I)–(viii)

Requests for a hearing and petitions for leave to intervene should be served upon Mr. Donald J. Silverman, Morgan Lewis & Bockius, LLP, 1111 Pennsylvania Avenue, NW., Washington, DC 20004 (tel: 202–739–5502; e-mail: *dsilverman@morganlewis.com;* fax: 202–739–3001); the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.302 and 2.305.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal**

Register and served on the parties to the hearing.

III. Opportunity To Provide Written Comments

In accordance with 10 CFR 2.1305, as an alternative to requests for hearing and petitions to intervene, comments with respect to this action should be provided in writing by April 30, 2007. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

IV. Further Information

For further details with respect to this action, see the application dated January 19, 2007, and supplements dated; February 23, 2007, and March 2, 2007, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* 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 via e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland this 23rd day of March 2007.

For the Nuclear Regulatory Commission.

Gary S. Janosko,

Deputy Director, Fuel Facility Licensing Directorate, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E7–5937 Filed 3–29–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362]

Southern California Edison Company, San Diego Gas and Electric Company, the City of Riverside, CA, Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Southern California Edison (the licensee) to withdraw its February 28, 2006, application for proposed amendment to Facility Operating License Nos. NPF–10 and NPF–15 for the San Onofre Nuclear Generating Station, Units 2 and 3, located in San Diego County, California.

The proposed amendment would have revised Technical Specifications (TSs) 3.8.1, ''AC [alternating current] Sources—Operating,'' 3.8.4, ''DC [direct current] Sources—Operating,'' 3.8.5, ''DC Sources—Shutdown,'' 3.8.6, ''Battery Cell Parameters,'' 3.8.7, ''Inverters—Operating,'' and 3.8.9, ''Distribution Systems—Operating.'' This change would have also added a new Battery Monitoring and Maintenance Program, Section 5.5.2.16.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 5, 2006 (71 FR 38185). However, by letter dated March 15, 2007, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated February 28, 2006, and the licensee's letter dated March 15, 2007, 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 O1 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.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 23rd day of March 2007.

For the Nuclear Regulatory Commission.

Nageswaran Kalyanam,

Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–5936 Filed 3–29–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Call for Nominations

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Call for Nominations.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is advertising for nominations for the position of nuclear pharmacist on the Advisory Committee on the Medical Uses of Isotopes (ACMUI).

DATES: Nominations are due on or before May 29, 2007.

Nomination Process: Submit an electronic copy of resume or curriculum vitae to Ms. Ashley M. Tull, *amt1@nrc.gov.* Please ensure that resume or curriculum vitae includes the following information, if applicable: education, certification; professional association membership and committee membership activities; duties and responsibilities in current and previous clinical, research, and/or academic position(s), including traditional nuclear medicine, preparing and dispensing radiopharmaceuticals, and shipping and receiving radioactive material.

FOR FURTHER INFORMATION CONTACT: Ashley M. Tull, U.S. Nuclear Regulatory Commission, Office of Federal and State Materials and Environmental Management Programs, Mail Stop T8–F3, Washington, DC 20555; (301) 415–5294; *amt1@nrc.gov.*

SUPPLEMENTARY INFORMATION: The ACMUI advises NRC on policy and technical issues that arise in the regulation of the medical use of byproduct material. Responsibilities include providing comments on changes to NRC rules, regulations, and guidance documents; evaluating certain non-routine uses of byproduct material; providing technical assistance in licensing, inspection, and enforcement cases; and bringing key issues to the attention of NRC for appropriate action.

ACMUI members possess the medical and technical skills needed to address evolving issues. The current membership is comprised of the following professionals: (a) Nuclear

medicine physician; (b) nuclear cardiologist; (c) medical physicist in nuclear medicine unsealed byproduct material; (d) therapy medical physicist; (e) radiation safety officer; (f) nuclear pharmacist; (g) two radiation oncologists; (h) patients' rights advocate; (i) Food and Drug Administration representative; (j) State representative; and (k) health care administrator.

NRC is inviting nominations for the nuclear pharmacist appointment to the ACMUI. The term of the individual currently occupying this position will end September 2008. Committee members currently serve a four-year term and may be considered for reappointment to an additional term.

Nominees must be U.S. citizens and be able to devote approximately 160 hours per year to Committee business. Members who are not Federal employees are compensated for their service. In addition, non-Federal members are reimbursed travel, secretarial and correspondence expenses. Full-time Federal employees are reimbursed travel expenses only.

Security Background Check: The selected nominee will undergo a thorough security background check. Security paperwork may take the nominee several weeks to complete. Nominees will also be required to complete a financial disclosure statement to avoid conflicts of interest.

Dated at Rockville, Maryland this 26th day of March 2007.

For the U.S. Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E7–5918 Filed 3–29–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste Meeting on Planning and Procedures; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold a Planning and Procedures meeting on April 10, 2007, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland. The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, April 10, 2007—8:30 a.m.–10 a.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Antonio F. Dias (*Telephone:* 301/415–6805) between 8:15 a.m. and 5 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8:15 a.m. and 5 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: March 22, 2007.

Antonio F. Dias,

Acting Branch Chief, ACNW.

[FR Doc. E7–5919 Filed 3–29–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Interim Regulatory Guide: Issuance, Availability

The U.S. Nuclear Regulatory Commission (NRC) has issued an interim revision to an existing guide in the agency's Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The revised guide, entitled ''Quality Assurance for Radiological Monitoring Programs (Inception Through Normal Operations to License Termination)—Effluent Streams and the Environment,'' is identified as Interim Revision 2 of Regulatory Guide 4.15. Like its predecessor, this interim revision describes a method that the NRC staff considers acceptable for use in designing and implementing programs to ensure the quality of the results of measurements of radioactive materials in the effluents from, and environment outside of, facilities that process, use, or store radioactive materials during all phases of the facility's life cycle. Quality assurance (QA) is a fundamental expectation of Title 10, ''Energy,'' of the *Code of Federal Regulations* (10 CFR) for items and activities that are relied on to protect the health and safety of the public and the environment.

This interim guide serves as a final regulatory guide for, and may be used by applicants and licensees of nuclear power reactors. It also presents draft NRC staff positions on a method for designing and implementing QA programs for use by non-nuclear power reactor applicants and licensees subject to the agency's QA requirements. The NRC staff seeks public comments on this regulatory guide with respect to its application to such licensees. The NRC staff will issue this guide in final form after resolving any comments received during the public comment period.

Interim Revision 2 of Regulatory Guide 4.15 specifically applies to facilities for which NRC regulations require routine monitoring of radioactive effluents to the environment, and particularly those facilities licensed under the following regulations:

- 10 CFR Part 50, ''Domestic Licensing of Production and Utilization Facilities''
- 10 CFR Part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants''
- 10 CFR Part 61, ''Licensing Requirements for Land Disposal of Radioactive Waste''
- 10 CFR Part 72, ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste''
- 10 CFR Part 76, ''Certification of Gaseous Diffusion Plants''

The guidance may also apply to other NRC-licensed facilities, for which the agency may impose specific license conditions for effluent or environmental monitoring, as deemed necessary to ensure the health and safety of the public and the environment, including those licensed under the following regulations:

- 10 CFR Part 30, ''Rules of General Applicability to Domestic Licensing of Byproduct Material''
- 10 CFR Part 40, ''Domestic Licensing of Source Material''
- 10 CFR Part 70, ''Domestic Licensing of Special Nuclear Material''

Finally, radiological standards for occupational workers and members of the public are codified in 10 CFR Part 20, ''Standards for Protection Against Radiation.''

As used in the context of Interim Revision 2 of Regulatory Guide 4.15, QA comprises all those planned and systematic actions that are necessary to provide adequate confidence in the assessment of monitoring results. Quality control (QC) comprises those QA actions that provide a means to measure and control the characteristics of measurement equipment and processes to meet established standards; QA includes QC. Interim Revision 2 of Regulatory Guide 4.15 makes no further effort to distinguish those elements that may be considered QC from those composing QA.

Quality assurance is necessary to ensure that all radiological and nonradiological measurements that support the radiological monitoring program are reasonably valid and of a defined quality. These programs are needed (1) to identify deficiencies in the sampling and measurement processes and report them to those responsible for these operations so that corrective action can be taken, and (2) to obtain some measure of confidence in the results of the monitoring programs to assure the regulatory agencies and the public that the results are valid. All steps of the monitoring process (for example, sampling, shipment of samples, receipt of samples in the laboratory, preparation of samples, radiological measurements, data reduction, data evaluation, and reporting of the measurement and monitoring results) should involve QA.

Interim Revision 2 of Regulatory Guide 4.15 presents more complete and extensive guidance on QA for facilities where radiological effluent or environmental monitoring is required by NRC regulations.[1] However, this guidance does not address all topics and elements that a facility's QA program may require (such as requirements of Appendix B to 10 CFR Part 50 for nuclear power plants or 10 CFR 76.93 for gaseous diffusion uranium enrichment facilities).

In addition, although Interim Revision 2 of Regulatory Guide 4.15 offers significant improvements in programmatic and technical guidance for QA and QC for radioactive effluent and environmental monitoring, it does not impose any new or additional requirements. Rather, this interim revision incorporates updated scientific and regulatory concepts concerning radioanalytical QA, which the NRC and industry have previously published not as requirements, but as good practices. Licensees may continue to use Revision 1 of Regulatory Guide 4.15, dated February 1979, if they so choose. Consequently, no backfit, as defined in 10 CFR 50.109, ''Backfitting,'' is either intended or implied.

The NRC previously solicited public comment on Revision 2 of Regulatory Guide 4.15 by issuing Draft Regulatory Guide DG–4010 in November 2006. The public comment period closed on December 17, 2006, and the staff has appropriately addressed all comments received. The staff's responses to all stakeholder comments received are available in the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html,* under Accession #ML070380010.

However, at the time of issuance, the NRC erroneously described Draft Regulatory Guide DG–4010 as applicable only to nuclear power reactor applicants and licensees. The NRC staff intended that this regulatory guide apply to all applicants and licensees subject to the agency's QA requirements.

Accordingly, the NRC is now issuing Revision 2 of Regulatory Guide 4.15 as an interim regulatory guide, which is applicable only to nuclear power reactor applicants and licensees. The NRC staff is also soliciting comments on this interim guide with respect to its application to non-nuclear power reactor applicants and licensees subject to the agency's QA requirements. The NRC staff will issue this guide in final form after resolving any comments received during the public comment period.

Comments on this interim revision may be accompanied by relevant information or supporting data. Please mention Interim Revision 2 of Regulatory Guide 4.15 in the subject line of your comments. Comments submitted in writing or in electronic form will be made available to the public in their entirety through the NRC's Agencywide Documents Access and Management System (ADAMS). Personal information will not be removed from your comments. You may submit comments by any of the following methods.

Mail comments to: Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

E-mail comments to: *NRCREP@nrc.gov.* You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol A. Gallagher (301) 415–5905; e-mail *CAG@nrc.gov.*

Hand-deliver comments to: Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about Interim Revision 2 of Regulatory Guide 4.15 may be directed to Dr. George E. Powers, at (301) 415–6212 or *GEP@nrc.gov.*

Comments would be most helpful if received by May 29, 2007. Comments received after that date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection or downloading through the NRC's public Web site at *http://www.nrc.gov/reading-rm/doc-collections/reg-guides/.* In addition, Interim Revision 2 of Regulatory Guide 4.15 is available for inspection or downloading through ADAMS at *http://www.nrc.gov/reading-rm/adams.html,* under Accession #ML070380006.

Interim Revision 2 of Regulatory Guide 4.15 and other related publicly available documents, including public comments received, can also be viewed electronically on computers in the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland. The PDR's reproduction contractor will make copies of documents for a fee. The PDR's mailing address is USNRC PDR,

[1] While not specific to QA, the following regulatory guides also address measurements of radioactive materials in effluents and the environment:

- Regulatory Guide 1.21, ''Measuring, Evaluating, and Reporting Radioactivity in Solid Wastes and Releases of Radioactive Materials in Liquid and Gaseous Effluents from Light-Water-Cooled Nuclear Power Plants.''
- Regulatory Guide 4.1, ''Programs for Monitoring Radioactivity in the Environs of Nuclear Power Plants.''
- Regulatory Guide 4.14, ''Radiological Effluent and Environmental Monitoring at Uranium Mills.''
- Regulatory Guide 4.16, ''Monitoring and Reporting Radioactivity in Releases of Radioactive Materials in Liquid and Gaseous Effluents from Nuclear Fuel Processing and Fabrication Plants and Uranium Hexafluoride Production Plants.''

Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *PDR@nrc.gov.*

Please note that the NRC does not intend to distribute printed copies of Interim Revision 2 of Regulatory Guide 4.15, unless specifically requested on an individual basis with adequate justification. Such requests for single copies of draft or final guides (which may be reproduced) should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Reproduction and Distribution Services Section; by e-mail to *DISTRIBUTION@nrc.gov;* or by fax to (301) 415–2289. Telephone requests cannot be accommodated.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 15th day of March 2007.

For the U.S. Nuclear Regulatory Commission.

Brian W. Sheron,

Director, Office of Nuclear Regulatory Research.

[FR Doc. E7–5932 Filed 3–29–07; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) to request an extension of the following collection of information: 3220–0007, Appeal under the Railroad Retirement and Railroad Unemployment Insurance Act, consisting of RRB Form HA–1, Appeal Under the Railroad Retirement Act or Railroad Unemployment Insurance Act. Our ICR describes the information we seek to collect from the public. Completion is required to obtain or retain benefits. One response is required of each respondent. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine (1) the practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (71 FR No. 231 Pages 69603 on December 1, 2006) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Appeal under the Railroad Retirement and Railroad Unemployment Insurance Act.

OMB Control Number: 3220–0007.

Form(s) submitted: HA–1.

Type of request: Extension of a currently approved collection.

Affected public: Individuals or households.

Abstract: Under Section 7(b)(3) of the Railroad Retirement Act and Section 5(c) of the Railroad Unemployment Insurance Act, a person aggrieved by a decision on his or her application for an annuity or other benefit has the right to appeal to the RRB. The collection provides the means for the appeal action.

Changes Proposed: The RRB proposes no changes to Form HA–1.

The burden estimate for the ICR is as follows: Estimated annual number of respondents: 550.

Total annual responses: 650.

Total annual reporting hours: 217.

Additional Information Or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312–751–3363) or *Charles.Mierzwa@rrb.gov.*

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E7–5912 Filed 3–29–07; 8:45 am]

BILLING CODE 7905–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection package included in this notice is for full clearance of an existing collection currently approved by OMB on an emergency basis.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed, faxed, or e-mailed to the individuals at the addresses and fax numbers listed below:

(OMB) Office of Management and Budget, *Attn:* Desk Officer for SSA, *Fax:* 202–395–6974, *E-mail address: OIRA_Submission@omb.eop.gov.*

(SSA) Social Security Administration, DCFAM, *Attn:* Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, *Fax:* 410–965–6400, *E-mail address: OPLM.RCO@ssa.gov.*

The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

SSA Guidance for Use of the Tax Information Authorization Form—0960–0738. The Internal Revenue Service (IRS) Form 8821 is used by taxpayers to authorize the release of tax information to a third party. The IRS agrees that a properly completed IRS Form 8821 is an appropriate means of designating the Department of Health and Human Services (HHS) to receive the tax information of a Medicare Part B beneficiary who has appealed a determination of Income-Related Monthly Adjustment Amount (IRMAA).

Specifically, Medicare Part B beneficiaries who wish to appeal SSA's reconsideration of their IRMAA amounts will be sent a copy of the HA–501 (Request for Hearing by an Administrative Law Judge) and with it the IRS Form 8821, which will enable beneficiaries to authorize disclosure of their relevant beneficiary tax data to HHS for use in conducting the appeals hearing. The respondents are Medicare Part B beneficiaries who want to request an appeal of their IRMAA amount.

Type of Request: Request for full approval for a collection already cleared under OMB emergency clearance procedures.

Number of Respondents: 6,000.

Frequency of Response: 1.

Average Burden per Response: 15 minutes.

Estimated Annual Burden: 1,500 hours.

Dated: March 26, 2007.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E7–5833 Filed 3–29–07; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 5738]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Foto: Modernity in Central Europe, 1918–1945''

Summary: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Foto: Modernity in Central Europe, 1918–1945'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about June 10, 2007, until on or about September 3, 2007, the Solomon R. Guggenheim Museum, New York, New York, from on or about October 5, 2007, until on or about January 2, 2008, and the Milwaukee Art Museum, Milwaukee, Wisconsin, from on or about February 9, 2008, until on or about May 4, 2008, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

For Further Information Contact: For further information, including a list of the exhibit objects, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: March 26, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–5945 Filed 3–29–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5736]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Greeks on the Black Sea: Ancient Art From the Hermitage''

Summary: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Greeks on the Black Sea: Ancient Art from the Hermitage'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The J. Paul Getty Museum, Los Angeles, California, from on or about June 14, 2007, until on or about September 3, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

For Further Information Contact: For further information, including a list of the exhibit objects, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: March 23, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–5902 Filed 3–29–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5737]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Oudry's Painted Menagerie''

Summary: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Oudry's Painted Menagerie'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The J. Paul Getty Museum, Los Angeles, California, from on or about May 1, 2007, until on or about September 9, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

For Further Information Contact: For further information, including a list of the exhibit objects, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: March 26, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–5899 Filed 3–29–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5735]

Culturally Significant Object Imported for Exhibition Determinations: ''The World of 1607''

Summary: On March 7, 2007, notice was published on page 10289 of the **Federal Register** (volume 72, number 44) of determinations made by the Department of State pertaining to the exhibit, ''The World of 1607.'' The referenced notice is corrected as to an additional object to be included in the exhibition. Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibition ''The World of 1607'', imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Jamestown Settlement, Williamsburg, Virginia, from on or about April 1, 2007, until on or about July 20, 2007, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

For Further Information Contact: For further information, including a list of the exhibit object, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: March 22, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–5904 Filed 3–29–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5734]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: The Indonesia English Language Study Program

Announcement Type: New Grant.

Funding Opportunity Number: ECA/A/E–07–Indonesia.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates: September 2007–December 2008.

Application Deadline: May 4, 2007.

Executive Summary: The Office of Academic Exchange Programs of the Bureau of Educational and Cultural Affairs announces an open competition to administer the FY2007 Indonesian English Language Study Program. Consortia of accredited post-secondary educational institutions and public and private non-profit organizations meeting the provisions described in Internal Revenue Code Section 26 U.S.C. 501(c)(3) in the United States may submit proposals to administer and manage this initiative, which will enroll up to 200 Indonesian undergraduate students over a period of two years in a series of eight-week intensive English language courses at colleges and universities throughout the United States and provide them with an introduction to American institutions, society and culture. It is anticipated that the total amount of funding for FY2007 administrative and program costs will be $1,873,125.

I. Funding Opportunity Description

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation. Funding authority for this program is contained in President Bush's six-year Education Initiative to improve basic education in Indonesia and is provided for by FY–2006/FY–2007 Economic Support Funds (ESF).

Purpose: At present, English language ability among Indonesians in all sectors is inadequate to meet the nation's educational and economic challenges. The intent of the Indonesian English Language Immersion Program is to increase the English language capability of Indonesian undergraduate students and to provide them with a substantive U.S. exchange experience. Many of the prospective participants may wish to return to the U.S. for graduate study; many will eventually seek careers in Indonesia as teachers of English at the school and university level, or as entrepreneurs, scientists, government officials, leaders within the Indonesian NGO community, or other positions of influence.

Overview: The program will consist of a series of ten eight-week programs. Each of these eight-week programs should offer participants intensive English language training, including English for Academic Purposes, as well as the development of general reading, writing, speaking and listening skills, and the testing of those skills.

The prospective applicant organization should identify a partner organization in Indonesia with the capacity to advertise, recruit, screen and assist in the selection of the program's participants as part of a nationwide, transparent competition. Both the applicant organization and its Indonesia partner will be expected to work closely with the Public Affairs Section (PAS) of the U.S. Embassy in Jakarta and with other Indonesian organizations identified by PAS Jakarta, including government ministries, on this aspect of the project. It is expected that approximately half the participants will come from institutions of higher education that are administered by the Ministry of National Education, and half from institutions administered by the Ministry of Religious Affairs. In addition, efforts should be made to recruit participants from non-elite backgrounds, from both rural and urban sectors, and with little or no prior experience in the United States or elsewhere outside their home country. It is anticipated that the selection of participants will reflect Indonesia's

geographic, institutional, ethnic, and gender diversity.

Most of the students selected will be in their junior year of study and will have completed approximately nine years of formal English study.

One grant will be awarded for the administration of this program and the organization of U.S. based activities. The grant recipient will be expected to identify the participating colleges and universities that will host students in groups of no more than 20 each. U.S. host institutions should be identified with an eye toward geographic and institutional diversity and the ability to provide the highest quality English language instruction, which is the primary objective of the program. In identifying the participating host institutions, the proposal should make clear (a) why these institutions have been recommended, (b) what particular strengths they will bring to the program, and (c) how those institutions will specifically meet the program content requirements as outlined above.

Students will be available for these programs in four discrete academic periods: (1) Fall 2007; (2) spring 2008; (3) summer 2008; and (4) fall 2008. At each campus program, it is essential that all students not be placed together in the same English courses, but rather that they study with students of other nationalities who will also be attending these intensive English language programs. Applicants should therefore design a program that will offer an academic residency component of eight weeks, the central element of which is an intensive English language training course (English for Academic Purposes), together with other instructional elements that will develop the participants' general reading, writing, speaking and listening skills. Provision should also be made for the testing of those skills.

Further guidance can be found in the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

II. Award Information

Type of Award: Grant Agreement.

Fiscal Year Funds: FY–2006/FY–2007 ESF Funds.

Approximate Total Funding: $1,873,125.

Approximate Number of Awards: 1.

Anticipated Award Date: June 4, 2007.

Anticipated Project Completion Date: December 31, 2008.

III. Eligibility Information

III.1. Eligible applicants: Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds: There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements: Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding one grant in an amount up to $1,873,125 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1. Contact Information to Request an Application Package: Please contact the East Asia and Pacific Programs Branch of the Office of Academic Programs, Bureau of Educational and Cultural Affairs (ECA/A/E/EAP) Room 208, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547. *Telephone:* (202) 453–8106; *Fax:* (202) 453–8107; *e-mail:* William Bate, *batewa@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/E–07—Indonesia located at the top of this announcement when making your request. Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation.

Please specify William Bate and refer to the Funding Opportunity Number ECA/A/E–07-Indonesia located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm*, or from the Grants.gov Web site at *http://www.grants.gov*.

Please read all information before downloading.

IV.3. Content and Form of Submission: Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. ''Application Deadline and Methods of Submission'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF—424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in

the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa. The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547. *Telephone:* (202) 203–5029 *FAX:* (202) 453–8640.

Please refer to Solicitation Package for further information.

IV.3d.2. Diversity, Freedom and Democracy Guidelines. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation. Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning,* such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant behavior*, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional Changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

The grantee organization will be required to provide a report analyzing its evaluation findings to the Bureau in its regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide

separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

(1) Instructional costs (for example: Language program fees, educational course materials);

(2) Lodging, meals, and incidental expenses for participants;

(3) Expenses associated with cultural activities planned for the group of participants (for example: tickets, transportation);

(4) Administrative costs as necessary;

(5) U.S. ground transportation costs to/from airports and for one regional trip for cultural enhancement.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission:

Application Deadline Date: May 4, 2007.

Reference Number: ECA/A/E–07-Indonesia.

Methods of Submission:

Applications may be submitted in one of two ways:

1. In hard-copy, via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

2. Electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications: Applications must be received no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and two copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, *Ref.:* ECA/A/E—07—Indonesia, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants submitting hard-copy applications must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section at the U.S. Embassy in Indonesia for its review.

IV.3f.2. *Submitting Electronic Applications.* Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the ''Find'' portion of the system. Please follow the instructions available in the ''Get Started'' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, *Contact Center Phone:* 800–518–4726.

Business Hours: Monday–Friday, 7 a.m.–9 p.m. Eastern Time.

E-mail: support@grants.gov.

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Applicants will receive a confirmation e-mail from grants.gov upon the successful submission of an application. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below.

- *Quality of Program Plan and Ability To Achieve Program Objectives:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission. Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.
- *Support for Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program

venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings and resource materials).

• *Evaluation and Follow-Up:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique, plus a description of the methodology used to link outcomes to original project objectives, are strongly recommended. Proposals should also discuss provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

• *Cost-effectiveness/Cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

• *Institutional Capacity and Track Record:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be fully qualified to achieve the project's goals.

VI. Award Administration Information

VI.1a. Award Notices: Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2. Administrative and National Policy Requirements: Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants. http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.*

VI.3. Reporting Requirements: You must provide ECA with a hard copy original plus two copies of a final program and financial report no more than 90 days after the expiration of the award;

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: William Bate, East Asia and Pacific Programs Branch, Office of Academic Programs, Bureau of Educational and Cultural Affairs (ECA/A/E/EAP) Room 208, ECA/A/E–07-Indonesia, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, *Telephone:* (202) 453–8106; *Fax:* (202) 453–8107; *E-mail: BateWA@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/E–07–Indonesia.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: March 21, 2007.

Dina Habib Powell,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 07–1544 Filed 3–29–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Draft Environmental Impact Statement (Draft EIS) for the Development and Extension of Runway 9R/27L and other Associated Airport Projects at Fort Lauderdale-Hollywood International Airport (FLL) and Notice of Public Hearing Date, Time, and Location

AGENCY: The lead federal agency is the Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of availability, notice of public comment period, notice of public information meeting and public hearing.

SUMMARY: The FAA is issuing this Notice of Availability to advise the public that a Draft EIS will be available for public review beginning March 30, 2007. The document was prepared

pursuant to a proposal presented to the FAA by the Broward County Board of County Commissioners, the owner and operator of FLL and identified in the Draft EIS as the Airport Sponsor, for environmental review.

The FAA prepared this Draft EIS to analyze and disclose potential environmental impacts related to possible Federal actions at FLL. Numerous Federal actions would be necessary if airfield development were to be implemented. Proposed improvements include Runway 9R/27L development and extension and other airfield projects (see below).

The Draft EIS presents the purpose and need for the proposed Federal action, analysis of reasonable alternatives, including the No Action alternative, discussion of impacts for each reasonable alternative, and supporting appendices. The FAA will consider all information contained in this Draft EIS and additional information that may be provided during the public comment period before issuing a Final EIS and Agency decision regarding the possible alternatives and Federal actions.

The Airport Sponsor proposes to develop and extend Runway 9R/27L to an overall length of 8,000 feet and width of 150 feet (the reconstructed runway would be equipped with an Engineered Materials Arresting System (EMAS) at both runway ends); elevate Runway 9R end and Runway 27L end to provide 34.74 feet of vertical clearance over the Florida East Coast (FEC) Railway; construct a new full-length parallel taxiway 75 feet wide on the north side of Runway 9R/27L with separation of 400 feet from 9R/27L; construct an outer dual parallel taxiway to be used as a temporary runway during the construction of permanent Runway 9R/27L; construct a connecting taxiway from the proposed full-length parallel taxiway to existing Taxiway E; construct a Category I Instrument Landing System (ILS) for landings on Runways 9R and 27L that includes a Medium Intensity Approach Light System with runway alignment indicator lights (MALSR), localizer, and glideslope. The Airport Sponsor also proposes to decommission Runway 13/31 and redevelop terminal gate facilities.

Connected actions associated with the Airport Sponsor's proposal include closure of Airport Perimeter Road located within the approach to Runway 9R; relocation of ASR–9; acquisition of all, or a portion, of the Wyndham Fort Lauderdale Airport Hotel to the extent the existing structure was within the Proposed Runway Protection Zone (RPZ) for extended Runway 9R/27L; partial displacement of the Jet Center facilities; and full displacement of the Gulfstream Airways aircraft maintenance facilities for potential use of a taxiway as a temporary runway during construction.

Public Comment and Information Workshop/Public Hearing: The public comment period on the Draft EIS will start March 30, 2007 and will end on May 14, 2007. A Public Information Workshop and Public Hearing will be held on May 1, 2007 at the Greater Fort Lauderdale/Broward County Convention Center, 1950 Eisenhower Boulevard, Fort Lauderdale, FL 33316; *Telephone:* (954) 765–5900. The purpose of the Public Hearing is to afford the public and other interested parties the opportunity to comment on the economic, social, and environmental effects of the location and location's consistency with the objectives of any planning that the community has carried out.

The Public Information Workshop will be held in Ballroom D from 4 p.m. to 8 p.m. The Public Hearing will be held in Ballroom A beginning at 6 p.m. and conclude when the last registered speaker submits comments for the record.

For those unable to attend the Public Hearing, the public will be able to submit written comments or register to give oral comments to a court reporter between 4 p.m. and 6 p.m. in the Public Information Workshop. Oral Comments will be limited to 3 minutes.

Comments can only be accepted with the full name and address of the individual commenting. Mail and fax comments are to be submitted to Ms. Virginia Lane of the FAA, at the address shown in **FOR FURTHER INFORMATION CONTACT**. E-mail comments should be sent to *FLL-EIScomments@landrum-brown.com*). All comments must be postmarked, faxed or e-mailed by no later than midnight, Monday, May 14, 2007. The Draft EIS may be reviewed for comment during regular business hours at the following locations:

1. Broward County Governmental Center, 115 S. Andrews Avenue, Fort Lauderdale, FL 33301 (*Telephone:* 954–357–7000).

2. Broward County Library—Main Branch, 100 S. Andrews Avenue, Fort Lauderdale, FL 33301 (*Telephone:* 954–354–7444).

3. Broward County Library—Fort Lauderdale Branch, 1300 E. Sunrise Boulevard, Fort Lauderdale, FL 33304 (*Telephone:* 954–765–4263).

4. Broward County Library—Hollywood Branch, 2600 Hollywood Boulevard, Hollywood, FL 33304 (*Telephone:* 954–926–2430).

5. Broward County Library—Dania Beach DeMaio Branch, 255 E. Dania Beach Boulevard, Dania Beach, FL 33004 (*Telephone:* 954–926–2420).

6. Broward County Library—Davie/Cooper City Branch, 4600 SW 82nd Avenue, Davie, FL 33328 (*Telephone:* 954–680–0050).

7. Broward County Library—Lauderhill Town Centre, 6399 W. Oakland Park Boulevard, Lauderhill, FL 33313 (*Telephone:* 954–497–1630).

8. Broward County Library—Stirling Road Branch, 3151 Stirling Road, Hollywood, FL 33021 (*Telephone:* 954–985–2689).

9. Broward County Library—Pembroke Pines/Walter C. Young Branch, 955 NW 129th Avenue, Pembroke Pines, FL 33025 (*Telephone:* 954–437–2635).

10. Broward County Library—West Regional Branch, 8601 W. Boulevard, Plantation, FL 33324 (*Telephone:* 954–831–3300).

11. Broward County Library—Sunrise Dan Pearl Branch, 10500 W. Oakland Park Boulevard, Sunrise, FL 33351 (*Telephone:* 954–749–2521).

12. Fort Lauderdale-Hollywood International Airport, Public Outreach Trailer, Broward County Aviation Department, 550 Northwest 10th Street, Dania Beach, FL 33315 (*Telephone:* 954–359–6977).

13. Broward County Administration Office, Broward County Governmental Center, 115 S. Andrews Avenue, Room 409, Fort Lauderdale, FL 33301 (*Telephone:* 954–357–7000).

14. Broward County Aviation Department, 320 Terminal Drive, Fort Lauderdale, FL 33315 (*Telephone:* 954–359–6118).

A CD version of the Draft EIS document will also be available at the following public locations. Broward County will be providing an electronic copy of the Draft EIS on the Broward County Web site at *http://www.broward.org/airport/*.

15. City of Lauderhill, Lauderhill City Hall, 2000 City Hall Drive, Lauderhill, FL 33313 (*Telephone:* 954–739–0100).

16. City of Pembroke Pines, Pembroke Pines City Hall, 10100 Pines Boulevard, Pembroke Pines, FL 33025 (*Telephone:* 954–431–4500).

17. City of Cooper City, Cooper City Hall, 9090 S.W. 50th Place, Cooper City, FL 33328 (*Telephone:* 954–434–4300).

18. City of Sunrise, 10770 W. Oakland Park Blvd., Sunrise FL 33351 (*Telephone:* 954–741–2580).

19. City of Fort Lauderdale, 100 N. Andrews Avenue, Fort Lauderdale, FL 33301 (*Telephone:* 954–761–5000).

20. City of Plantation, Plantation City Hall, 400 N.W. 73rd Avenue, Plantation, FL 33317 (*Telephone:* 954–797–2221).

21. City of Hollywood, Hollywood City Hall, 2600 Hollywood Boulevard, Hollywood, FL 33020 (*Telephone:* 954–921–3473).

22. City of Dania Beach, Dania Beach City Hall, 100 W. Dania Beach Boulevard, Dania Beach, FL 33004 (*Telephone:* 954–924–3600).

23. Town of Davie, Davie Town Hall, 6591 SW., 45th Street, Davie, FL 33314 (*Telephone:* 954–797–1000).

SUPPLEMENTARY INFORMATION: The FAA encourages all interested parties to provide comments concerning the scope and content of the Draft EIS. Comments should be as specific as possible. Comments should address the contents of the Draft EIS, such as the analysis of potential environmental impacts, the adequacy of the proposed action to meet the stated need, or the merits of the various alternatives. Reviewers should organize their participation to make it meaningful and effective in making the FAA aware of the viewer's interests and concerns. Reviewers should use quotations, page references, and other specific citations to the text of the Draft EIS and related documents. This commenting procedure is intended to ensure that substantive comments and concerns are made available to the FAA in a timely and effective manner, so that the FAA has an opportunity to address them.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Lane, FAA Orlando Airports District Office, 5950 Hazeltine National Drive, Orlando, Florida 32822–5024. *Telephone:* (407) 812–6331, *Fax:* (407) 812–6978.

Issued in Orlando, Florida, on March 21, 2007.

W. Dean Stringer,

Manager, FAA Orlando Airports District Office.

[FR Doc. 07–1523 Filed 3–29–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Rescind a Notice of Intent To Prepare an Environmental Impact Statement (EIS): State Route 357 From Existing State Route 357 West of the Tri-Cities Airport to the U.S. 11E/19E U.S. 19E Intersection Near Bluff City, Sullivan County, TN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public that the Notice of Intent published on December 7, 2005 to prepare an Environmental Impact Statement (EIS) for the proposed extension of State Route 357 in Sullivan County, Tennessee, is being rescinded.

FOR FURTHER INFORMATION CONTACT: Ms. Karen M. Brunelle, Planning and Program Management Team Leader, Federal Highway Administration—Tennessee Division Office, 640 Grassmere Park Road, Suite 112, Nashville, TN 37211. 615–781–5772.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Tennessee Department of Transportation, is rescinding the notice of intent to prepare an Environmental Impact Statement (EIS) on a proposal to provide an extension to State Route 357 in Sullivan County, Tennessee. The proposed project was to involve extending State Route 357 from existing State Route 357 west of the Tri-Cities Airport to the U.S. 11E/19E-U.S. 19E intersection near Bluff City, Tennessee.

The project was proposed to provide for existing and projected traffic demand on the surrounding transportation network. After nearly two years of public involvement, it became clear that there was not an urgent need for the extension to State Route 357. An extensive Context Sensitive Solution process with a local citizen team did not identify an immediate need for the extension project. The State Route 357 Extension project is not currently included as a priority project by either the Kingsport Metropolitan Planning Organization (MPO) or the First Tennessee Regional Planning Organization (RPO).

To ensure that the full range of issues related to this proposed action is identified and taken into account, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA contact person identified above at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed program.)

Issued on: March 26, 2007.

Karen M. Brunelle,

Planning and Program Management Team Leader, Nashville, TN.

[FR Doc. E7–5891 Filed 3–29–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No: FTA–2007–23697]

Public-Private Partnership Pilot Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of extension of date by which FTA shall respond to public comments on the establishment and implementation of the Public-Private Partnership Pilot Program.

SUMMARY: FTA is extending the date by which it indicated it would respond to comments received on the establishment and implementation of the Public-Private Partnership Pilot Program.

DATES: FTA will respond to comments received on the establishment and implementation of the Public-Private Partnership Pilot Program no later than April 30, 2007.

FOR FURTHER INFORMATION CONTACT: David B. Horner, Esq., Chief Counsel, Federal Transit Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4040, *david.horner@dot.gov.* Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On March 22, 2006, FTA issued a notice soliciting comments and expressions of preliminary interest with respect to the Secretary of Transportation's establishment and implementation of FTA's Public-Private Partnership Pilot Program (the Pilot Program) (71 FR 14568). FTA received comments from nineteen parties in response to this notice. On January 19, 2007, FTA issued a Notice of Establishment of Public-Private Partnership Pilot Program, which set forth the definitive terms of the Pilot Program and invited interested parties to submit applications to the Pilot Program by March 31, 2007 (72 FR 2583). In this notice, FTA indicated that it would, by separate notice, summarize and respond to comments on the March 22, 2006 notice no later than March 31, 2007.

The volume of work underway within FTA has prevented publication of response to comments by the date previously indicated. Therefore, FTA intends to summarize and respond to comments on the March 22, 2006 notice no later than April 30, 2007.

This notice does not affect the application deadlines to the Pilot Program. Therefore, to be considered in

FTA's first quarterly review of applications to the Pilot Program, applications must be received by FTA on or before March 31, 2007. Applications received by FTA between March 31, 2007, and July 1, 2007, will be reviewed in FTA's second quarterly review of applications to the Pilot Program.

Issued in Washington, DC, this 26th day of March 2007.

James S. Simpson,

Administrator, Federal Transit Administration.

[FR Doc. E7–5880 Filed 3–29–07; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2006–26275]

Receipt of Petition for Rulemaking Classification of Polyurethane Foam and Certain Finished Products Containing Polyurethane Foam as Hazardous Materials

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA).

ACTION: Notice.

SUMMARY: This Notice solicits comments on the merits of a petition for rulemaking filed by the National Association of State Fire Marshals (NASFM). The NASFM petitioned PHMSA to classify Polyurethane Foam and certain finished products containing Polyurethane Foam (PU) as hazardous materials in transportation in commerce, as a matter of safety for emergency responders and the public.

DATES: Comments must be received by June 28, 2007.

ADDRESSES: *Written comments:* You may submit comments on this Notice identified by the docket number (PHMSA–2006–26275) by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, PL–402, Washington, DC 20590–0001.
- *Hand Delivery:* PL–402 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number for this notice. Internet users may access comments received by DOT at *http://dms.dot.gov.* Note that comments received may be posted without change to *http://dms.dot.gov* including any personal information provided. If you believe your comments contain trade secrets or confidential commercial information, those comments or relevant portions of those comments should be appropriately marked. PHMSA procedures in 49 CFR part 105 establish a mechanism by which commenters may request confidentiality.

FOR FURTHER INFORMATION CONTACT: Helen Engrum or Susan Gorsky, Office of Hazardous Materials Standards (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

In a letter dated October 31, 2006, the National Association of State Fire Marshals (NASFM) submitted a petition for rulemaking to the U.S. Department of Transportation (DOT) through the Pipeline and Hazardous Materials Safety Administration (PHMSA) under the provisions of 49 CFR 106.31. The NASFM requested that the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) be amended to classify Polyurethane (PU) Foam and certain finished products containing PU as a hazardous material for purposes of transportation in commerce. The NASFM is made up of senior-level public safety officials from the 50 States and the District of Columbia. The NASFM petition was received and acknowledged by PHMSA and assigned petition number P–1491; Docket No. PHMSA–2006–26275.

Issuance of this Notice does not constitute a decision by PHMSA to undertake a rulemaking action on the substance of the petition. This Notice is issued solely to obtain comments on the merits of the petition to assist PHMSA in making a decision of whether to proceed with a rulemaking. Of particular interest are substantive comments that address the following items: (1) Estimated incremental costs or savings; (2) Anticipated safety benefits; (3) Estimated burden hours associated with the proposals related to information collection; (4) Impact on small businesses; and (5) Impact on the national environment.

II. Petition P–1491 Is Quoted as Follows

As a matter of safety for emergency responders and the public, the National Association of Fire Marshals petitions the U.S. Department of Transportation (DOT), through the Pipeline & Hazardous Materials Safety Administration (PHMSA), to classify polyurethane (PU) foam and certain finished products containing it as a hazardous material for purposes of transportation. NASFM consists of senior-level public safety officials from the 50 states and District of Columbia.

The petitioners regard this proposal as critical to the safety of emergency responders and the public they are sworn to protect. The safety of emergency responders begins with information—at minimum, responders have the absolute right to know when they are dealing with hazardous materials, so they may take special precautions at incidents. The petitioners' interest extends to ensuring that hazardous materials are used, stored and transported in safe ways. Regulations exist across agencies that regulate the use and storage of PU foam, but a gap exists in ensuring the safe transportation of this hazardous material. Because it is not officially classified as a hazardous material for purposes of transportation, the safety of emergency responders and the public is compromised.

The U.S. Department of Transportation's system of hazardous materials transportation placarding is critical to the safety of emergency responders and the public. Placards typically are the one source of information immediately available to responders as they determine the safest and most efficient means of suppressing fires and of rescuing persons trapped in vehicles. Placards provide information essential to knowing how fast a fire might spread, how difficult it might be to suppress, and how large and dangerous it may become.

When hazardous materials are not properly placarded, the consequences to emergency responders could be injury or death. Obviously some shippers and transporters choose to violate the law by failing to properly placard when placarding is required. However, the DOT does not require placarding with some well-recognized hazardous materials. Such is the case with most grades of rigid and flexible PU foam and many of the finished products containing this highly flammable solid.

PU foam, whether in bulk shipments or in finished products, is explicitly listed and controlled as a hazardous material in all phases of manufacturing, construction and more recently, consumer applications. As such, records pertaining to the hazardous nature of PU foam already are kept and reports are routinely issued by the producers of these materials. Ironically, when the risks are least manageable—in transportation—PU foam is not officially considered hazardous. This petition aims to correct this inadvertent oversight.

Whether experienced in the real world or observed under scientific conditions, PU foam is a hazardous material. A significant

and unambiguous body of scientific literature underscores the poor fire performance of these materials and products, and a preliminary review of the fire incident data found numerous transportation incidents where PU foam and such products as upholstered furniture and mattresses provided the fuel load for significant fires. These are not new observations. Smoldering and small open flame ignitions of finished products containing PU foam have long been the number-one cause of death by fire in the home.

Proposed Rulemaking Procedure

NASFM proposes the following procedure based on its understanding of the PHMSA rulemaking process: Issue an Interim Final Rule designating bulk shipments of Polyurethane (PU) Foam as a Class 9 hazardous material. As part of this Interim Final Rule

Phase I

- Assign a North American Identification number to PU foam.
- Except shippers/carriers from requiring shipping papers, employee training, specific packaging requirements, and placarding.
- Require carriers to display Orange Panels with the identification number to identify the presence of PU foam for initial responders.
- Require transportation incidents involving PU foam fires to be reported to PHMSA.
- Publish a Safety Alert identifying measures initial responders can take to protect themselves and the general public during this initial response phase of the incident involving PU foam.
- Incorporate the measures published in the Safety Alert into the 2008 Emergency Response Guidebook (ERG).

Cotton can be used as an example of how PU can be initially regulated. The following is recommended for inclusion in the Hazardous Materials Table (49 CFR 172101):

Column 1—Symbols	D (Domestic).
Column 2—HM description and proper shipping name	Polyurethane Foam.
Column 3—Hazard Class or Division	9.
Column 4—Identification Number	NA XXXX (to be assigned by PHMSA).
Column 5—Packing Group	Leave blank.
Column 6—Label Codes	None.
Column 7—Special Provisions	To be determined by PHMSA.
Column 8—Packaging (8A, 8B, and 8C)	None.
Column 9—Packaging Limitations	To be determined by PHMSA and the Federal Aviation Administration.
Column 10—Vessel Stowage	To be determined by PHMSA and the U.S. Coast Guard.

This should not be considered a significant rulemaking, because there are a limited number of carriers transporting bulk PU foam.

Phase IIA

Initiate domestic rulemaking to finalize Interim Final Rule and explore the need for additional regulatory oversight of products manufactured using PU foam through the issuance of a Notice of Proposed Rulemaking.

Phase IIB

Introduce PU foam as a proposed work item at the 30th session of the Transport of Dangerous Goods Sub-Committee, December 4–12 2006 in Geneva, Switzerland.

Phase IIA and IIB can be conducted simultaneously.

DOT has the authority to classify PU foam as a hazardous material.

The precise classification of PU foam is a legalistic matter for consideration by regulators, and may require special treatment given the unusual properties of these materials. For example, PU foam becomes highly flammable as it moves rapidly from solid to liquid to vapor states. In that way, it is similar to gasoline, which becomes hazardous as it moves from a liquid to a vapor. Gasoline is a flammable liquid when, in scientific terms, it is a flammable vapor. Another unique characteristic is that, unlike most hazardous materials, PU foam becomes dangerous as it becomes lighter in weight, for a simple reason: low density PU foam contains more air to feed a fire and more surfaces to ignite.

Manufacturers of PU foam describe these materials as ''combustible solids'' on the material safety data sheets provided to customers and regulators. However, PU foam does not fit neatly into the combustible solids category. The prescribed test methods used with combustible solids are irrelevant to the real-world fire hazards posed by PU foam, because PU foams possess fire performance and chemical properties more comparable to well-established hazardous materials such as gasoline that react in liquid and vapor phases.[1] A fire hazard of this significance may not legally be ignored simply because of the inflexibility of the rating system.

Rather than assigning PU foam to Class 4 as a flammable solid, NASFM recommends that it be placed within Class 9, which exists for unusual but clearly hazardous materials and products ranging from molten asphalt to life preservers containing pressurized containers. The exact classification may not matter as much as the fact that the classification will subject this material to tighter controls in transport, thus helping to ensure the safety of emergency responders and the public.

Classification of PU foam as a hazardous material for transportation is necessary as a matter of consistency of policies across various agencies that define the safe use of hazardous materials.

Those responsible for safety in residential, manufacturing and storage occupancies already regard PU foam as a hazardous material because of its poor fire performance.

- Manufacturers' Materials Safety Data Sheets and warning labels on the bulk shipments note the flammability characteristics of PU foam. Manufacturers recognize that PU foam poses unique fire and explosion hazards. A typical label on PU foam sold in bulk says:

If ignited, foam can produce rapid flame spread, intense heat, dense black smoke and toxic gases. Material can melt into a burning liquid that can drip and flow. Accumulated polyurethane dust can be readily ignited and presents a fire risk. High concentrations of dust in the air can explode if exposed to a flame, spark, or other ignition sources.[2]

- The National Fire Protection Association standard NFPA 13's hazard classification system lists PU foam as a Group A Plastic. This now requires increased use of automatic fire sprinklers, imposes limits on storage requirements and is strictly enforced by state and local fire code enforcement officials.
- Starting in July 2007, the U.S. Consumer Product Safety Commission (CPSC) will begin enforcement of mattress fire safety requirements that effectively isolate PU foam in residential fires. This action has the benefit of significantly reducing the risk of fires when mattresses are being transported, in addition to preventing the approximately 400 mattress fires that occur every year. [3] Even if the CPSC proposes fire safety requirements for upholstered furniture, there is some question whether these standards will be adequate to address the issues discussed here.

The use of PU foam is regarded as hazardous in some transportation modes.

- The Coast Guard has issued warnings on the fire hazard of polyurethane insulation and other organic foams on vessels.[4]

[1] Langevin, Kennedy, and Conyers. United States. Cong. House. *Foam Fire Safety Act.* 109th Cong., 1st sess. HR 943. 17 Feb. 2005. 8 Sept. 2006 *http://thomas.loc.gov/cgi-bin/query/z?c109:H.R.943.IH:*

[2] ''Material Safety Data Sheet.'' *Foamex.* 17 July 2002. Foamex International, Inc. 8 Sept. 2006. *http://www.foamex.com/ftpWs/MSDS%20Flexible%20Polyurethane* %20Foam%20-%20English.pdf#search=%22OSHA%20polyurethane%20flexible%20foam%20fire%22.

[3] Chowdbury, Risiana, Michael Greene, David Miller, and Linda Smith. *1999 Revised—2002 Residential Fire Loss Estimates.* U.S. Consumer Product Safety Commission. Washington, DC, 2005.

[4] Bell, Henry H. *Navigation and Vessel Inspection Circular No. 8–80.* United States Coast Guard. Washington, DC: U.S. Coast Guard, 1980. 8 Sept 2006. *http://www.uscg.mil/hq/gm/nvic/8_80/n8–80.pdf#search=%22Navigation%20and%20Vessel%20Inspection%20 Circular%20No.%208–80%22*

• The Occupational Safety and Health Administration has issued warnings about PU foam in marine applications saying,

Rigid polyurethane and polyisocyanurate foams will, when ignited, burn rapidly and produce intense heat, dense smoke and gases which are irritating, flammable and/or toxic. As with other organic materials the most significant gas is usually carbon monoxide. Thermal decomposition products from PU foam consist mainly of carbon monoxide, benzene, toluene, oxides of nitrogen, hydrogen cyanide, acetaldehyde, acetone, propene, carbon dioxide, alkenes and water vapor.[5]

• The Federal Aviation Administration requires that all seat cushions and padding be self-extinguishing.[6]

• The National Transportation Safety Board issued a recommendation on the use of PU foam in maritime applications in 1995 saying,

The Safety Board believes that NFPA [the National Fire Protection Association] and the Coast Guard should establish, in cooperation, a national marine fire safety standard on the safe use of RPU [Rigid Polyurethane] foam and other organic combustible material insulation on vessels.[7]

The current classifications of PU foam as a hazardous material are supported by a large and unambiguous body of technical and scientific literature. A bibliography is in the appendix to this petition.

The petitioners also ask PHMSA to review the results of recent large-scale fire tests conducted on behalf of the European Union, which demonstrate clearly the danger that PU foam presents during transport. The SP Swedish National Testing and Research Institute conducted four full-scale tests involving truck fires in the Runehamar tunnel in Norway in September 2003. In one test a truck was loaded with furniture and in another, a truck was loaded with mattresses and wooden pallets. In both tests, the heat release rates (HRR), or measure of the fire's intensity, reached levels that are normally expected only from hazardous materials.[8] In fact, temperatures in the tunnel reached those comparable to tunnel tests involving petroleum products.[9]

PHMSA is well aware of the difficulties of securing data from hazardous materials incidents. Because PU foam is not classified as a hazardous material for transportation, it might follow that finding examples of incidents would be that much more difficult. But with little effort, NASFM has found numerous examples. Here are two:

• On August 28, 2006, a furniture delivery truck caught fire on Interstate 5 near San Diego. The semi-truck veered of the road, hitting a guardrail before the truck burst into thick flames and smoke. According to the California Highway Patrol, the semi-truck was transporting furniture and mattresses that quickly went up in flames. The incident began around 4 pm during the evening rush hour, and the fire was still burning at 5:30 pm; the incident closed northbound lanes of I–5 well into the evening and backed up traffic for miles.

• A May 7, 2005, fire in Navarro County, Texas, resulted in the loss of a reported $10,500 truck where an upholstered sofa and chair were among the items first ignited.

As part of a rulemaking, NASFM is prepared to work with PHMSA to undertake a systematic review of incident records where PU foam contributed to motor carrier fires. These fires may be ignited accidentally because of collisions or friction during transport, electrical faults, careless smoking, or they may be ignited intentionally. Regardless of ignition source, the ensuing fires present unacceptable risks to emergency responders.

NASFM is especially interested in incidents that may involve the GMC Savana cargo van that is recommended for furniture deliveries by the American Home Furnishings Alliance, yet has been the subject of two DOT supervised recalls because of potential fire hazards related to defective brakes and electrical components.[10] This vehicle has been the subject of at least 10 recalls overall; some of these defects have the potential to cause the vehicle to crash, further increasing the risk of vehicle fire.

Exemptions are possible for fire-resistant PU foam and finished products containing PU foam that meet certain flammability standards.

The petitioners believe it is reasonable to exempt certain finished products from this rule. For example, mattresses sold after July 1, 2007, in the United States must comply with CPSC requirements that effectively shield PU foam from ignition sources. Much as properly packaged individual containers of fingernail polish remover are exempt while bulk shipments are not, this new fire safety standard may exempt compliant mattresses from classification as a hazardous material. Some upholstered furniture used by institutions such as health care facilities, prisons and hotels meet the State of California's most stringent fire safety requirements for institutional use, and may be eligible for exemption. Certain grades of high density, fire resistant PU foams as currently specified by the State of California also may be candidates for exemption. The full text of these requirements can be found in the appendices to this document.

But while some exemptions may be justified, the fact remains that most bulk shipments and many finished products containing PU foam are formally listed and treated as hazardous materials in factories, warehouses, retail and residential occupancies by their manufacturers, users, and regulators. These materials and products do not suddenly become less hazardous when being transported among these places. In fact, given the uncertainties of traffic, road conditions, driver behavior and condition of the vehicle, the risks are greater during transport, especially to emergency responders who may need to negotiate treacherous conditions such as a steep, muddy slope to rescue a driver from a burning truck full of PU foam.

The benefits of changing the classification of PU foam far outweigh the costs.

Given the similarities of PU foam's fire performance to that of gasoline and other classified hazardous materials, NASFM believes that benefits of the hazardous materials classification proposed here may be comparable to these existing classified materials. Additionally, because PU foam is already classified as hazardous across numerous other agencies, there will be no significant incremental costs associated with the proposed action.

The social and economic costs associated with the loss of a roadway tunnel are well understood. Serious fires involving PU foam on roads, on bridges, in garages or in tunnels pose a significant danger to the health and safety of persons, often result in the total loss of involved vehicles and can cause significant structural damage to roads, tunnels or surrounding buildings. The March 1999 fire in the Mont Blanc tunnel between France and Italy tragically demonstrated the disastrous results of a fire involving materials classified as non-hazardous: 39 people died during the two-day fire, and the tunnel was closed for three years following the tragedy. The cost to the Italian economy alone due to direct damage and lost revenues associated with the tunnel during the three-year closure is estimated at $215 billion.[11] In addition to injuries and fatalities that result from catastrophic transportation incidents, the social cost to the surrounding region cannot be ignored. The furniture truck fire on I–5 backed up traffic for miles and delayed hundreds of thousands of people in traffic for hours. As demonstrated by the SP Swedish National Testing and Research Institute Runehamar tunnel fire tests, a truck containing quantities of polyurethane—even when in finished products—is capable of causing this sort of catastrophic fire, which may result in numerous injuries and fatalities and require years and billions of dollars to repair.

• The petitioners believe there are no direct effects, including preemption effects under section 5125 of Federal hazardous materials transportation law, of our proposed

[5] Baier, Edward J. ''The Fire Hazard of Polyurethane and Other Organic Foam Insulation Aboard Ships and in Construction.'' *OSHA Hazard Information Bulletins.* 10 May 1989. U.S. Department of Labor. 8 Sept. 2006. *http://www.osha.gov/dts/hib/hibdata/hib19890510.html*

[6] United States. Federal Aviation Administration. *Electronic Code of Federal Regulations (E-CFR) Title 14: Aeronautics and Space Part 23.* 25 Sept. 2006 *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=06a589895da22315eabb8c077bed3ded&rgn=div8&view=text&node=14:1.0.1.3.10.4.86.72&idno=14*

[7] Hall, Jim. ''Safety Recommendation in Reply to M–95–24 and –25.'' 17 July 1995. Washington, DC: National Transportation Safety Board, 1995. *http://www.ntsb.gov/recs/letters/1995/M95_24_25.pdf#search=%22NTSB%20safety%20recommendation%20M–95–24%22.*

[8] Lonnemark, Anders. *On the Characteristics of Fires in Tunnels.* Lund, Sweden: Tryckeriet I E–Huset, Lund University, 2005.

[9] Ibid., 524.

[10] ''2003 GMC Savana Recalls & Problems.'' *Internet Auto Guide.* 25 Sept. 2006. *http://www.internetautoguide.com/auto-recalls/67-int/2003/gmc/savana/2500/index.html.*

[11] ''EU Tunnel Fire Safety Action.'' Tunnels & Tunneling International (2003). 8 Sept. 2006. *<http://www.etnfit.net/unprotected_documents/EU%20Action%20-%20Tunnel%20Fire%20Safety%20%-%20TT%20paper.pdf#search=%22Mont%20Blanc%20tunnel%20fire%20cost%22>.*

action on States, on the relationship between the Federal government and the States, and on the distribution of power and responsibilities among the various levels of government.

The petitioners regard the actions proposed here as being fully supportive of the States' interests in the safety of its citizens and emergency responders.

• The regulatory burden on small businesses, small organizations, small governmental jurisdictions and Indian tribes will be minimal.

Small businesses, small organizations, small governmental jurisdictions, and Indian tribes now comply with safety requirements for PU foam enforced by state and local officials in manufacturing, storage, retail and residential occupancies. Classifying PU foam as a hazardous material for transportation may add some minimal costs related to placarding, packaging and the selection of routes.

• Recordkeeping and reporting costs to manufacturers and transporters will be minimal.

This action is unlikely to add significantly to existing record keeping and reporting burdens. The manufacturers and users of PU foam already regard these materials as ''combustible solids'' and accordingly maintain and share data with their customers and regulators.

• Classification of PU foam as a hazardous material will not have any adverse environmental effects but may have significant positive effects on the natural environment. Additionally, this action would significantly reduce the costs borne by society for the unsafe transportation of this hazardous cargo.

Possible environmental effects from the reclassification of PU foam are:

• Increased emissions resulting from longer routes needed to transport PU foam;

• Decreased emissions of the noxious by products of PU fires like hydrogen cyanide, hydrochloric gas and carbon monoxide because of increased precautions taken to reduce the number of these fires.

Societal impacts from the reclassification of PU foam are readily apparent. Fewer PU foam fires directly benefit society through decreased injuries, fatalities and property damage.

Therefore, we respectfully ask the DOT to use its clear authority to protect emergency responders and the public they are sworn to serve, by accepting this petition and moving forward expeditiously with enforcement.

III. Purpose of the Notice

The purpose of this Notice is to solicit comments on the merits of a petition for rulemaking filed by the National Association of State Fire Marshals requesting classification of Polyurethane Foam (PU) and certain finished products containing PU as hazardous materials under the Hazardous Materials Regulations. The safety implications of the proposals in the petition will be given careful considerations as we go through the process of determining whether regulatory action is needed.

Because of the many attachments to petition P–1491 (*e.g.*, MSDS, appendices, bibliography, and other information) submitted with this petition, we encourage interested parties to access the Web site: *http://dms.dot.gov* to review the petition and other documentation submitted with the petition.

Issued in Washington, DC, on March 27, 2007.

Robert A. Richard,

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. E7–5948 Filed 3–29–07; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Financial Literacy and Education Commission's Inaugural Meeting of the ''National Financial Education Network''

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces the inaugural meeting of the ''National Financial Education Network'' of the Financial Literacy and Education Commission. The Commission was established by the Financial Literacy and Education Improvement Act (Title V of the Fair and Accurate Credit Transactions Act of 2003).

DATES: The Financial Literacy and Education Commission's inaugural meeting of the ''National Financial Education Network'' will be held on Tuesday, April 17, 2007, from 9:30 a.m. to 4 p.m.

ADDRESSES: The inaugural meeting of the ''National Financial Education Network'' will be held in the Cash Room at the Department of the Treasury, located at 1500 Pennsylvania Ave., NW., Washington, DC. To be admitted to the Treasury building, an attendee must RSVP by providing his or her name, organization, phone number, date of birth, Social Security number and country of citizenship to the Department of the Treasury by e-mail at: *FLECrsvp@do.treas.gov*, or by telephone at: (202) 622–1783 (not a toll-free number) not later than 5 p.m. on Wednesday, April 11, 2007.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Garret Overlock by e-mail at: *garret.overlock@do.treas.gov* or by telephone at (202) 622–1006 (not a toll free number). Additional information regarding the Financial Literacy and Education Commission and the Department of the Treasury's Office of Financial Education may be obtained through the Office of Financial Education's Web site at: *http://www.treasury.gov/financialeducation*.

SUPPLEMENTARY INFORMATION: The Financial Literacy and Education Improvement Act, which is Title V of the Fair and Accurate Credit Transactions Act of 2003 (the ''FACT Act'') (Pub. L. 108–159), established the Financial Literacy and Education Commission (the ''Commission'') to improve financial literacy and education of persons in the United States. The Commission is composed of the Secretary of the Treasury and the head of the Office of the Comptroller of the Currency; the Office of Thrift Supervision; the Federal Reserve; the Federal Deposit Insurance Corporation; the National Credit Union Administration; the Securities and Exchange Commission; the Departments of Education, Agriculture, Defense, Health and Human Services, Housing and Urban Development, Labor, and Veterans Affairs; the Federal Trade Commission; the General Services Administration; the Small Business Administration; the Social Security Administration; the Commodity Futures Trading Commission; and the Office of Personnel Management.

As part of the implementation of Taking Ownership of the Future: The National Strategy for Financial Literacy, the U.S. Office of Personnel Management and the Department of the Treasury partnered to establish a network of state and local government officials to improve collaboration on financial education efforts among federal, state and local levels. The inaugural meeting of the ''National Financial Education Network'' of state and local governments will bring together representatives from different areas and levels of government across the nation. The purpose of the meeting will be to create an open dialogue among associations, government officials, and individuals in hopes of advancing financial education at the state and local level.

Dated: March 21, 2007.

Dan Iannicola, Jr.,

Deputy Assistant Secretary for Financial Education.

[FR Doc. E7–5953 Filed 3–29–07; 8:45 am]

BILLING CODE 4811–42–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–30–95]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–30–95 (TD 8672), Reporting of Nonpayroll Withheld Liabilities (§ 31.6011(a)–4).

DATES: Written comments should be received on or before May 29, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Reporting of Nonpayroll Withheld Tax Liabilities.

OMB Number: 1545–1413.

Regulation Project Number: IA–30–95.

Abstract: This regulation relates to the reporting of nonpayroll withheld income taxes under section 6011 of the Internal Revenue Code. The regulations require a person to file Form 945, Annual Return of Withheld Federal Income Tax, only for a calendar year in which the person is required to withhold Federal income tax from nonpayroll payments.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households business or other for-profit organizations, not-for-profit institutions, farms, and Federal, State, local or tribal governments.

The burden for the collection of information is reflected in the burden for Form 945, Annual Return of Withheld Federal Income Tax.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 22, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–5834 Filed 3–29–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5306–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5306–A, Application for Approval of Prototype Simplified Employee Pension (SEP) or Savings Incentive Match Plan for Employees of Small Employers (SIMPLE IRA Plan).

DATES: Written comments should be received on or before May 29, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the internet at RJoseph.Durbala@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Application for Approval of Prototype Simplified Employee Pension (SEP) or Savings Incentive Match Plan for Employees of Small Employers (SIMPLE IRA Plan).

OMB Number: 1545–0199.

Form Number: 5306–A.

Abstract: This form is used by banks, credit unions, insurance companies, and trade or professional associations to apply for approval of a simplified employee pension plan or a Savings Incentive Match Plan to be used by more than one employer. The data collected is used to determine if the prototype plan submitted is an approved plan.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5,000.

Estimated Time per Respondent: 18 hours, 53 minutes.

Estimated Total Annual Burden Hours: 94,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration

of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 22, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–5835 Filed 3–29–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 88–30 and Notice 88–132

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning two existing notices, Notice 88–30, Diesel Fuel and Aviation Fuel Taxes Imposed at Wholesale Level, and Notice 88–132, Diesel and Aviation Fuel Taxes; Rules Effective 1/1/89.

DATES: Written comments should be received on or before May 29, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notices should be directed to R. Joseph Durbala, at (202) 622–3634, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Notice 88–30, Diesel Fuel and Aviation Fuel Taxes Imposed at Wholesale Level, and Notice 88–132, Diesel and Aviation Fuel Taxes; Rules Effective 1/1/89.

OMB Number: 1545–1043.

Notice Number: Notice 88–30 and Notice 88–132.

Abstract: Notice 88–30 and Notice 88–132 require certain persons involved with diesel or aviation fuel (1) To be registered with the Internal Revenue Service, (2) to maintain certain records, and (3) to provide certificates to support exempt purchases. Because of the Code amendments made by the Omnibus Budget Reconciliation Act of 1993, these requirements now apply only with respect to aviation fuel.

Current Actions: There are no changes being made to the notices at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, farms, and state, local or tribal governments.

Estimated Number of Respondents: 3,500.

Estimated Time Per Respondent: 1 hour, 6 minutes.

Estimated Total Annual Burden Hours: 3,850.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 22, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–5836 Filed 3–29–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–B

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–B, Proceeds From Broker and Barter Exchange Transactions.

DATES: Written comments should be received on or before May 29, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Proceeds From Broker and Barter Exchange Transactions.

OMB Number: 1545–0715.

Form Number: Form 1099–B.

Abstract: Internal Revenue Code section 6045 requires the filing of an information return by brokers to report the gross proceeds from transactions and by barter exchanges to report exchanges of property or services. Form 1099–B is used to report proceeds from these transactions to the Internal Revenue Service.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Responses: 117,611,875.

Estimated Time per Response: 19 minutes.

Estimated Total Annual Burden Hours: 36,459,682.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 23, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–5837 Filed 3–29–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–120–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–120–86 (TD 8584), Capitalization of Interest (§§ 1.263A–8(b)(2)(iii), 1.263A–9(d)(1), 1.263A–9(e)(1), 1.263A–9(f)(1)(ii), 1.263A–9(f)(2)(iv), 1.63A–9(g)(2)(iv)(C), 1.263A–9(e)(I) and 1.263A–9(g)(3)(iv)).

DATES: Written comments should be received on or before May 29, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to R. Joseph. Durbala, at (202) 622–3634, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Capitalization of Interest.

OMB Number: 1545–1265.

Regulation Project Number: IA–12–120–86.

Abstract: Internal Revenue Code section 263A(f) requires taxpayers to estimate the length of the production period and total cost of tangible personal property to determine if interest capitalization is required. This regulation requires taxpayers to maintain contemporaneous written records of production period estimates, to file a ruling request to segregate activities in applying the interest capitalization rules, and to request the consent of the Commissioner to change their methods of accounting for the capitalization of interest.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved approval.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 100 hours.

Estimated Number of Recordkeepers: 500,000.

Estimated Time per Recordkeeper: 14 minutes.

Estimated Total Annual Recordkeeping Hours: 116,667.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 21, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–5838 Filed 3–29–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Regulation Section 31.6001]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing regulations, 26 CFR 31.6001–1, Records in general; 26 CFR 31.6001–2 Additional Records under FICA; 26 CFR 31.6001–3, Additional records under Railroad Retirement Tax Act; 26 CFR 31.6001–5, Additional records in connection with collection of income tax at source on wages; 26 CFR 31.6001–6, Notice by District Director requiring returns, statements, or the keeping of records.

DATES: Written comments should be received on or before May 29, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulation sections should be directed to R. Joseph Durbala at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: 26 CFR 31.6001–1, Records in general; 26 CFR 31.6001–2, Additional Records under FICA; 26 CFR 31.6001–3, Additional records under Railroad Retirement Tax Act; 26 CFR 31.6001–5, Additional records in connection with collection of income tax at source on wages; 26 CFR 31.6001–6, Notice by District Director requiring returns, statements, or the keeping of records.

OMB Number: 1545–0798.

Abstract: Internal Revenue Code section 6001 requires, in part, that every person liable for tax, or for the collection of that tax must keep such records and comply with such rules and regulations as the Secretary may from time to time prescribe. The recordkeeping requirements under 26 CRF 31.6001 have special application to employment taxes (and to employers) and are needed to ensure proper compliance with the Code. Upon examination, the records are needed by the taxpayer to establish the employment tax liability claimed on any tax return.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Recordkeepers: 5,676,263.

Estimated Time per Recordkeeper: 5 hours, 20 minutes.

Estimated Total Annual Recordkeeping Hours: 30,273,950.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 22, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–5839 Filed 3–29–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–73–89]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–73–89 (T.D. 8370), Excise Tax on Chemicals That Deplete the Ozone Layer and on Products Containing Such Chemicals (§§ 52.4682–1(b), 52.4682–2(b), 52,4682–2(d), 52.4682–3(c), 52.4682–3(g), and 52.4682–4(f)).

DATES: Written comments should be received on or before May 29, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202)622–3634, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Excise Tax on Chemicals That Deplete the Ozone Layer and on Products Containing Such Chemicals.

OMB Number: 1545–1153.

Regulation Project Number: PS–73–89.

Abstract: This regulation imposes reporting and recordkeeping requirements necessary to implement Internal Revenue Code sections 4681 and 4682 relating to the tax on chemicals that deplete the ozone layer

and on products containing such chemicals. The regulation affects manufacturers and importers of ozone-depleting chemicals, manufacturers of rigid foam insulation, and importers of products containing or manufactured with ozone-depleting chemicals. In addition, the regulation affects persons, other than manufacturers and importers of ozone-depleting chemicals, holding such chemicals for sale or for use in further manufacture on January 1, 1990, and on subsequent tax-increase dates.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents/ Recordkeepers: 150,316.

Estimated Time per Respondent/ Recordkeeper: 30 minutes.

Estimated Total Annual Burden Hours: 75,142.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 21, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–5840 Filed 3–29–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–44–78]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, EE–44–78 (TD 8100), Cooperative Hospital Service Organizations (§ 1.501(e)–1).

DATES: Written comments should be received on or before May 29, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to R. Joseph Durbala, at (202) 622–3634, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Cooperative Hospital Service Organizations.

OMB Number: 1545–0814.

Regulation Project Number: EE–44–78.

Abstract: This regulation establishes the rules for cooperative hospital service organizations which seek tax-exempt status under section 501(e) of the Internal Revenue Code. Such an organization must keep records in order to show its cooperative nature and to establish compliance with other requirements in Code section 501(c).

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Not-for-profit institutions.

The recordkeeping requirement does not create any additional burden on taxpayers because the records which the regulations require would ordinarily be kept by a cooperative as a routine part of its day-to-day business operations.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 22, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–5841 Filed 3–29–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–150562–03]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing proposed regulation, REG–150562–03 (NPRM), Section 1045 Application to Partnerships.

DATES: Written comments should be received on or before May 29, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Section 1045 Application to Partnerships.

OMB Number: 1545–1893.

Regulation Project Number: REG–150562–03.

Abstract: This document contains proposed regulations relating to the application of section 1045 of the Internal Revenue Code (Code) to partnerships and their partners. These regulations provide rules regarding the deferral of gain on a partnership's sale of qualified small business stock and deferral of gain on a partner's sale of qualified small business stock distributed by a partnership. The proposed regulations affect partnerships that invest in qualified small business stock and their partners. This document also provides notice of a public hearing on the proposed regulations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of the currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 22, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–5858 Filed 3–29–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–251703–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–251703–96 (TD 8813), Residence of Trusts and Estates—7701 (§ 301.7701–7).

DATES: Written comments should be received on or before May 29, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Residence of Trusts and Estates-7701.

OMB Number: 1545–1600.

Regulation Project Number: REG–251703–96.

Abstract: This regulation provides the procedures and requirements for making the election to remain a domestic trust in accordance with section 1161 of the Taxpayer Relief Act of 1997. The information submitted by taxpayers will be used by the IRS to determine if a trust is a domestic trust or a foreign trust.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of the currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 222.

Estimated Time per Respondent: 31 minutes.

Estimated Total Annual Burden Hours: 114.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 22, 2007.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E7–5865 Filed 3–29–07; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 72, No. 61

Friday, March 30, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1572

[Docket No. TSA–2006–24191; TSA Amendment Nos. 1515–(New), 1540–8, 1570–2, and 1572–7]

RIN 1652–AA41

Transportation Worker Identification Credential Implementation in the Maritime Sector; Hazardous Materials Endorsement for a Commercial Driver's License; Correction

Correction

In rule document E7–5487 beginning on page 14049 in the issue of Monday, March 26, 2007, make the following correction:

§ 1572.103 [Corrected]

On page 14050, in the third column, in the first paragraph, in the third line, ''(b)(2)(xii)'' should read ''(b)(2)(xiii)''.

[FR Doc. Z7–5487 Filed 3–29–07; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,

March 30, 2007

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 482, 488, and 498

Medicare Program; Hospital Conditions of Participation: Requirements for Approval and Re-Approval of Transplant Centers To Perform Organ Transplants; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 482, 488, and 498

[CMS–3835–F]

RIN 0938–AH17

Medicare Program; Hospital Conditions of Participation: Requirements for Approval and Re-Approval of Transplant Centers To Perform Organ Transplants

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule establishes, for the first time, Medicare conditions of participation for heart, heart-lung, intestine, kidney, liver, lung, and pancreas transplant centers. This rule sets forth clear expectations for safe, high quality transplant service delivery in Medicare-participating facilities. In addition, in this rule we respond to public comments on the proposed rule.

EFFECTIVE DATES: These regulations are effective on June 28, 2007.

FOR FURTHER INFORMATION CONTACT: Eva Fung, (410) 786–7539. Marcia Newton, (410) 786–5265. Diane Corning, (410) 786–8486. Jeannie Miller, (410) 786–3164. Rachael Weinstein, (410) 786–6775.

SUPPLEMENTARY INFORMATION:

I. Background

A. Key Statutory Provisions

Section 1102 of the Social Security Act (the Act) authorizes the Secretary to publish rules and regulations ''necessary for the efficient administration of the functions'' with which the Secretary is charged under the Act. Section 1871(a) of the Act authorizes the Secretary to ''prescribe such regulations as may be necessary to carry out the administration of the insurance programs under this title.''

Section 1864 of the Act authorizes the use of State agencies to determine providers' compliance with Medicare conditions of participation (CoPs). Responsibilities of the States in ensuring compliance with the CoPs are set forth in regulations at 42 CFR part 488, Survey, Certification, and Enforcement Procedures. Under section 1865 of the Act and § 488.5 of the regulations, hospitals that are accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the American Osteopathic Association (AOA) are not routinely surveyed by State agency surveyors for compliance with the conditions, but are deemed to meet most of the requirements in the hospital CoPs based on their accreditation. JCAHO, AOA, and other national accreditation programs with deeming authority under § 488.6 of the regulations must meet requirements that are at least as stringent as the Medicare CoPs. (See Part 488, Survey and Certification Procedures.) An accreditation organization must apply for and receive approval of deeming authority from CMS.

Section 1865(b)(1) of the Act states that providers of certain services listed in section 1881(b) of the Act cannot be deemed by a national accreditation body to meet the Medicare conditions of participation. Kidney transplant centers are entities listed in 1881(b); thus, they cannot be deemed to be accredited.

Section 1881(b)(1) of the Act contains specific authority for prescribing the health and safety requirements for facilities, including renal transplant centers, that furnish end stage renal disease (ESRD) care to beneficiaries.

B. Past Medicare Policy Regarding Transplantation

Until now, kidney transplant centers have participated in Medicare by meeting requirements set forth at 42 CFR Part 405, subpart U, ''Conditions for Coverage of Suppliers of End Stage Renal Disease (ESRD) Services.'' These requirements address issues such as compliance with applicable Federal, State, and local laws and regulations; governing body; patient care plans; patients' rights; medical records; and the physical environment. In addition, the ESRD conditions for coverage (CfCs) delineate minimum utilization rates, requirements for the director of transplantation, and minimum service requirements. (See 405.2170 and 405.2171.) Likewise, we have regulated extra-renal transplant centers under various national coverage decisions (NCDs) published beginning in 1987. The NCDs have been based on the ''reasonable and necessary'' provision of the Medicare statute (section 1862(a)(1)(A) of the Act). Generally, under section 1862(a)(1)(A), Medicare does not pay for any item or service unless it is medically reasonable and necessary. The NCDs provide that transplantation of extra-renal organs will be considered reasonable and necessary if performed in a center that meets the criteria specified in the applicable NCD.

C. Our Efforts To Improve Oversight of Transplant Centers

In the preamble of the proposed transplant center rule published February 4, 2005 (70 FR 6140), we discussed our efforts that are underway to improve organ donation and transplantation services, including the Secretary's Gift of Life Initiative. Publication of the proposed rule for new CoPs for transplant centers was the first step in moving toward a stronger oversight process. In February 2004, the Office of the Inspector General (OIG) published a report titled ''Medicare-approved Heart Transplant Centers'' (OEI–01–02–00520), and outlined three recommendations for CMS oversight of heart transplant centers: (1) CMS should expedite the development of continuing criteria for volume and survival rate performance and for periodic re-certification; (2) CMS should develop guidelines and procedures for taking actions against centers that do not meet Medicare criteria for volume and survival rate; and (3) CMS should take immediate steps to improve its ability to maintain accurate and timely data on center performance. All of the OIG's recommendations were incorporated into the rule.

Through this final rule, we are codifying requirements for approval and re-approval of transplant centers as CoPs and placing Medicare-approved transplant centers under the survey and certification enforcement process used for all other providers and suppliers of Medicare services.

Since publication of the proposed rule, we have identified quality and service issues that some transplant centers are experiencing. For example, in 2005, we investigated and cited a hospital whose liver transplant center was accused of turning down a large number of organs offered for the patients on its waiting list. As a result, the hospital closed its liver transplant center. In addition, the Government Accountability Office (GAO) is currently reviewing the Department's oversight of the transplantation system in the United States.

Our current oversight of transplant centers relies on self-reporting of significant changes within a transplant center, as well as beneficiary complaints that may lead to a review or survey of a transplant center. The transplant center NCDs do not delineate explicit criteria for de-certifying of organ transplant programs. In this final rule, we are responding to public comments on the proposed rule and recommendations for improvement to this system by setting forth explicit

expectations for outcomes, and high quality transplantation services.

We are codifying the requirements for the approval and re-approval of transplant centers as an option under part 482, subpart E, for hospitals that choose to perform transplants. This final rule applies to hospitals with heart, heart-lung, intestine, kidney, liver, lung, and pancreas transplant centers. For purposes of this final rule, heart-lung transplant centers are those centers that are located in a hospital with an existing Medicare-approved heart transplant center and an existing Medicare-approved lung center that performs combined heart-lung transplants. Intestine centers are those Medicare-approved liver transplant centers that perform intestine transplants, combined liver-intestine transplants, and multivisceral transplants. Pancreas centers are those Medicare-approved kidney transplant centers that perform pancreas transplants, alone or subsequent to a kidney transplant, and that also perform kidney-pancreas transplants.

II. Provisions of the Proposed Rule and Response to Comments on the February 4, 2005 Proposed Rule

In the February 4, 2005 **Federal Register** (70 FR 6140), we published the proposed rule entitled, ''Hospital Conditions of Participation: Requirements for Approval and Re-approval of Transplant Centers to Perform Organ Transplants'' and provided for a 60-day comment period. On March 25, 2005, we published a notice in the **Federal Register** (70 FR 15264) extending the comment period for an additional 60 days, until June 6, 2005, to allow sufficient time for the public to provide comments on the large number of proposed new requirements.

The proposed rule set forth new hospital CoPs for the approval and re-approval of transplant centers at 42 CFR part 482, subpart E. Additionally, following publication of the proposed rule, we conducted an external, independent peer review of several of the technical aspects associated with the proposed outcome measures and options. We contacted five scientists, of which three sent us detailed comments to address the technical questions that we raised. One scientist declined to provide detailed comments but said his views were reflected by the comments provided by the American Society of Transplant Surgeons/American Transplantation Society (ASTS/ATS). Comments provided by the ASTS/ATS partially addressed these technical issues, as well as more general issues of concern to the society. These peer reviews were received during the public comment period. Below we respond to the comments of the peer reviewers, in addition to the public comments received during the comment period.

We received a total of 91 comments: 48 from individual transplant centers; 10 from professional associations representing those who work in the field of transplantation (including physicians, surgeons, dietitians, nurses, social workers, transplant coordinators, hospitals), 2 from organizations that support transplantation, (that is, the National Kidney Foundation and National Liver Foundation); 9 from individual social workers; 6 from individual transplant coordinators; 5 from individual organ procurement organizations; and 11 from various sources (including the Scientific Registry of Transplant Recipients, United Network for Organ Sharing, the Secretary's Advisory Committee on Organ Transplantation, the New York State Department of Health, the Joint Commission on Accreditation of Healthcare Organizations, individual physicians, a histocompatability laboratory, a living donor, and a dialysis facility). The comments ranged from general support or opposition to the proposed conditions of participation to very specific questions or comments regarding the proposed criteria. Note that comments made by peer reviewers are identified specifically as peer review comments. All other comments were made by the public.

Brief summaries of each proposed provision, a summary of the public comments we received (with the exception of specific comments on the paperwork burden or the economic impact analysis), and our responses to the comments are set forth below. Comments related to the paperwork burden and the impact analysis are addressed in the Collection of Information and Impact Analysis Sections in this preamble.

General Comments

Comment: Many commenters supported and commended our efforts to update Medicare approval and re-approval requirements for transplant centers. Some commenters indicated they were impressed by our recognition of the highly complex issues faced by transplant recipients and living donors. Other commenters stated that the rationales provided in the February 4, 2005 proposed rule were based on sound medical and transplant practices. Some commenters stated that this rule may help to decrease organ wastage and graft failure, which would reduce the need for kidney dialysis services and re-transplantation of failed organs.

Some of the professional associations and three peer reviewers supported our efforts to update transplantation standards for Medicare-approved centers, codify standards for extra-renal organ transplants, and improve care for Medicare beneficiaries and living donors. One peer reviewer was pleased with the comprehensiveness of the proposed rule, which the peer reviewer said builds upon the work of the Organ Procurement and Transplantation Network (OPTN), the Scientific Registry of Transplant Recipients (SRTR), and the Health Resources and Services Administration (HRSA). Another peer reviewer supported the re-approval process and stated that a mechanism to re-approve transplant centers is essential.

Response: We thank the commenters and peer reviewers for their assistance in developing this final rule. We are committed to ensuring that Medicare-approved transplant centers consistently maintain the expertise and resources necessary to provide high quality transplantation services to patients.

Comment: A few commenters stated that the proposed rule was too prescriptive and expressed concerns that implementation of the rule would bring extra burden to transplant centers, especially kidney transplant centers, in terms of cost and nursing hours. One commenter suggested a more general approach as opposed to using prescriptive language. One commenter inquired about the source of funding for the extra expenses generated by this rule.

Response: One of our goals in publishing new CoPs for transplant centers is to provide flexibility for transplant centers within the framework of our regulatory authority. As stated in the proposed rule, we have set forth requirements that we believe are absolutely necessary to ensure quality care and protect the health and safety of patients. All of the CoPs are specifically transplant-oriented, and we believe that nearly all requirements in this final rule clarify or strengthen normal business practices for most transplant centers. Centers that have not incorporated the requirements in this final rule into their normal business practices will need to assess their transplantation practices and improve their performance. We believe this rule will strengthen accountability of transplant centers, and we expect centers to maintain compliance with the requirements in this final rule and continuously strive to improve quality of care and patient and

living donor safety in their pursuit of optimal outcomes.

We believe this rule will neither increase nursing workloads nor create significant burdens for centers, including kidney centers. We estimate that on average, the cost for each currently-approved Medicare transplant center to comply will be less than $56,000 in the first full year following the effective date of the final rule and less than $21,000 in subsequent years.

Comment: A peer reviewer expressed concern that the level of detail in the proposed rule may hamper the Agency's ability to make needed modifications in the future.

Response: We have included only those requirements that we believe are absolutely essential for ensuring quality care and protecting the health and safety of Medicare beneficiaries and living donors. From an oversight perspective, we must be specific in our expectations so that providers clearly understand the requirements for Medicare participation.

We will continue to stay abreast of the latest advances in transplantation. If hospitals significantly change how they provide transplant patient care or the SRTR changes its outcome measure methodology, we will review and revise the final rule as necessary.

Comment: One commenter stated that the OPTN oversight process and the CoPs would create inconsistent parallels for review of transplant center performance. Another commenter was concerned that the OPTN and the proposed CMS review processes were duplicative or inconsistent in some areas. The commenter believed that the OPTN oversight and compliance with the Medicare CoPs should be consistent and work in tandem.

Response: Our intent is that OPTN policies and the requirements in this final rule will complement but not duplicate each other. Nevertheless, in some instances, we have incorporated OPTN policies into our requirements so that they are enforceable under Medicare. Below is a crosswalk chart that shows overlap and differences between OPTN policies and CMS regulations:

CROSSWALK OF TRANSPLANT CENTER FINAL RULE, PART 121, & OPTN POLICIES AND BYLAWS

CMS requirements	42 CFR Part 121, OPTN policies, and bylaws for transplant centers	Comments
Main focuses of CMS requirements. • Regulatory oversight of transplant centers. • Patient care & transplant services furnished to beneficiaries. • Relationship with transplant centers based on Provider Agreement & Medicare reimbursement. • Medicare approval & re-approval based on compliance with Conditions of participation (CoPs). • Provider responsibilities.	Part 121 sets forth the governing structure of the OPTN and sets standards for availability of organ transplantation data. Part 121 lays out requirements for transplant program in hospitals at §§ 121.9 and 121.11(b)(1)(C) (defined as OMB-approved OPTN forms). Main focuses of Part 121. • Govern the operation of the OPTN which is under contract with HRSA. • Require OPTN to develop policies for its members. However, as of today, with the exception of ''data submission requirements'', none of the OPTN polices have been enforceable because they have not been approved and published by the Secretary.	Main focuses of OPTN policies/Bylaws. • Organ allocation. • Credential of transplant surgeons/physicians. • Relationship with transplant hospital members is collegial with the goal to help them to improve performance. • OPTN Membership application reviewed by peer reviewers. • Member obligations. *Additional requirements for non-Medicare approved transplant programs.
§ 482.68 Special Requirements for transplant centers. In order to be granted approval from CMS to provide transplant services, a transplant center must: • Be located within a hospital that has a Medicare provider agreement. • Meet the CoPs of this final rule. • Meet all hospital CoPs.	Compliance with Part 121 ..... OPTN membership requirements.	• This rule now makes the data submission requirements of OPTN a Condition of Participation. • Transplant centers must comply with CoPs to be reimbursed.
§ 482.70 Definitions. CMS has specific definitions for certain types of centers.	Generic definitions in part 121	No comparable OPTN definitions.
§ 482.72 Condition of participation: OPTN membership. A transplant center must be located in a transplant hospital that is a member of and abides by the approved rules and requirements of the OPTN established and operated in accordance with § 372 of the Public Health Service (PHS) Act (42 U.S.C. section 274).	§ 121.9 Designated transplant program requirements. • (a) To receive organs for transplantation, a transplant program must be in a hospital that is a member of the OPTN.	
§ 482.74 Condition of participation: Notification to CMS. A transplant center must notify CMS immediately of any significant changes related to the center's transplant program or changes that would alter elements in the approval/re-approval application: • A change in key staff members of the transplant team. • A decrease in the center's volume or survival rates.	OPTN Bylaw Appendix B–3 ..... OPTN member programs must notify OPTN immediately when a key person plans to leave.	CMS adopts the OPTN bylaw and adds more requirements.

CROSSWALK OF TRANSPLANT CENTER FINAL RULE, PART 121, & OPTN POLICIES AND BYLAWS—Continued

CMS requirements	42 CFR Part 121, OPTN policies, and bylaws for transplant centers	Comments
• Termination of an agreement between the hospital in which the transplant center is located and an OPO for the recovery and receipt of organs. • Inactivation of the transplant center.		
§ 482.76 Condition of participation: Pediatric Hospitals. • With the exceptions of heart centers, pediatric centers that wish to provide transplantation services to both adult and pediatric transplants must meet all requirements (except for clinical experience) in this rule and request separate Medical approval. • A center that mostly performs adult transplants cannot be approved to perform pediatric transplants if they lose their approval to perform adult transplants. • A center that mostly performs pediatric transplants cannot be approved to perform adult transplants if they lose their approval to perform pediatric transplants. • Heart centers that want to obtain Medicare approval for pediatric transplants have the option to be approved under the criteria listed under OBRA 1987.	.....	No specific OPTN policy/bylaw for pediatric transplant programs.
§ 482.80 Condition of participation: Data submission, clinical experience, and outcome requirements for *INITIAL APPROVAL* of transplant centers.	§ 121.11(b)(2) Reporting requirements. Member transplant hospitals must submit to the Secretary information as the Secretary prescribes (OPTN forms).	By using the publicly available SRTR data for outcome measures, CMS's outcome complements Part 121.
(a) Standard: Data submission. No later than 90 days after the due date established by the OPTN, a transplant center must submit to the OPTN at least 95 percent of required data on all transplants (deceased and living donor) it has performed.	§ 121.11(b)(1)(C) • The OPTN & the SRTR shall provide to the Secretary any data that the Secretary requests. • Make available to the public timely & accurate program-specific information on the performance of transplant programs. OPTN Policy 7.8 Data Submission Requirements. • Each transplant center must collect & submit 95% of expected forms complete within 3 months of the due date and 100% of expected forms complete within 6 months of the due date.	CMS adopts the OPTN policy for the most part.
(b) Standard: Clinical experience. We require an annual volume for the following types of transplant centers: • Heart, intestine, liver & lung transplant centers—10 transplants. • Kidney transplant centers—at least 3 transplants. • No annual volume requirement for heart-lung, and pancreas centers, and centers that primarily perform pediatric transplants.	No annual volume required by the OPTN. However, it has definitions for ''functionally inactive'' centers: • No transplants performed in 3 months in the case of kidney, liver, & heart transplant programs. • No transplants performed in 6 months in the case of pancreas & lung programs.	CMS requirements are straighter than OPTN policy for the purpose of monitoring inactivity of centers.

CROSSWALK OF TRANSPLANT CENTER FINAL RULE, PART 121, & OPTN POLICIES AND BYLAWS—Continued

CMS requirements	42 CFR Part 121, OPTN policies, and bylaws for transplant centers	Comments
(c) Standard: Outcome measures ..... • We will review outcomes for all transplants performed at a center, including outcomes for living donor transplants, if applicable. Except for lung transplants, CMS will review adult and pediatric outcomes separately when a center requests Medicare approval to perform pediatric transplants. • A center's (risk-adjusted) expected 1-year patient survival and 1-year graft survival will be compared to its observed 1-year patient survival and 1-year graft survival, based on the following non-compliance thresholds:. • O − E >3. • O/E >1.5. • 1-sided p <0.05.	OPTN Bylaw Appendix B Attachment Survival Rates. • While the precise numerical criteria may be selected by the Membership & Professional service Committee, the initial criteria employed to identify programs with low patient/graft survival rates will include the following findings: • O − E >3. • O/E >1.5. • 1-sided p <0.05.	CMS adopts the OPTN bylaws to the extent that the outcome measure standards and the OPTN policies for survival rate criteria & outcome methodology are essentially the same in the assessment of a center's outcomes. However, OPTN uses the survival outcomes as flags for further investigation while CMS uses them as criteria to make approval & re-approval determinations. Compliance with the OPTN's survival rate criteria is not required for initial approval of a new transplant program as an OPTN member. The OPTN grants conditional approval to new transplant programs, which gives the new transplant program 3 years to comply with the OPTN requirements.
(d) Exceptions. No outcome requirements for: • Heart-lung transplant centers. • Intestinal transplant centers. • Pancreas transplant centers.		
§ 482.82 Condition of participation: Data submission, clinical experience, and outcome requirements for *RE-APPROVAL* of transplant centers.		
(a) Standard: Data submission. No later than 90 days after the due date established by the OPTN, a transplant center must submit to the OPTN 95 percent of the required data submissions on all transplants (deceased and living donor) it has performed over the 3-year approval period.	See Initial Approval	See Initial Approval.
(b) Standard: Clinical experience. We require an annual volume for the following types of transplant centers: • Heart, intestine, kidney, liver & lung transplant centers—10 transplants. • No annual volume requirement for heart-lung, and pancreas centers, and centers that primarily perform pediatric transplants.	See Initial Approval	See Initial Approval.
(c) Standard: Outcome measures ..... • We will review outcomes for all transplants performed at a center, including outcomes for living donor transplants, if applicable. Except for lung transplants, CMS will review adult and pediatric outcomes separately when a center requests Medicare approval to perform pediatric transplants. • A center's (risk-adjusted) expected 1-year patient survival and 1-year graft survival will be compared to its observed 1-year patient survival and 1-year graft survival, based on the following non-compliance thresholds: • O − E >3. • O/E >1.5. • 1-sided p <0.05.	See Initial Approval	See Initial Approval.
(d) Exceptions. No outcome requirements for: • Heart-lung transplant centers. • Intestinal transplant centers. • Pancreas transplant centers.		
§ 482.90 Condition of participation: Patient and living donor selection.	§ 121.8 Allocation of Organs	CMS requirements complement OPTN policies.
(a) Standard: Patient selection. Patient selection criteria must: • Assure fair and non-discriminatory distribution of organs. • Include a psychosocial evaluation.	The OPTN has wait list policies for the purpose of organ allocation.	

CROSSWALK OF TRANSPLANT CENTER FINAL RULE, PART 121, & OPTN POLICIES AND BYLAWS—Continued

CMS requirements	42 CFR Part 121, OPTN policies, and bylaws for transplant centers	Comments
• Include documentation in the patient's medical record that the candidate's blood type has been determined on at least two separate occasions. • Include documentation in the patient's medical record of the patient selection criteria used.		
(b) Standard: Living donor selection. The living donor selection criteria must be consistent with the general principles of medical ethics. Transplant centers must: • Ensure that a prospective living donor receives a medical & Psychosocial evaluation prior to donation. • Document in the living donor's medical records the living donor's suitability for donation. • Document that the living donor has given informed consent, as required.		No comparable OPTN policy/bylaw.
§ 482.92 Condition of participation: Organ recovery and receipt. • Written protocols for—deceased organ recovery, organ receipt, and living donor transplantation to validate donor-recipient matching of blood types and other vital information. • The transplanting surgeon at the transplant center responsible for ensuring medical suitability of donor organs for transplantation into the intended recipient.		
(a) Standard: Organ recovery. When an intended transplant recipient is known, the transplant center's organ recovery team must review and compare donor-data with the recipient blood type and other vital information before organ recovery takes place.	Policy 3.1 Organ Distribution: Definitions. 3.1.2 Transplant Center—The transplanting surgeon is responsible for ensuring medical suitability of donor organ for transplantation into the potential recipient, including compatibility of donor and candidate by ABO blood type.	CMS requirements complement OPTN policies.
(b) Standard: Organ receipt. • When an organ arrives at the center, the transplanting surgeon and at least one licensed health care professional must verify that the donor's blood type and other vital information is compatible with transplantation of the intended recipient prior to transplantation.	Policy 3.1 Organ Distribution: Definitions. 3.1.2 Transplant Center—Upon receipt of an organ, prior to implantation, the transplant center is responsible for verifying the recorded donor ABO with the recorded ABO of the intended recipient.	CMS requirements complement OPTN policies.
(c) Standard: Living donor transplantation. • If a center performs living donor transplants, the transplanting surgeon and at least one licensed health care professional at the transplant center must verify that the donor's blood type and other vital information is compatible with transplantation of the intended recipient immediately before the removal of the donor organ(s) and, if applicable, prior to the removal of the recipient's organ(s).	.....	No comparable OPTN policy/bylaw.
§ 482.94 Condition of participation: Patient and living donor management. • Transplant center must have written patient management policies and patient care planning for the pre-transplant, transplant, and discharge phases of transplantation. • Center must have written donor management policies for the donor evaluation, donation, and discharge phases of living organ donation if it performs living donor transplants.	.....	No comparable OPTN policy/bylaw.
(a) Standard: Patient and living donor care. ..... Each transplant patient and/or living donor is under the care of a multidisciplinary patient care team coordinated by a physician throughout transplantation or donation.	.....	No comparable OPTN policy/bylaw.

CROSSWALK OF TRANSPLANT CENTER FINAL RULE, PART 121, & OPTN POLICIES AND BYLAWS—Continued

CMS requirements	42 CFR Part 121, OPTN policies, and bylaws for transplant centers	Comments
(b) Standard: Waitlist management. Transplant centers must keep their waitlists up to date, including: • Updating waitlist patients' clinical information on an ongoing basis. • Removing patients from the center's waitlist if a patient receives a transplant or dies, or if there is any other reason why the patient should no longer be on a center's waitlist. • Notifying the OPTN no later than 24 hours after a patient's removal from the center's waitlist.	OPTN Policies 3.2.3.1, 3.6.6 ..... • Require transplant centers to immediately remove transplant candidates that have received a transplant from a deceased donor, or have died while awaiting a transplant, from the center's waitlist and from the UNOS Patient Waiting List and to notify UNOS within 24 hours of such removal.	CMS Requirements complement OPTN policies.
(c) Standard: Patient records. Transplant centers must maintain up-to-date and accurate patient management records for each patient who receives an evaluation for placement on a center's waitlist and who is admitted for organ transplantation. This includes notification to patient (and patient's usual dialysis facility if patient is a kidney patient) of: • Patient's placement on the center's waitlist; the center's decision not to place the patient on its waitlist; or the center's inability to make a determination regarding the patient's placement on its waitlist because further clinical testing or documentation is needed. • Removal from waitlist for reasons other than transplantation or death within 10 days. • Patient records must contain documentation of: • Multidisciplinary patient care planning during the pre-transplant period. • Multidisciplinary discharge planning for post-transplant care.	OPTN Bylaw Appendix B ..... II.C.10 Transplant Programs: Patient Notification Transplant programs must notify patients in writing: (i) within ten business days (a) of the patient's being placed on the UNOS Patient Waiting List including the date the patient was listed, or (b) of completion of the patient's evaluation as a candidate for transplantation, that the evaluation has been completed and that the patient will not be placed on the UNOS Patient Waiting List at this time, whichever is applicable; and (ii) within ten business days of removal from the UNOS Patient Waiting List as a transplant candidate for reasons other than transplantation or death that the patient has been removed from the Waiting List. The transplant program must maintain.	CMS adopts OPTN bylaw for the most part.
(d) Standard: Social services. The transplant center must make available social services, furnished by qualified social workers, to transplant patients, living donors, and their families. Definitions for a qualified social worker included.	§ 121.9(a) Designated Transplant Program Requirements OPTN Bylaw Appendix B, Attachment I, III.C.15 Transplant Programs: Social Support—Psychiatric and social support services must be available in transplant programs approved under 121.9(a)(2).	The OPTN bylaw does not define qualification of a qualified social worker. CMS requirement complement OPTN bylaw.
(e) Standard: Nutritional services. Nutritional assessments and diet counseling services furnished by a qualified dietitian must be available to all transplant patients and living donors. Definitions for a qualified dietitian included.	.....	No comparable OPTN policy/bylaw.
§ 482.96 Condition of participation: Quality assessment and performance improvement (QAPI). A transplant center must have a data-driven QAPI programs to monitor & evaluate performance of all transplantation services.	.....	No comparable OPTN policy/bylaw.
§ 482.98 Condition of participation: Human resources. (a) Standard: Director of a transplant center. Transplant center must be under the general supervision of a qualified transplant surgeon or a qualified physician-director.		

CROSSWALK OF TRANSPLANT CENTER FINAL RULE, PART 121, & OPTN POLICIES AND BYLAWS—Continued

CMS requirements	42 CFR Part 121, OPTN policies, and bylaws for transplant centers	Comments
(b) Standard: Transplant surgeon and physician. • Transplant center must identify to the OPTN a primary transplant surgeon and a transplant physician with the appropriate training and experience to provide transplantation services, who are immediately available to provide transplantation services when an organ is offered for transplantation. • Transplant surgeon is responsible for providing surgical services related to transplantation. • Transplant physician is responsible for providing and coordinating transplantation care.	OPTN Bylaw Appendix B defines the credential of a qualified transplant surgeon and physician in 15 pages. Each transplant center designated under 42 CFR 121.9(a)(2) must have on-site a qualified transplant surgeon.	The OPTN bylaw for credentials is too detailed for adoption in regulation. CMS requirement for ''immediate availability of the primary transplant surgeon & physician'' complement OPTN's ''on-site'' bylaw.
(c) Standard: Clinical transplant coordinator. The transplant center must have a qualified clinical transplant coordinator to ensure the continuity of care of patients and living donors throughout transplantation and donation.	OPTN Bylaw Appendix B: Requirement for a Clinical Transplant Coordinator with defined responsibilities.	CMS requirement complement the OPTN bylaw.
(d) Standard: Independent living donor advocate of living donor advocate team. The transplant center that performs living donor transplants must identify either an independent living donor advocate or an independent living donor advocate team to ensure protection of the rights of living donors and prospective living donors.		
(e) Standard: Transplant team. The transplant center must identify a multidisciplinary transplant team (composed of individuals from medicine, nursing, nutrition, social services, transplant coordination, and pharmacology) and describe the responsibilities of each member of the team.	§ 121.9(a) Designated Transplant Program Requirements. OPTN Bylaw Appendix B Attachment I. Collaborative Support—Transplant programs approved under 121.9(a)(2) must show evidence of collaborative involvement with experts in the field of hepatology, radiology, pediatrics, infectious disease, nephrology with dialysis capability, pulmonary medicine with respiratory therapy support, pathology, immunology, anesthesiology, physical therapy and rehabilitation medicine.	CMS requirements complement Part 121 requirements and OPTN bylaw.
(f) Standard: Resource commitment. The transplant center must demonstrate availability of expertise in internal medicine, surgery, anesthesiology, immunology, infectious disease control, pathology, radiology, and blood banking as related to the provision of transplantation services.	§ 121.9(a) Designated Transplant Program Requirements. Bylaws Appendix B Attachment I. Transplant Programs—Ancillary services—Transplant programs approved under 121.9(a)(2) must have immediate access to sophisticated microbiology, clinical chemistry, tissue typing, bloodbank support, radiology services, as well as the facilities required for monitoring immunosuppressive drugs.	CMS adopts the Part 121 requirements and OPTN bylaw.
§ 482.100 Condition of participation: Organ procurement. • Transplant center must ensure that transplant hospital has written agreement (with delineated responsibilities for both parties) with an OPO designated by the Secretary.	§ 121.9(a) Designated Transplant Program Requirements. Bylaws Appendix B Attachment I A transplant program approved under 121.9(a)(2) must have letters of agreement or contracts with an OPO.	CMS requirement complement the OPTN bylaw because the OPTN bylaw does not require transplant centers to notify the OPTN or CMS when an agreement with an OPO is terminated.
§ 482.102 Condition of participation: Patient and living donor rights. • In addition to meeting the requirements at § 482.13, the transplant center must protect and promote each transplant patient's and living donor's rights.	.....	No comparable OPTN policy/bylaw.
(a) Standard: Informed consent for transplant patients. • Transplant centers must have written policies for the informed consent process. • Each patient will be informed about: —The evaluation process; —The surgical procedure; —Alternative treatments;	.....	No comparable OPTN policy/bylaw.

CROSSWALK OF TRANSPLANT CENTER FINAL RULE, PART 121, & OPTN POLICIES AND BYLAWS—Continued

CMS requirements	42 CFR Part 121, OPTN policies, and bylaws for transplant centers	Comments
—Potential medical or psychosocial risks; —National & center-specific outcomes from the most recent SRTR center-specific report, including (but not limited to) the transplant center's observed and expected 1-year patient and graft survival, national 1-year patient and graft survival, and notification about all Medicare outcome requirements not being met by the transplant center; —Organ donor risk factors that could affect the success of the graft or health of the patient; —His or her right to refuse transplantation; —The fact that if his or her transplant is not provided in a Medicare-approved transplant center it could affect the transplant recipient's ability to have his or her immunosuppressive drugs paid under Medicare Part B.		
(b) Standard: Informed consent for living donors. • Transplant centers must have written policies for the informed consent process. • Each living donor will be informed about: —The fact that communication between the donor & the transplant center will remain confidential, in accordance with the requirements at 45 CFR parts 160 & 164. —The evaluation process. —The surgical procedure, including post-op treatment. —The availability of alternative treatments for the transplant recipient. —The potential medical or psychosocial risks to the donor. —The national & center-specific outcomes for recipients & living donors as data are available. —The possibility that future health problems related to the donation may not be covered by the donor's insurance, and that the donor's ability to obtain health, disability, or life insurance may be affected. —The donor's right to opt out of donation at any time during the donation process. —The fact that if his or her transplant is not provided in a Medicare-approved transplant center it could affect the transplant recipient's ability to have his or her immunosuppressive drugs paid under Medicare Part B.	.....	No comparable OPTN policy/bylaw. CMS adopts many of the informed consent elements contained in the Secretary's Advisory Committee on Transplantation (ACOT) Recommendations.

CROSSWALK OF TRANSPLANT CENTER FINAL RULE, PART 121, & OPTN POLICIES AND BYLAWS—Continued

CMS requirements	42 CFR Part 121, OPTN policies, and bylaws for transplant centers	Comments
(c) Standard: Notification to patients ..... Transplant centers must notify patients placed on the center's waiting list of information about the center that could impact the patient's ability to receive a transplant should an organ become available, and what procedures are in place to ensure the availability of a transplant team: —The fact the center is served by a single transplant surgeon or physician, the potential unavailability of the transplant surgeon or physician, and whether or not the center has a mechanism to provide an alternative transplant surgeon or transplant physician that meets the hospital's credentialing policies. • At least 30 days before a center's Medicare approval is terminated, whether voluntarily or involuntarily, the center must inform: —Patients on the waiting list & provide assistance to waiting list patients who choose to transfer to the waiting list of another Medicare-approved center without loss of time accrued on the waiting list; and —Medicare beneficiaries on the center's waiting list that Medicare will no longer pay for transplants performed at the center after the effective date of the center's termination of approval. • As soon as possible prior to a transplant center's inactivation, the center must inform patients on the center's waiting list and, as directed by the Secretary, provide assistance to waiting list patients who choose to transfer to the waiting list of another Medicare-approved transplant center without loss of time accrued on the waiting list.	§ 121.9 Designated Transplant Program Requirements. (a) To receive organs for transplantation, a transplant program approved under 121.9(a)(2) agrees to promptly notify OPTN & patients awaiting transplantation if it becomes inactive. OPTN Bylaws Appendix B Attachment I—Criteria for Institutional Membership. III.C Transplant programs—A transplant program served by a single surgeon or physician shall inform patients of this fact and potential unavailability of 1 or both of these individuals during the year. OPTN Bylaws, Appendix B. VI. Change in Program Status. When a transplant program is voluntarily or involuntarily inactivated, waitlist patients may retain existing waiting time and continue to accrue waiting time. Accrued waiting time may be transferred to the patient's credit when s(he) is listed with a new program.	CMS adopts Part 121 and OPTN bylaws.
§ 482.104 Condition of participation: Additional requirements for kidney transplant centers. (a) Standard: End stage renal disease (ESRD). • Kidney transplant centers must furnish directly transplantation & other medical & surgical specialty services required for the care of ESRD patients. (b) Standard: Dialysis services. • Kidney transplant centers must furnish inpatient dialysis services directly or under arrangement. (c) Standard: Participation in network activities. • Kidney transplant centers must cooperate with the ESRD Network designated for its geographical area, in fulfilling the terms of the Network's current statement of work.	.....	No comparable Part 121 requirements or OPTN policy/bylaw for kidney transplant centers.
No comparable CMS requirements	Bylaws Appendix B—Criteria for Institutional Membership. III.E Relocation and Transfer of Established Programs.	Relocation and transfer of established programs is not addressed in CMS requirements.
No comparable CMS requirements	Part 121.8 Allocation requirements of Organs. OPTN Policy 3.0 Organ Distribution. 3.3 Acceptance Criteria. 3.4 Organ Procurement, distribution, and alternative systems for organ distribution or allocation. 3.9 Allocation System for Organs Not Specifically Addressed.	The OPTN policies are all organ allocation/acceptance policies.

CROSSWALK OF TRANSPLANT CENTER FINAL RULE, PART 121, & OPTN POLICIES AND BYLAWS—Continued

CMS requirements	42 CFR Part 121, OPTN policies, and bylaws for transplant centers	Comments
	3.10 Back-up for Inactive Transplant Programs. 3.11 Intestinal Organ Allocation. Appendix to Policy 3.0. A. HLA Antigen Values and Split Equivalences. C. Resolving Discrepant Donor and Recipient HLA Typing Results in the OPTN Database. Policy 4.0 Acquired Immune Deficiency Syndrome (AIDS) and Human Pituitary Deceived Growth Hormone (HPDGH) and Human T-Lymphotropic Virus Type I (HTLV–I). Policy 6.0 Transplantation of Non-Resident Aliens.	
§ 488.61 Special procedures for approval and re-approval of organ transplant centers. • Survey, certification, and enforcement procedures at 42 CFR part 488, subpart A, including the periodic review of compliance and approval contained in § 488.20. • Transplant centers that meet all data submission, clinical experience, outcome, and process requirements will be approved for 3 years. • Current Medicare-approved centers will continue to be Medicare approved after submitting applications and awaiting CMS's decision for approval. • At the end of 3-year approval period, CMS will review transplant center's data to determine compliance with data submission, clinical experience and outcome requirements at § 482.82. • If a center is in compliance with § 482.82, CMS may choose to review its compliance with the rest of the CoPs. • A transplant center may remain inactive and retain its Medicare approval for a period not to exceed 12 months during the 3-year approval cycle. • Centers that have lost their Medicare approval may seek re-entry into the Medicare program at any time, and the center must: (1) Request initial approval; (2) Comply with the initial approval requirements; and (3) Submit a report to CMS documenting any changes or corrective actions taken by the center as a result of the loss of its Medicare approval status. Part 498 Appeals procedures for determinations that affect participation in the Medicare program and for determinations that affect the participation of ICFs/MR and certain NFs in the Medicaid program. • The definition of ''provider'' is amended by adding ''transplant center'' after ''hospital'' the first time it appears.	§ 121.10(c)(1)(2) Enforcement of OPTN rules. Sanctions for violations of non-mandatory policies or mandatory policies (w/o approval from the Secretary of DHHS) include: • Warning, letter of admonition, or letter of reprimand. • Probation. • Member Not in Good Standing. Additional Sanctions (only for violation of mandatory policies): • Suspension of member privileges. • Termination of OPTN membership. • Termination of Status as Designated Transplant Program, Termination of Participation in Medicare/Medicaid, Termination of Reimbursement under Medicare/Medicaid. The 3 additional sanctions can only be imposed by the Secretary. § 121.10(c) Sanctions can also be imposed for violations of Part 121, including its data submission requirements, and when the Secretary determines that the public health or patient safety is at risk.	OPTN policies and bylaws are voluntary, until approved (i.e., codified) by the Secretary. At this time, the Secretary has not approved or published any OPTN policies and bylaws, except for data submission requirements. For the first time, transplant centers have the same appeal rights as other Medicare providers.

CMS Oversight and OPTN Policies

Some commenters voiced their opinions about our oversight of transplant centers in comparison to OPTN oversight of its transplant hospital members.

Comment: Some commenters stated their appreciation that the proposed rule is congruent with OPTN policies and bylaws, because OPTN policies and bylaws were developed through a consensus process with broad participation by the transplant community. Commenters pointed out that the rule sets consistent and unified standards and provides an established infrastructure for performance monitoring and review of transplant centers.

Response: The OPTN's primary responsibilities are to ensure the effectiveness, efficiency, and equity of

organ allocation; increase the supply of transplantable organs; collect and disburse data; and designate transplant programs. We are responsible for establishing minimum standards to protect patient health and safety, and for implementing oversight mechanisms to ensure that transplant centers provide quality transplant and living donor care to Medicare beneficiaries through the development of health and safety requirements. In developing this rule, we worked closely with HRSA, which oversees the OPTN and SRTR, to ensure consistency and minimize the burden on transplant centers where possible.

Comment: A commenter requested that we limit our role to reimbursement of clinical services.

Response: As a health care regulatory agency and a prudent health care purchaser, our responsibility cannot be limited to reimbursement. The Secretary has the statutory authority and responsibility to protect patient health and safety and to ensure that high quality care is provided to patients.

Comment: Many commenters stated that the OPTN oversight process and our approval and re-approval process would create an inconsistent and duplicative mechanism in the oversight of transplant centers. The commenters stated that we should collaborate with the OPTN to streamline the two processes into one unified consistent process, but with more reliance on OPTN oversight. One public commenter stated that CMS should consider termination of a center only if the OPTN Board reports to the Secretary that it has made a final decision to take adverse action against the center. A peer reviewer was concerned that the collegial relationship between OPTN and the transplant centers might be jeopardized by codification of some of the OPTN requirements.

Response: We understand the commenters' concerns. However, for the most part, we and the OPTN have different roles vis-á-vis transplant centers. For example, when surveying transplant centers for compliance with the CoPs in this final rule, we will focus on protections for patient health and safety. When the OPTN surveys (or performs desk audits of) transplant centers, it focuses on compliance with candidate listing and delisting, data submission, and its patient notification policies and verifies that the designated physician and surgeon are the same individuals approved by the OPTN. The degree of authority to act in the event of non-compliance also differs. The OPTN generally takes a collegial approach and assists centers in improving their performance, while we generally take a regulatory approach which sometimes may lead to termination of the Medicare agreement with providers. However, compliance with the OPTN's policies will facilitate transplant centers' compliance with the requirements in this final rule. Therefore, the OPTN will continue to play a consultative role with transplant centers to assist them in complying with Medicare requirements. We believe the collegial relationship between the OPTN and the transplant centers may be enhanced and strengthened rather than compromised.

Comment: Many commenters stated that the OPTN oversight process is vigorous and effective and that the OPTN should have full oversight of transplant centers to avoid duplicative efforts. The commenters cited 42 CFR part 121 as the regulation governing the operation of the OPTN and stated that the OPTN has legally binding rules enforceable on transplant centers.

Other commenters noted that the OPTN already surveys heart and liver programs once every 3 years. The commenters recommended that the OPTN be recognized as the accrediting body to audit and survey centers periodically based on its expertise in dealing with the complexity of transplantation. A commenter recommended that we review a center for potential termination from the Medicare program only if the Secretary has been notified of a final decision of the OPTN Board to take an adverse action against the center. The commenters stated that reviews or surveys conducted by an inexperienced CMS designee would burden centers and lead to misinterpretation of OPTN policies and CMS regulations, which could cause confusion and loss of Medicare approval.

Response: The commenters are correct that 42 CFR part 121 governs the operation of the OPTN, which establishes policies for transplant hospital members. OPTN policies are enforceable only when they have been incorporated into regulations by the Department. However, with the exception of the OPTN data submission requirements, OPTN policies have not been incorporated by the Department. Therefore, if the OPTN determines that removal of a member's designation as a transplant hospital is warranted for reasons of non-compliance with other OPTN policies, with the final rule governing the operation of the OPTN (42 CFR part 121), or because of a threat to public health and safety, the OPTN will recommend to the Secretary that the member's designation be revoked. The OPTN has made this recommendation on only two occasions.

We have an obligation to oversee transplant centers serving Medicare beneficiaries, and we do not have the statutory authority to delegate oversight responsibilities to the OPTN. In our view, the OPTN oversight approach is a complement to the Medicare regulatory authority. Once the final rule becomes effective, and before conducting surveys, our surveyors will be trained in applicable OPTN policies for transplant centers.

Comment: A commenter recommended that the Secretary take action to expand the role of the OPTN relative to oversight of living donors.

Response: The commenter's recommendation falls outside the scope of this final rule. We will forward this recommendation to the Secretary for consideration.

Comment: A commenter stated that despite the fact that the OPTN requires transplant programs to abide by OPTN policies and bylaws, we should not codify the OPTN policies and bylaws as regulatory language. One commenter stated that the relatively fluid OPTN policies and bylaws would allow the incorporation of future changes in transplant practice more quickly.

Response: The requirements in this final rule are intended to be broadly applicable to transplant centers over a long period of time. OPTN policies or elements of OPTN policies that we have included in this final rule conform to this intent. We understand that many OPTN policies, particularly organ allocation, transplant surgeon and transplant physician credentials, and criteria for listing and de-listing transplant candidates are subject to rapid changes as transplant medicine advances. Therefore, we did not include such policies in this final rule.

Comment: Some commenters raised confidentiality concerns regarding the sharing of data between the OPTN and CMS under applicable laws and regulations protecting the peer review process. One commenter suggested adding language to state that the regulation is not intended to affect the confidentiality of the process in any manner.

Response: We understand the commenters' concerns about the confidentiality of data shared between the OPTN and CMS. However, under reporting requirements set forth in 42 CFR 121.11(b)(1)(iii), the OPTN and the SRTR are required to provide to CMS any data that we request, as appropriate. Nonetheless, it is not our intention to disrupt the OPTN confidential peer review process. We will obtain only the

OPTN data that is necessary for our oversight of transplant centers.

Comment: One commenter suggested that section 1865 of the Act and regulations at 42 CFR part 488 mean that only CMS's designated national accrediting organizations are eligible for deeming authority for transplant centers. The commenter further stated that organizations that accredit both hospitals and transplant centers are in the best position to ensure consistent quality oversight and avoid fragmented survey arrangements.

Response: We will consider applications from any national accrediting organization for deeming authority for initial approval and re-approval for any of the extra-renal transplant centers. We believe that we have the statutory authority to permit national accrediting organizations to accredit most transplant centers as ''facilities,'' pursuant to paragraph 1865(b)(4) of the Act, with the exception of kidney transplant centers. As discussed previously, section 1864 of the Act authorizes the use of State agencies to determine providers' compliance with the CoPs. A national accreditation program may apply for deeming authority for the providers that are specifically listed in § 488.6. Since ''transplant centers'' are not specifically identified in § 488.6, this final rule inserts the language ''transplant centers, except for kidney transplant centers'' in § 488.6(a) with the list of providers eligible for deeming authority. Kidney transplant centers are specifically excluded because they are not eligible for deeming authority by statute. (See sections 1864 and 1865(b)(4) of the Act.)

Special Requirements for Transplant Centers (Proposed § 482.68)

We proposed that a transplant center located within a hospital that has a Medicare provider agreement must meet the CoPs specified in § 482.72 through § 482.104 in order to be granted our approval to provide transplant services.

We proposed that the CoPs specified in § 482.72 through § 482.104 would apply to all heart, heart-lung, intestine, kidney, liver, lung, and pancreas transplant centers, unless specified otherwise.

We also proposed that transplant centers seeking Medicare approval must meet the hospital CoPs specified in § 482.1 through § 482.57.

We received no comments on this section of the proposed regulation and are finalizing it as proposed.

Definitions (Proposed § 482.70)

We proposed definitions for ''transplant hospital,'' ''transplant program,'' and ''transplant center'' to clarify the usage of these terms throughout the regulation.

We proposed deleting the definitions for ''histocompatibility testing,'' ''ESRD Network,'' ''network organization,'' ''organ procurement,'' ''renal transplantation center,'' ''transplantation service,'' and ''transplantation surgeon'' contained in § 405.2102, as these terms are no longer used in the section.

We proposed including the definitions for ''ESRD,'' ''ESRD network,'' and ''network organization'' from § 405.2102 in this final rule to emphasize the distinct statutory authority and requirements that kidney transplant centers have to meet and to clarify the use of the terms in the proposed CoPs for transplant centers.

We proposed adding definitions for ''adverse event,'' ''heart-lung transplant center,'' ''pancreas transplant center,'' and ''intestinal transplant center.''

This final rule includes all definitions related to ESRD Network programs from 42 CFR part 405, subpart U, § 405.2102, as well as §§ 405.2110 through 2114. We note that in the proposed rule we incorrectly stated that our proposed definition for ''adverse event'' was derived from the JCAHO's definition of ''adverse event.'' In fact, JCAHO has a definition for ''sentinel event'' but not ''adverse event.'' Additionally, we have made a change to the definition of ''adverse event'' for clarification purposes. The proposed definition listed two examples of adverse events related to living donors: ''living donor death due to mismanagement of the donor'' and ''avoidable loss of a healthy living donor.'' We have replaced these two examples with ''serious medical complications or death caused by living donation'' to clarify that the death of any living donor or a living donor's serious medical complications caused by living donation should be investigated as an adverse event. Following are summaries of the comments we received and our responses.

Comment: One commenter applauded our efforts to standardize definitions for transplant hospitals for the purpose of improving communication. The commenter noted that JCAHO developed a Patient Safety Event Taxonomy in response to the lack of agreement on definitions regarding medical errors. The commenter suggested that the adoption of the Patient Safety Event Taxonomy developed by the JCAHO in the quality assessment and performance improvement (QAPI) CoP would decrease confusion, improve patient safety, and promote quality.

Response: A Patient Safety Event Taxonomy is a system of classifying adverse events at hospitals or other providers of health care. Thus, the Taxonomy is a ''language'' in which providers can report adverse events. One of the JCAHO's current initiatives is to ''promote using health information technology to improve patient safety reporting, data analysis and learning from errors, and to promote a national reporting system for adverse events through the use of standardized patient safety taxonomy and ontology.'' Although the final rule provides a general definition for an ''adverse event'' in transplantation, it does not attempt to classify all possible adverse events in health care or transplantation. The Patient Safety Event Taxonomy classifies all health care events, not just those related to transplantation. Incorporation of the Taxonomy into the QAPI CoP would be inappropriate because it falls outside the scope of this rule. Therefore, we have not adopted the commenter's suggestion.

Comment: One commenter noted that the term ''transplant center'' is commonly used interchangeably with the term ''transplant hospital.'' For this reason, the commenter stated that our proposal to use the term ''transplant center'' interchangeably with ''transplant program'' is confusing and the commenter suggested the removal of the term ''transplant center'' in the final rule.

Response: Although we agree that these terms often are used interchangeably, we believe the transplant community understands our use of the term ''transplant center'' in this final rule. We do not believe it is necessary to make a change based on this comment.

Proposed General Requirements for Transplant Centers

Condition of Participation: OPTN Membership (Proposed § 482.72)

We proposed that a transplant center must be located in a transplant hospital that is a member of, and abides by the rules and requirements of, the OPTN, as set forth at § 482.45(b)(1), and that are enforceable under 42 CFR 121.10.

We proposed that no transplant hospital would be considered to be out of compliance with section 1138(a)(1)(B) of the Act (which requires participation in the OPTN) unless the Secretary gave the OPTN formal notice that he or she approved the decision to exclude the transplant hospital from the OPTN and notified the center in writing.

We received no comments on this section of the proposed rule. Therefore, we are finalizing it as proposed.

Condition of Participation: Notification to CMS (Proposed § 482.74)

We proposed requiring each transplant center to notify us immediately of any significant changes related to the center's transplant program or any change that would otherwise alter specific elements in its application for approval or re-approval.

We proposed that instances in which we should be notified would include, but not be limited to, changes in key staff members of the transplant team (such as the individual who has been designated to the OPTN as the center's primary transplant surgeon or physician) or a decrease in the center's volume or survival rate that could result in the center being out of compliance with § 482.82.

Note that in this final rule, we have added to this section two specific instances that must be reported to us immediately. First, a transplant center must notify us if the hospital in which it is located terminates its agreement with an OPO for recovery and receipt of organs. Further information about this requirement can be found in this preamble in our discussion of the CoP for organ procurement. Second, a transplant center must notify us if it becomes inactive. Further information about our requirements in regard to transplant center inactivity can be found in this preamble in our discussion of clinical experience requirements and special procedures for approval and re-approval of organ transplant centers.

For clarity, we have replaced the language stating that a transplant center must notify us of any change that would otherwise alter specific elements in its application for approval. Section 482.100 of this final rule states that, ''a transplant center must notify CMS immediately of any significant changes related to the center's transplant program or changes that could affect its compliance with the conditions of participation.''

Following are summaries of the comments we received and our responses.

Comment: A number of commenters supported the requirement for transplant centers to notify us of significant changes that may affect their approved status. However, some commenters stated that the requirement would be redundant and burdensome because the OPTN already requires such notification.

Response: The OPTN bylaws require transplant hospital members to notify the OPTN immediately if the hospital learns that its primary surgeon or primary physician plans to leave. The transplant hospital is required to submit to the OPTN the name of the replacement surgeon or physician, curriculum vitae, and documentation of credentials and qualification at least 30 days (if possible) prior to the departure of the individual being replaced.

Although we have avoided duplicating OPTN policies in this final rule (unless we have done so deliberately so that we can enforce a requirement), in this instance, we believe a transplant center should inform us in addition to the OPTN so that we can actively monitor the situation to confirm that the departing surgeon or physician is replaced. We note that the current NCDs require Medicare-approved heart, liver, and lung centers to report such information to us.

Comment: One commenter suggested that transplant centers should not be required to notify us of a significant decrease in volume or survival rates. The commenter stated that an unusually large number of early deaths may not significantly affect 1-year outcomes if the transplant center subsequently has increased volume with successful results. Furthermore, these outcomes will be reflected in the subsequent SRTR 1-year survival reports.

Response: As one component of the active monitoring and oversight of transplant centers, we need to be made aware of any significant changes at transplant centers. However, the outcome requirements in this final rule are based on 1-year patient and graft survival as calculated and reported by the SRTR, meaning that there may be a considerable lapse of time before we have access to data from the SRTR indicating that a transplant center's outcomes have dropped significantly. Although we understand that a decrease in clinical experience (that is, volume) and survival rates within a short period of time does not necessarily signify a problem, we need to be aware of these changes so that we can determine whether they are meaningful, for example, whether a decrease in the number of transplants signals ongoing inactivity and whether a decrease in outcomes signals a significant problem.

When notified by a transplant center of a significant change, we will assess the information to determine how to proceed. We may note the information (such as a change in staff) and take no further action, contact the center for more information, analyze the information in conjunction with HRSA and the OPTN, and/or conduct an on-site review of the center.

We recognize that it may be challenging for centers to determine whether decreases in the volume and unadjusted survival rates would be significant enough to warrant reporting to CMS. Centers will not be required to independently decide what constitutes a significant change. Centers will receive guidance from CMS through interpretive guidelines and provider notifications as to what constitutes a significant enough decrease in clinical experience or survival rates to necessitate reporting. This guidance is under development.

Interpretive guidelines provide guidance to Medicare surveyors and clarify the intent of regulations. Each provider type is surveyed in accordance with the appropriate protocols based on the substantive requirements in the statute and regulations to determine whether a citation of non-compliance is appropriate. A center will be deemed deficient if it fails to meet the requirements of the statute or regulations, which, in turn, are based on the surveyor's observations of the providers' performance or practices.

The specific process that surveyors use for each type of provider or supplier is outlined in the CMS State Operations Manual. The State Operations Manual is publicly available under the ''Manuals'' section of the CMS Web site. Included in the appendices of the State Operations Manual are the Interpretive Guidelines (also known as ''Guidance to Surveyors'') for each type of provider or supplier. The Interpretive Guidelines interpret and clarify the Conditions and Standards that are outlined in statute and regulations. The Interpretive Guidelines merely define or explain the relevant statute and regulations and describe the specific elements that a surveyor will be reviewing and/or observing. The Interpretive guidelines do not impose any requirements that are not otherwise sets forth in statute or regulation.

Implementation of the survey and certification process for transplant programs will follow this same process. CMS is developing revisions to the State Operations Manual and a separate appendix that will include the Interpretive Guidelines that will be used for surveyors of organ transplant programs. CMS will also be posting informational material on its Web site for providers that would like to request approval for their transplant program. We made no changes based on this comment.

Comment: One commenter noted that there was no definition provided for the term ''immediately'' for purposes of

describing the time frame within which a transplant center must notify us of changes. Other commenters questioned the term ''significant changes'' and recommended that the definition should be limited to staff changes and adverse events.

Response: We disagree that the scope of significant changes should be limited to staff changes and adverse events. As we said in our previous response, decreases in the number of transplants performed and in the number of positive outcomes are also significant changes.

We will address the time frame within which a transplant center must notify us of any significant changes and the meaning of ''significant changes'' in our interpretive guidelines for Medicare surveyors, as that medium permits a more thorough explanation of our expectations. Interpretive guidelines provide guidance to surveyors and serve to clarify and explain the intent of regulations. No changes were made based on this comment.

Comment: One commenter inquired about the consequence of failure to comply with this requirement. The commenter stated that a good faith failure to comply should not constitute grounds for termination.

Response: Notification to us is one of the conditions of participation required for Medicare-approved transplant centers. A center that fails to notify us of any significant changes as delineated in § 482.74 would be considered non-compliant with the transplant conditions of participation and 42 CFR part 488, may be subject to investigation, and could ultimately have its transplant center approval revoked.

Comment: One commenter asked for a CMS contact for notification of changes. A commenter suggested linking transplant centers' notification of changes to the appropriate accrediting organization so that further assessment of the situation can be conducted promptly.

Response: At this time, we do not know whether we or a designee will survey transplant centers. Therefore, under this final rule, a transplant center must report a significant change to us. (See § 482.74.)

Comment: A commenter asked how we will communicate the changes in primary surgeons and physicians to the OPTN, once notified by transplant centers of the change.

Response: The OPTN policies that transplant centers must meet as OPTN members already require transplant centers to inform the OPTN of changes in primary surgeons and physicians immediately; therefore, there is no need for us to communicate such changes to the OPTN.

Condition of Participation: Pediatric Transplants (Proposed § 482.76)

Children are eligible for Medicare on the basis of ESRD as follows: under section 226A of the Act, an insured worker's dependent child (as defined in regulations) who is medically determined to have ESRD is eligible for Medicare Part A and Part B. According to 42 CFR 408.13, a child is considered ''dependent'' if he or she is unmarried and is under the age of 22 or is between ages 22 and 26 and has been receiving at least one half of his or her support from the insured worker continuously since before attainment of age 22.

Children are eligible for Medicare on the basis of disability as follows: (1) Under section 223(b) of the Act, individuals who have been entitled to Childhood Disability Benefits (CDB) under section 202(d) of the Act by reason of a disability (as defined in section 223(d) of the Act) for 24 months are entitled to Medicare Part A and Part B the 25th month of disability benefit entitlement. Section 202(d) restricts the first month of CDB entitlement to the month the child attains age 18. Therefore, the earliest month a CDB beneficiary can qualify for Medicare is the month he or she attains age 20; or (2) section 223 of the Act provides that any individual who is under age 65 and has the necessary Social Security work credits, as defined in section 223(c) of the Act, and is under a disability as defined in section 223(d) of the Act, is entitled to Medicare Parts A and B on the 25th month of disability benefit entitlement.

In 2005, Medicare paid for 404 pediatric transplants of different organ types.

We proposed that in order to be reimbursed for transplants performed on pediatric Medicare beneficiaries, a hospital that furnishes transplantation services to both adult and pediatric patients must seek separate Medicare approval to provide pediatric transplantation services.

We also proposed retaining the statutory criteria found at section 4009(b) of the Omnibus Budget Reconciliation Act (OBRA) 1987 (Pub. L. 100–203) as an extra option for heart transplant centers that wish to become Medicare-approved to perform pediatric heart transplants. We did not reference this citation in the proposed rule as an oversight. We proposed that a center that wishes to become Medicare-approved to perform pediatric heart transplants may also be approved by meeting data submission, outcome, and process requirements in the final rule.

We proposed that a center that performs 50 percent or more of its transplants on adult patients must be approved to perform adult transplants in order to be approved to perform pediatric transplants. For these centers, we proposed that a loss of Medicare approval to perform adult transplants, whether voluntary or involuntary, would result in a loss of the center's approval to perform pediatric transplants. We also proposed that a loss of Medicare approval to perform pediatric transplants, whether voluntary or involuntary, would not impact the center's Medicare approval to perform adult transplants.

We proposed that a center that performs 50 percent or more of its transplants on pediatric patients must be approved to perform pediatric transplants in order to be approved to perform adult transplants. For these centers, we proposed that loss of Medicare approval to perform pediatric transplants, whether voluntary or involuntary, would result in a loss of the center's approval to perform adult transplants. We proposed that loss of Medicare approval to perform adult transplants would not impact the center's Medicare approval to perform pediatric transplants.

For a center that performs 50 percent or more of its transplants on pediatric patients, we proposed that there would be no minimum number of adult or pediatric transplants required prior to its request for Medicare approval. Following are summaries of the comments we received and our responses.

Comment: A commenter noted that it is important for pediatric transplant centers to continue to transplant adolescent and young adults beyond the pediatric age range (18–25) to maintain continuity of care of established patients.

Response: We agree. In some situations, a young adult for whom an organ becomes available has received treatment for end stage organ failure from the same pediatric transplant surgeon and pediatric transplant physician for many years and understandably wishes to have the transplant performed at the pediatric center where these physicians practice.

Under the proposed rule and this final rule, which require separate Medicare approvals for performing adult and pediatric transplants, a transplant center performing predominately pediatric transplants will be able to transplant adolescents and young adults age 18 and older. We recognize that pediatric

programs may need to continue transplanting young adults beyond the pediatric age range in order to maintain continuity of care for established patients. The health care needs of these patients are best addressed in a pediatric setting until appropriate transition to adult care can occur. Pediatric centers are required to become certified as both a pediatric and adult transplant center if they intend to provide transplantation services to both populations.

Comment: A few commenters agreed that pediatric centers should meet the transplant center conditions of participation, but they did not agree that adult and pediatric centers should be approved separately. The commenters noted that the low volume of adult transplants performed at pediatric centers does not justify the cost and labor for the centers to seek separate approval to perform adult transplants. Likewise commenters said it would be burdensome to require an adult center to seek separate Medicare approval just to perform a few pediatric transplants.

Response: We understand the commenters' concerns. In our view, a center that performs 50 percent or more of its transplants on adult patients in a 12-month period is considered to be an adult transplant center whereas a center that performs 50 percent or more of its transplants on pediatric patients in a 12-month period is considered to be a pediatric transplant center. There are distinct differences between adult centers performing occasional pediatric transplant and pediatric centers performing occasional adult transplants in terms of patient selection criteria, patient management, and the number of transplants performed. Because of these differences, we believe that approving adult and pediatric centers as one unified program is problematic. For example, it would be difficult, if not impossible, for pediatric centers to meet clinical experience requirements that are appropriate for adult transplant centers, which could impair access to pediatric transplants.

However, we will permit a transplant center to submit its request for approval as a pediatric transplant center and its request for approval as an adult transplant center using the same application, which should *minimize the paperwork burden.* We made no changes based on this comment.

Comment: Some commenters stated that in most pediatric centers, the core transplant team performs both adult and pediatric transplants. The commenters said that to be consistent with OPTN requirements for pediatric centers, we should allow the sharing of personnel in transplant hospitals that have both adult and pediatric transplant programs. Some commenters recommended treating adult and pediatric transplant centers as one unified program or adopting the statutorily-based approval criteria as used in pediatric heart transplant centers.

Response: We recognize that many centers that perform pediatric transplants are operated by, or affiliated with, a Medicare-approved adult transplant center. In some transplant centers, the core transplant team performs both adult and pediatric transplants. We have no objection to such arrangements, provided that a transplant center has committed sufficient resources to both its pediatric and its adult transplant programs. There is nothing in the final rule that precludes a pediatric center and an adult center from operating as one unified program. Nevertheless, we would emphasize that an adult transplant center may not attempt to meet the clinical experience requirement by combining the number of adult transplants it has performed with pediatric transplants that were performed at its pediatric center. The outcomes of pediatric and adult transplant centers are reviewed separately.

Comment: A commenter recommended adopting the OPTN pediatric transplant standards.

Response: OPTN pediatric transplant policies relate primarily to pediatric organ allocation, and transplant surgeon and physician training and experience, and they differ significantly from our proposed CoPs for pediatric centers. We did not make any changes based on the comment.

We received no comments on our proposal to allow a heart transplant center to provide transplantation services to pediatric heart patients to be approved to perform pediatric heart transplants by meeting the OBRA 1987 criteria in section 4009(b) (Pub. L. 100–203). Therefore, the proposal was finalized without change except for the addition of the OBRA 1987 citation.

Condition of Participation: Data Submission, Clinical Experience, and Outcome Requirements for Initial Approval of Transplant Centers (Proposed § 482.80)

We proposed that transplant centers must meet all of the data submission and outcome requirements in order to be granted our initial approval. If a center failed to meet any of the requirements, no waiver would be granted. However, we did propose certain exceptions, which are discussed below.

Proposed Data Submission Requirements

We proposed at § 482.80(a) that no later than 90 days after the due date established by the OPTN, a transplant center must submit to the OPTN at least 95 percent of required data submissions on all transplants (deceased and living donor) that the center has performed at the center.

We proposed that required data submissions would include, but not be limited to, the submission of the appropriate organ-specific OPTN forms for transplant candidate registration, transplant recipient registration, and transplant recipient follow up.

We proposed using the same data submission requirements for both initial approval and re-approval.

Proposed Outcome Requirements

We proposed using the same outcome requirements for both initial approval and re-approval.

We proposed using the SRTR's center-specific reports as the foundation of our outcome evaluation system. We proposed reviewing outcomes for all transplants performed at a center, including outcomes for living donor transplants, if applicable. With the exception of lung transplants, we will review adult and pediatric outcomes separately when a center requests Medicare approval to perform both adult and pediatric transplants. The OPTN policies for the cutoff for pediatric lung allocation and outcome assessment is under 12 years old, and the number of pediatric (under 12 years old) lung transplants is very small. Therefore, the outcomes of pediatric lung transplants and adult lung transplants are reviewed together. We proposed that we would compare each transplant center's observed number of patient deaths and graft failures 1-year post-transplant to the center's expected number of patient deaths and graft failures 1-year post-transplant (or under certain circumstances, 1-month post-transplant patient and graft survival in lieu of 1-year post-transplant patient and graft survival.)

We proposed that under most circumstances, an adult transplant center requesting Medicare approval would need to have 1-year patient and 1-year graft survival follow-up data on at least 9 transplants of the appropriate organ type during the 2.5 year period reported in the most recent SRTR center-specific report.

We proposed that we would compare each transplant center's observed

number of patient deaths and graft failures 1-year post-transplant to the center's expected number of patient deaths and graft failures 1-year post-transplant using the data contained in the most recent SRTR center-specific report, as long as the center had 1-year post-transplant follow up on at least 9 transplants of the appropriate organ type. We also proposed that if a center's observed patient survival or graft survival rate was lower than the expected patient or graft survival rate and the center crossed over all 3 of the non-compliance thresholds for all 3 tests (p-value less than 0.05, observed—expected greater than 3, and observed/expected greater than 1.5) for either graft or patient survival, we would not consider the center to be in compliance with the outcome requirements.

We proposed that a heart-lung transplant center, an intestine transplant center, and a pancreas transplant center, as defined in the final rule, would not be required to comply with the outcome requirements for re-approval.

We proposed that a center requesting Medicare re-approval to perform pediatric transplants would not be required to perform a minimum number of pediatric transplants prior to its request for Medicare re-approval.

Comment: Some commenters supported the proposed data submission requirements. The commenters were pleased that the provisions would not require additional data beyond the OPTN requirements. The commenters asked us to emphasize that follow-up data are essential for evaluating and reporting of outcomes and the refinement of organ allocation policies.

Response: We appreciate the commenters' understanding of the importance of data submission in the accurate assessment of transplant center performance. We did not propose and are not requiring under this final rule that transplant centers report additional data beyond what they already report to the OPTN. The OPTN's comprehensive data reporting policies provide sufficient data for us to determine whether transplant centers meet the outcome measures in this final rule.

Comment: A commenter stated that we should coordinate our data submission requirements with the OPTN's, so that centers do not have to submit data both to us and to the OPTN.

Response: Under this final rule, we require transplant centers to continue to submit the required data to the OPTN UNet℠ system (or any successor system under the OPTN Contract) in accordance with the specified time frame. UNet℠ is a secure system for transplant hospitals to communicate transplant information and data to UNOS. We are not requiring transplant centers to submit data to us separately on a routine basis.

Comment: A commenter stated that compliance with the data submission requirements should not be used as the basis for denial of Medicare approval and re-approval. The commenter said that there is no evidence linking failure to submit OPTN-required data with poor outcomes.

Response: Given that the national and center-specific outcome measures calculated by the OPTN are based largely on data submitted by the transplant centers, it is imperative for centers to report data to the OPTN completely, accurately, and in a timely manner. We cannot provide meaningful oversight of center activities without complete and timely data submission. To ensure that the data used by the SRTR for analysis and compilation of the national and center-specific reports are comprehensive and accurate, we must have data submission requirements. We made no changes based on this comment.

Comment: Some commenters expressed concern that the expanding scope and complexity of OPTN data submission have significant personnel and financial implications for transplant centers. The commenters urged us to confer with the OPTN to limit the Federal data submission requirements to data needed only to calculate 1-year post-transplant outcomes.

Response: We understand the administrative workload required to achieve compliance with OPTN data submission policies. In 2006, the OPTN engaged in an extensive effort to review all data elements currently submitted by transplant centers to determine whether the number of elements could be reduced to lessen the burden on centers. Based on collaboration with the American Society of Transplant Surgeons and the American Society of Transplantation and input from the public, the OPTN succeeded in reducing the data entry burden on its transplant hospital members. For example, 268 data fields will no longer be required for validation of UNet℠ forms, such as the transplant candidate registration form and the transplant recipient registration and follow up forms. Additionally, the requirement to follow transplant recipients for 2 years after graft failure has been eliminated. With significant reduction in data submission elements such as these, the OPTN anticipates that data quality will improve significantly. We continue to support the OPTN's commitment to review its data collection process annually for opportunities to reduce burden.

However, we believe that the data submitted by transplant centers cannot be limited only to those data needed to calculate 1-year post-transplant outcomes. The more extensive data submitted by transplant centers form the backbone for the research and analyses produced by the SRTR, and the data are necessary for the OPTN, CMS, and transplant centers to develop sound policies. No changes were made based on this comment.

Comment: Some commenters requested that we quantify whether ''95 percent compliance'' means 95 percent of forms, patients, or data fields. A commenter suggested a data compliance threshold of less than 95 percent.

Response: By 95 percent compliance, we mean that 95 percent of the OPTN-required forms on all transplants (deceased and living donors) must be completed and submitted within 90 days following the OPTN-required time frame. This requirement provides transplant centers with an additional 90 days beyond the OPTN due date to comply. In our view, lowering the threshold to less than 95 percent is unacceptable and inconsistent with OPTN requirements. Therefore, we did not make any changes based on this comment.

Comment: A commenter recommended that if a center produces independent evidence that it has submitted the required data timely or if a center's failure to produce the required data is attributable to unique circumstances that are unlikely to recur, we should consider the center to be compliant with data submission requirements. One commenter stated that the imposition of the ''no later than 90 days after the OPTN due date'' deadline is unnecessarily harsh and recommended that, as long as a transplant center submits 95 percent of the required 1-year data in time to be included in the SRTR report, we should consider the transplant center to be compliant. Another commenter expressed concern that tying Medicare approval to compliance with the 95 percent data submission requirement would result in centers submitting poor quality data. The commenter suggested that in an effort to comply, centers may resort to marking data elements as ''unknown'' or ''lost to follow up'' more often than is currently done.

Response: Data submission policies that differ from those of the OPTN are likely to confuse transplant centers and result in decreased compliance with OPTN policies. When reviewing a center's compliance with the data

submission requirements, we will take into consideration whether circumstances beyond the control of the center prevented it from fully complying with the data submission policies. Nevertheless, any willful falsification of data by a transplant center will be considered a violation of the data submission requirements in this final rule, as well as that of 42 CFR 121.11(b)(2).

Comment: Some commenters asked that we exempt kidney transplant centers from data submission and outcome requirements because kidney transplants are covered under the Act.

Response: The Act provides the authority for Medicare to pay for kidney transplantation. However, it does not preclude us from establishing requirements that kidney transplant centers must meet to participate in the Medicare program. In fact, the statute specifies that payment will be made for kidney transplantation to providers of services that ''meet such requirements as the Secretary shall by regulation prescribe * * *'' (See section 1881(b)(1)(A) of the Act.)

Further, as noted in the preamble to the proposed rule, we are committed to bringing both the kidney and extra-renal transplant requirements up to date. For consistency across all types of transplant centers, we are requiring Medicare-approved transplant centers, including kidney transplant centers, to submit transplant data per OPTN data submission requirements. No changes were made based on this comment.

Comment: Another commenter recommended that we amend the regulation text to require the submission of 95 percent of a program's data within 3 months of the due date and 100 percent of the program's data within 6 months of the due date.

Response: We expect transplant centers to comply with the OPTN policy to submit 100 percent of the required data within 6 months of the due date. However, we are not including the requirement in this final rule because a requirement for 100 percent compliance would be problematic within our framework for Medicare oversight and enforcement. For example, if the OPTN notified us that a transplant center had submitted only 99.9 percent of its data within the required time frame, under such a requirement we would consider the transplant center to be out of compliance, which could subject the transplant center to review and adverse action.

Clinical Experience

We requested comments on: (1) Whether requiring a minimum number of 9 transplants during a 2.5 year period would be acceptable for the application of the SRTR methodology; and (2) whether our proposal to focus more heavily on a center's outcomes by eliminating volume as a separate standard and integrating volume into our outcome measures would provide us with the necessary data. In addition, three peer reviewers provided comments on the following specific issues related to volume: (1) Other alternative minimum volume criteria that would ensure that the 3 test criteria can be applied properly; and (2) appropriateness of volume standards for pediatric transplants.

Comment: Only one commenter said that eliminating volume as a separate standard would be a positive change. Overall, commenters said that the proposed methodology-based volume of 9 transplants in a 2.5 year cohort would be unacceptable as a basis for approval or re-approval of transplant centers. Commenters noted that a threshold of 9 transplants in 2.5 years would be much lower than the current Medicare annual thresholds (10 for lungs and intestines, 12 for hearts and livers, and 15 for kidneys). One commenter said that the proposed volume should not be used to assess a center's performance because it neither serves the best interests of patients nor supports our stated goal to raise transplant standards. Another commenter said that no center performing only 9 transplants in 2.5 years can be considered a legitimate transplant program. Still another commenter said that the proposed volume is so low that it essentially would eliminate a requirement for volume. One commenter suggested that with the exception of isolated geographic locations, we should require 15 transplants as the absolute minimum annual volume, with a higher annual requirement for kidney and liver transplants, such as 30 transplants of each organ per year.

Two peer reviewers voiced concern that the methodology-based volume requirement we proposed may allow Medicare-approved centers to become inactive but retain their Medicare approval.

Response: We proposed requiring only 9 transplants in the 2.5 year cohort used for SRTR center-specific reports because 9 transplants is the minimum number necessary for the SRTR-based methodology to flag a poorly-performing center. In the preamble to the proposed rule, we acknowledged the possibility that a center could perform 9 transplants in a short period of time and remain inactive for a much longer period, while still retaining its Medicare approval. Nevertheless, we posited that the OPTN's oversight of transplant center ''functional inactivity'' would guard against this circumstance.

Additionally, in our move toward an outcome-focused system that reflects the clinical experience, resources, and commitment of a transplant program, we have revised the preamble and the regulations text by removing references to ''volume requirements'' and instead refer to ''clinical experience requirements.'' We believe this change reflects our intent to approve transplant centers using an outcome-based methodology under which the number of transplants performed is one of several factors we consider.

However, the comments we received from the public and from peer reviewers, as well as recent findings of prolonged inactivity or sub-optimal clinical experience at some transplant centers, have caused us to re-evaluate our position. In analyzing this issue, we considered several factors, including the possible impact of clinical experience on quality of outcomes and the ability of a patient on a transplant center's waiting list to obtain a transplant.

Few research studies have been conducted on the link between volume and quality of outcomes in transplantation. A 1994 study found a significantly higher 1-year post-transplant mortality rate among patients transplanted at centers that performed fewer than 9 heart transplants per year when compared to patients transplanted at centers that performed 9 or more heart transplants per year. (Hosenpud JD, Breen TJ, et al. The effect of transplant center volume on cardiac transplant outcomes: a report of the United Network for Organ Sharing Registry. *Journal of the American Medical Association*, 1994; 271: 1844–1849.)

A 1999 study using 1994 through 1997 data showed a similar correlation between liver transplant volumes and outcomes. Specifically, patients transplanted at liver centers that performed 20 or fewer transplants per year had significantly higher 1-year post-transplant mortality than patients transplanted at liver centers that performed more than 20 transplants per year. (Edwards, EB, Roberts JP, et al. The effect of the volume of procedures at transplantation centers on mortality after liver transplantation. *New England Journal of Medicine*, 1999; 341: 2049–2053.)

However, we believe it would be problematic to base clinical experience requirements on research conducted on transplants performed when survival rates, particularly liver transplant

survival rates, were significantly lower than they are today. That is, 1-year risk-adjusted survival after heart transplantation was 83.4 percent in 1994 but had increased to 87.96 percent during the most recent SRTR cohort for which data are available, July 1, 2002 through December 31, 2004. Further, 1-year risk-adjusted survival after liver transplantation was 76.3 percent in 1994 but had increased to 86.59 percent during the most recent time period for which data are available, January 1, 2003 through June 30, 2005. In contrast, 1-year survival from 1994 through 1997 at the high-volume liver centers in the 1999 study was only 80 percent.

A study published in 2004 looked at data for adult patients who received kidney or liver transplants between January 1, 1996 and December 31, 2000. (Axelrod DA, Guidinger MK, et al. Association of center volume with outcome after liver and kidney transplantation. *American Journal of Transplantation*, 2004; 4: 920–927.) The study found a significantly lower rate of 1-year post-transplant kidney graft failure at high volume centers when compared to medium, low, or very low volume centers. The study also found a significantly different rate of 1-year post-transplant patient mortality at high, medium, and low volume liver centers; low volume centers were associated with a significantly higher risk of death. Despite these findings, the study's authors concluded that there is no clear minimal threshold volume.

Additionally, the study's authors identified several potential implications from the results of the study, noting that efforts are underway in other (non-transplant) surgical fields to concentrate procedures at high volume centers when there is a relationship between volumes and outcomes. The study suggested that even with a clear association between volume and outcomes in transplantation, ''The adoption of such a policy for liver and kidney transplantation would not be straightforward even if it were desirable, particularly in the case of deceased donor transplantation [because] the benefit of high-volume center performance must be carefully weighed against the increased risk of graft loss associated with the increased cold ischemia time [that] would likely accompany increased regionalization of transplant services.'' The authors also pointed out that ''the frequent follow-up visits necessary after transplantation might prove to be an added hardship if patients were forced to travel great distances. Because patients may be more compliant with follow-up visits if appointments are convenient, compliance may also be an important determinant of outcome.''

Because research on the effect of volume on outcomes in transplantation provides little guidance in establishing the appropriate amount of clinical experience for Medicare approval, we looked at the waiting lists at heart, liver, and kidney centers that have volumes below current Medicare requirements, (12 transplants per year for heart centers and liver centers and 15 transplants per year for kidney centers), and compared them to the waiting lists at higher volume heart, liver, and kidney centers. We found indications that there may be a link between clinical experience and how well patients fare while they are still on the waiting list.

For example, in 2005, there were approximately 117 adult heart transplant centers in the United States. According to the SRTR, 69 centers performed 12 or more transplants, and 48 performed fewer than 12 transplants. Out of the 69 centers that performed 12 or more transplants, 1 had a higher than expected mortality on the waiting list. Of the 48 centers that performed fewer than 12 transplants, 5 had higher than expected mortality on the waiting list.

Nationwide in 2005, there were approximately 106 adult liver transplant centers in the United States. There were 6,122 patients on the liver transplant waiting list. Slightly more than 28 percent (1,745) of these patients died without receiving a transplant. Of the 96 adult liver transplant centers that performed 12 or more transplants in 2005, only one center had more deaths on the waiting list than the number of transplants it performed. However, among the 10 liver centers that performed fewer than 12 transplants in 2005, 5 centers had more deaths on the waiting list than the number of transplants it performed. Of those 5 centers, 2 centers had approximately 3 times the number of deaths on the waiting list as the number of transplants they performed. For example, one liver center performed 7 transplants in 2005 and had 20 waiting list deaths during the same time period.

We also considered whether center clinical experience affects the ability of waiting list patients to obtain a transplant by reviewing transplant rates for kidney centers in 2004/2005. The SRTR calculates whether a center's transplant rate for deceased donor transplants is statistically higher, statistically lower, or not significantly different from other transplant centers. Although we found no definitive link between a kidney center's clinical experience and the transplant rate calculated by the SRTR, we note that the transplant rate of a small center generally would not be considered statistically lower than expected even if the center performed no transplants during a given year due to the small number of patients on its waiting list. However, in reviewing the data, we found that 7 out of the approximately 231 adult kidney transplant centers in the United States in 2004 and 2005 performed no transplants at all during those 2 years. The number of patients on the waiting lists of the 7 centers numbered between 9 and 47. Although the number of patients affected was small, we are concerned that patients continued to be listed on the waiting lists of centers that performed no transplants in 2 years. We note that, at present, all 7 centers are listed as inactive on the SRTR's Web site.

In summary, public commenters and some peer reviewers recommended a volume standard higher than the proposed 9 transplants in 2.5 years. None of the peer reviewers recommended a specific volume. Studies of the effect of volume on outcomes in transplantation suggest that higher volume centers have better outcomes, although there is no evidence that indicates what the minimum threshold should be. Also, our review of waiting list data raises the concern that waiting list patients at small centers may not fare as well as waiting list patients at larger centers, both in terms of waiting list mortality and the ability to obtain a transplant.

Further, as discussed earlier in this preamble, in the fall of 2005, we found that some centers, although not considered ''functionally inactive'' by the OPTN, performed few transplants and refused a high percentage of organs that were offered to them for transplantation into their waiting list patients, leading to longer than average waiting times and, possibly, an increased number of deaths among their waiting list patients. These factors must be weighed against the necessity to maintain Medicare beneficiaries' access to transplantation. Also, we must keep in mind the concerns raised by the 2004 study of volume and outcomes in kidney and liver transplantation that centralizing transplants in too few centers could be detrimental to transplant outcomes.

Based on these considerations, we believe transplant centers should be required to perform more than 9 transplants in 2.5 years to become Medicare approved and, once approved, retain their Medicare approval. Without strong statistical evidence supporting a particular threshold for any of the organ types, we believe the most appropriate

solution is to establish a clinical experience requirement that is close to the current volume requirements in our NCDs for heart, intestine, liver, and lung transplant centers and in our CfCs for kidney transplant centers. We believe establishing a clinical experience requirement of 10 transplants per year for all organ types for both approval and re-approval of transplant centers is both sensible and the least disruptive for transplant centers that have current Medicare approval and for the beneficiaries on the waiting lists of these centers.

We are revising § 482.80(b) to state that to be Medicare approved under this final rule, adult transplant centers (with the exception of heart-lung centers, kidney transplant centers, and pancreas centers) generally must perform 10 transplants over a 12 month period. We are revising § 482.82(b) to state that to be re-approved under this final rule, a transplant center must perform an average of 10 transplants per year during the re-approval period. There are no minimum clinical experience requirements for initial approval or re-approval for heart-lung, pancreas, or pediatric centers. (Kidney transplant centers generally must perform 3 transplants over a 12-month period for initial approval and 10 transplants annually for re-approval.) (See §§ 482.80(d)(4) and 482.82(d)(4).) Note that an adult transplant center may not attempt to meet the clinical experience requirement by combining adult transplants with pediatric transplants performed at an affiliated pediatric center.

As stated previously, the main intent of the clinical experience requirement for re-approval is to ensure that Medicare-approved centers stay active. We recognize that a center's transplant numbers may fluctuate at times. Nonetheless, we believe that a transplant center must perform an average of 10 or more transplants per year to demonstrate commitment to its transplant program and gain adequate clinical experience.

To determine a center's compliance with the clinical experience requirement, we will review the data contained in the most recent OPTN Data Report and SRTR center-specific reports. (See § 488.61(a)(2) and § 488.61(c)(1)(ii).)

Comment: Some commenters said that all kidney transplant centers should be exempt from initial approval requirements (such as the requirement to perform 9 transplants) because a lengthy initial approval process would delay access to the new kidney center's transplantation services for Medicare beneficiaries. That is, until a new kidney transplant center receives Medicare approval, Medicare will not pay for beneficiaries to receive transplants at the facility.

Response: We share the commenters' concern that a lengthy approval process for kidney centers, particularly a requirement to perform 10 transplants prior to approval, may prevent kidney transplant centers from opening in areas of the country where access to kidney transplant services is already limited.[1] Meeting a clinical experience requirement of 10 transplants would be particularly difficult for new kidney transplant centers, because Medicare is either primary payer or secondary payer for 69 percent of kidney transplants performed in the United States, while the other 31 percent of kidney transplants are paid for by private insurance, Medicaid, and the Department of Veterans Affairs (unlike extra-renal transplants for which Medicare pays between approximately 20 percent and 40 percent, depending upon organ type). Thus, a new kidney transplant center would have considerable difficulty finding 10 non-Medicare patients to transplant.

Under the current ESRD CfCs for kidney transplant centers, a new center may be approved without performing any transplants if it has a written plan detailing how it will achieve conditional status (7–14 transplants) within 2 years and unconditional status (15 or more transplants) within 4 years. Currently, there are no outcome requirements for kidney transplant centers. However, this final rule contains outcome requirements for initial approval of kidney transplant centers, and in order for us to assess a new kidney transplant center's performance, the center must perform some transplants. Taking this information into consideration, we have determined that requiring new kidney transplant programs to complete 10 transplants before applying for approval could prevent new centers from entering the Medicare program.

We believe that completing 3 consecutive, successful transplants, as determined by 1-year post-transplant graft and patient survival outcomes, is necessary for a new kidney center to demonstrate sufficient experience in transplantation and enhances the new transplant center's ability to recruit transplant candidates from the limited pool of the non Medicare-eligible kidney transplant candidate population.

We are sensitive to the difficulty a new kidney transplant center will have in finding non-Medicare patients to transplant. We are committed to maintaining and improving access to kidney transplantation services for Medicare beneficiaries, but we also believe it is essential to assess a kidney transplant center's performance prior to approving it for the Medicare program. Therefore, this final rule establishes a clinical experience requirement of 3 transplants for initial Medicare approval for kidney transplant centers that had not been approved by Medicare under § 405.2122 as of this rule's effective date at § 482.80(d)(5). We believe this requirement will allow new kidney transplant centers to obtain Medicare approval expeditiously, while ensuring that some data are available to demonstrate whether the center's outcomes are acceptable.

Like extra-renal transplant centers, kidney transplant centers will be approved for 3 years and will be required to perform an average of 10 transplants per year for re-approval. However, because a kidney center will be required to perform only 3 transplants before obtaining initial approval, we will scrutinize the center's clinical experiences and outcomes closely, particularly in the year following its initial approval. CMS will monitor the clinical experience and outcomes statistics of the center in the year following its initial approval. We are requesting center-specific data already collected through the OPTN, and expect to review the data at least quarterly. If the center's clinical experience and outcomes highlight a need for additional investigation, CMS will follow up through its survey and certification process.

We note that in the past, new transplant centers interested in applying for Medicare approval have offered to perform transplants for Medicare beneficiaries free of charge so that the center could meet the clinical experience requirement for initial Medicare approval quickly. This practice has serious implications for a Medicare beneficiary who accepts a transplant center's offer of a free transplant. Medicare pays for prescription drugs used in immunosuppressive therapy under Medicare Part B only if the transplant was performed in a Medicare approved facility. Although an individual may be eligible for payment for his or her immunosuppressive drugs under

[1] Although nearly half of all transplant centers in the United States are kidney transplant centers, there are barriers to access to kidney transplantation services in some areas of the country where there are large dialysis populations but few kidney transplant centers, and in some largely rural States that have no in-State kidney transplant centers and few centers in neighboring States.

Medicare Part D, the beneficiary may pay several thousand dollars more out of pocket every year.

Therefore, we have added a requirement under the CoP for Patients' and Living Donor Rights at § 482.102(a)(8) and (b)(9) that a transplant center must inform Medicare beneficiaries who are prospective transplant recipients and their prospective living donors that receiving a transplant that is not provided in a Medicare-approved transplant center could affect the transplant recipient's ability to have his or her immunosuppressive drugs paid under Medicare Part B. See further discussion of this requirement in this preamble under ''Patients and Living Donor Rights'' and ''Centers With Current Medicare Approval.''

Comment: A commenter stated that OPTN policies do not specify that transplant centers must perform a minimum number of transplants per year and said that our requirements and those of the OPTN should be consistent. A commenter also asked us to clarify in more detail what the OPTN means when it terms a transplant center ''functionally inactive,'' as well as how this status may impact a center's eligibility to receive organs.

Response: As discussed in the proposed rule, although the OPTN does not require a transplant center to perform a minimum number of transplants, programs (centers) are reviewed and may be classified as ''functionally inactive'' if they have not performed a single transplant within a specified period of time. The specific time frame that the OPTN Membership and Professional Standards Committee (MPSC) uses to determine ''functional inactivity'' is 3 months for kidney, liver, and heart programs, 6 months for pancreas and lung programs, and 1 year for stand-alone pediatric programs. Under OPTN Bylaws, Appendix B(II), an OPTN member transplant hospital that fails to remain functionally active with respect to any designated transplant program may be encouraged to voluntarily deactivate its transplant program until such time as the circumstances affecting the status of the program have been resolved (up to 12 months) or relinquish designated transplant status for the program. If the member fails to take either action voluntarily, the MPSC may recommend that the Board of Directors notify the Secretary of this inactivity (if the transplant program is Medicare approved or located within a Federal hospital) and take appropriate action in accordance with the OPTN bylaws.

The OPTN's determination that a transplant program is ''functionally inactive'' does not, by itself, prohibit a center from receiving organs. However, hospitals with transplant centers usually follow the recommendation of the MPSC by voluntarily inactivating the transplant center in question.

Although we want to ensure that transplant centers remain active, we do not want a transplant center that is experiencing problems to continue to perform transplants just to avoid losing its Medicare approval. Therefore, we have added a provision to this final rule that a transplant center may inactivate its program for a period not to exceed 12 months during the 3-year approval cycle without losing its Medicare approval (see § 488.61(e)), but the center must notify us immediately of significant changes in the number of transplants performed, as required at § 482.74(a)(4). The transplant center also must notify the patients on its waiting list and, as requested by the Secretary, assist patients in transferring to the waiting list at another transplant center, without loss of time accrued on the waiting list. (See § 482.102(c)(3).) We will confer with HRSA and the OPTN on a case-by-case basis to determine whether to instruct an inactive center to notify its waiting list patients and assist them in transferring to another transplant center's waiting list.

We proposed that a center that was requesting initial Medicare approval to perform pediatric transplants would not be required to perform a minimum number of pediatric transplants prior to its request for Medicare approval.

Comment: Most commenters agreed that volume requirements are not relevant for pediatric centers and they strongly supported having no volume requirements for centers performing pediatric transplants. Two peer reviewers said that a volume requirement would be inappropriate for pediatric centers. One peer reviewer agreed that volume standards are not appropriate for pediatric transplant programs, but also expressed concerns about the ability of pediatric centers to maintain their expertise because many centers perform so few pediatric transplants. Another peer reviewer stated that since setting a volume requirement for small pediatric centers is challenging, Medicare approval for pediatric centers that are affiliated with Medicare-approved adult transplant programs is recommended. Like the other peer reviewer, this peer reviewer also had concerns about small, stand-alone pediatric transplant programs' ability to maintain resources and expertise in transplantation.

However, two commenters stated that a minimum volume requirement is necessary to ascertain the commitment and investment a hospital has made in its pediatric transplant center. One commenter recommended ten pediatric transplants a year for liver and kidney programs and a lower volume for heart programs. The commenter suggested counting open and closed congenital heart surgeries toward the volume requirement for pediatric heart transplants. One commenter expressed a strong belief that having no volume requirement for pediatric transplant centers would allow small programs with limited resources to perform transplants, with potential poor outcomes.

Response: Given the nature of the pediatric transplants performed and the low numbers of pediatric transplants in general, it would be impossible for most pediatric transplant centers to obtain Medicare approval if we required them to meet clinical experience requirements, limiting access for pediatric Medicare beneficiaries who need transplants. As stated earlier, we will monitor pediatric centers' outcomes to ensure they provide high quality transplantation services to Medicare pediatric patients. We made no changes based on this comment.

Comment: Some commenters stated that in most pediatric centers, the core transplant team performs both adult and pediatric transplants. The commenters said that to be consistent with OPTN requirements for pediatric centers, we should allow the sharing of personnel in transplant hospitals that have both adult and pediatric transplant programs. Some commenters recommended treating adult and pediatric transplant centers as one unified program or adopting the pediatric heart transplant center statutory approval criteria.

Response: We recognize that many centers that perform pediatric transplants are operated by or affiliated with a Medicare-approved adult transplant center. In some transplant centers, the core transplant team performs both adult and pediatric transplants. We have no objection to such arrangements, provided that a transplant center has committed sufficient resources to both its pediatric and its adult transplant programs. There is nothing in the final rule that precludes a pediatric center and an adult center from operating as one unified program. Nonetheless, approval of the pediatric center is not automatic. The pediatric center and adult center must apply for separate approval.

We invited comments from the public on the proposed outcome requirements.

In addition, we conducted independent peer reviews of the following specific issues related to the outcome requirements:

(1) Appropriateness and usefulness of using 1-year post-transplant graft and patient survival rates to assess transplant center performance;

(2) Alternative outcome measures;

(3) Appropriateness of using 1-month post-transplant data for initial approval of new centers;

(4) Outcome measures for heart-lung, intestine and pancreas transplant centers;

(5) Use of the Cox model to explain the risk-adjusted expected 1-year post-transplant graft and patient survival rates;

(6) Appropriateness of using the 3 proposed thresholds to determine center performance; and

(7) Use of the proposed p-value to assess centers with ≥ 9 transplants during a 2.5-year period. None of the peer reviewers suggested alternative outcome measures. All reviewers agreed that the Cox model is the most widely used, flexible, and reliable tool to measure transplant outcomes because it allows adjustments, additions, or deletions of co-variables to reflect clinical changes in transplantation over time.

Following are summaries of the comments we received and our responses.

Use of 1-Year Post-Transplant Graft and Patient Survival Rates as Outcome Measure Standards

In our discussion of outcome measures in the preamble to the proposed rule, we said that we would compare each transplant center's observed number of patient deaths and graft failures 1-year post-transplant to the center's expected number of patient deaths and graft failures 1-year post-transplant, using the most recent SRTR center-specific reports. We also stated that we would not consider a center's patient and graft survival rates to be acceptable if a center's observed patient survival rate and observed graft survival rate is lower than its expected patient survival rate or expected graft survival rate.

Comment: Many commenters agreed that risk-adjusted graft and patient survival rates are appropriate measures of transplant center performance. Some commenters stated that the proposed comparison of 1-year observed graft/patient survival rates with 1-year expected graft/patient survival rates is reasonable and achievable. The commenters noted that the proposed risk-adjusted survival data with a 1-year follow-up period has more statistical validity than the evaluation of a survival curve at a particular time point, such as when the Kaplan Meier model is used. The commenters appreciated our effort to strive for consistency with OPTN standards and in establishing meaningful outcome standards. One commenter believed that outcome measure reviews should be based on trends and not just on one single snapshot in the SRTR reports.

All three peer reviewers agreed with the public commenters that it is appropriate to use 1-year graft and patient survival rates to assess transplant center performance. Three peer reviewers added that a survival time frame longer than 1 year, such as 3 years or 5 years, may provide a more accurate assessment of center performance and minimize statistical deviations for small centers. However, they pointed out that the drawback of a longer time frame is that more patients would be lost to follow up, and a longer time frame may not be applicable to smaller programs.

Response: Although we agree that a time frame for the outcome measures longer than 1-year post-transplant would provide some additional information, the drawbacks include increased mortality from patients' co-morbidities and more patients lost to follow up. We believe that utilizing 1-year survival data for approvals and re-approvals is sufficient. We have made no changes based on these comments.

Alternatives to the OPTN Outcome Thresholds

We solicited comments on different options to apply the SRTR methodology. Following are summaries of the comments we received and our responses.

Comment: A commenter stated that graft and patient survival rates alone do not give a complete picture of transplant center performance. The commenter encouraged us to continue to identify or develop measures to capture the full scope of a transplant center's performance.

Response: We agree with the commenter that graft and patient survival rates alone do not provide a complete picture of transplant center performance. To provide a broader view, we will assess each center's compliance with the other CoPs, which focus on other measures of quality, such as direct patient care. If the OPTN and SRTR develop additional measures, we will consider whether those measures should be incorporated into our CoPs through the rulemaking process. We made no changes based on this comment.

Comment: A commenter suggested including waiting list mortality, the number of organ donors, and the size of the waiting list in the outcome measure analysis.

Response: We considered using waiting list mortality as one of the outcome measures, but after careful deliberation, we determined that using this criterion would be problematic because transplant centers do not provide direct patient care for all of the patients on their waiting lists. Some waiting list patients routinely receive their primary care from other providers, particularly patients awaiting kidney transplants who are likely to receive their care through a dialysis facility. In addition, some waiting list patients are listed at more than one center. We would have considerable difficulty determining which transplant center should be accountable for the death of a patient listed on more than one waiting list. Finally, waiting list patients may die for reasons unrelated to their end-stage organ failure. We believe it would be unfair to hold a transplant center responsible for the death of a waiting list patient if the cause of death were unrelated to the patient's transplant.

Although the commenter suggests using the number of organ donors as one of the outcome measures in the final rule, we would point out that cooperating with organ procurement organizations (OPOs) in the organ donation process would be a function of the hospital in which a transplant center is located, not of the transplant center itself. Furthermore, the hospital CoP at § 482.45 ''Organ, tissue, and eye procurement'' lists specific requirements all hospitals must meet related to their performance as donor hospitals. We made no changes based on this comment

Comment: A commenter also suggested using the size of a transplant center's waiting list as an outcome measure.

Response: We disagree. There are many different variables affecting the size of a transplant center's waiting list, such as geographic location, patient selection criteria, cultural factors, and transplant resources, among others. Thus, we do not believe the size of a transplant center's waiting list is an appropriate outcome measure. We did not make any changes based on these comments.

The 3 Thresholds (p < 0.05, Observed—Expected > 3, and Observed/Expected > 1.5)

We requested comments on the three proposed non-compliance thresholds for the outcome measures and solicited data and evidence that would support alternative thresholds, especially thresholds specific to a particular organ type.

We proposed that a transplant center's performance would not be acceptable if its observed patient survival rate and observed graft survival rate were lower than its expected patient survival rate and expected graft survival rate and if all three of the following thresholds were crossed over:

(1) One-sided p-value is less than 0.05;

(2) Number of observed events (patient deaths or graft failures) minus the number of expected events is greater than 3; and

(3) Number of observed events divided by the number of expected events is greater than 1.5.

Comment: Although some commenters expressed support for the three proposed thresholds, a few commenters stated that these thresholds would be too lenient. Other commenters suggested making the thresholds more rigorous but only if the outcome measures were used solely as a trigger for further investigation. Three peer reviewers supported using all 3 proposed non-compliance thresholds (p < 0.05, O—E > 3, and O/E > 1.5) to determine transplant center performance. However, one peer reviewer recommended changing the threshold for O/E > 1.5 to O/E > 1.3 in order to narrow the variations among centers. One commenter stated that the three thresholds for outcome measures are arbitrary since the outcome measure methodology may change in the future.

Response: We disagree that the proposed thresholds are too lenient. The OPTN uses the same thresholds currently to flag centers for further review, and the SRTR uses the thresholds to report observed and expected patient and graft survival.

Changing the threshold of O/E > 1.5 to O/E > 1.3, as one peer reviewer suggested, would be inconsistent with the OPTN O/E threshold for flagging centers for further review. If the OPTN changes the criteria to narrow the variation in the future or we determine that the threshold is insufficiently rigorous for our purposes, we will re-assess it.

We will not use these thresholds simply to flag centers for further review as suggested by some of the commenters. Although failure to meet the outcome requirements does not mean that a transplant center will be denied Medicare approval automatically or lose Medicare approval automatically, a transplant center's performance on the outcome requirements is the single most important factor we will consider in making these determinations because these measures are designed to reflect the importance of the need for a transplant center to have sufficient expertise in all phases of transplantation, such as conducting pre-transplant evaluations, performing the surgical procedure, and regulating post-transplant immunosuppression and other medications to prevent graft failure. Since we will be using outcomes data, along with other data and information on transplant center performance, to make decisions on initial approvals and re-approvals of transplant centers, we believe the thresholds are sufficiently rigorous to ensure we can identify transplant centers whose performance is unacceptable.

We do not agree that simply because we or the OPTN may change the proposed outcome requirements in the future, they are definitionally arbitrary. We are establishing thresholds at a level that is optimal to identify transplant centers whose performance is not adequate for delivery of transplantation services to Medicare beneficiaries. If we determine in the future that any of the three thresholds is too low or too high, we will propose changes in the threshold through the rulemaking process. We made no changes based on these comments.

Comment: A few commenters suggested that we should establish the criteria for unacceptable performance at crossing over 2 out of the 3 (instead of all 3) non-compliance thresholds.

Response: Throughout the final rule, we have been careful to conform our requirements to OPTN policies in almost all cases, so that our requirements for and our oversight of transplant centers does not conflict with the OPTN's. Currently, the OPTN requires that a transplant center has crossed over all three thresholds to be flagged for further review. We do not believe it would make sense to adopt the SRTR methodology and most of the OPTN's outcome measures policies in this final rule but establish a different criterion for the thresholds. In addition, we are mindful that the existing OPTN thresholds were established with the support of the transplant community. If the OPTN changes its thresholds in the future, we will determine at that time whether we should change the thresholds in our regulations. We made no changes based on this comment.

Comment: A commenter pointed out that the OPTN uses a 2-year cohort, but we proposed using a 2.5-year cohort. Commenters said that use of different cohort lengths would lead to different results when centers are reviewed.

Response: As of 2005, the SRTR changed the OPTN cohort from 2 years to 2.5 years to be consistent with the public SRTR center-specific reports.

Appropriateness of Using the Proposed Outcome Requirements, the 3 Thresholds, and the SRTR Methodology as the Basis To Approve and Re-Approve Transplant Centers

Comment: A few commenters supported the basis for the outcome measure methodology designed by the SRTR and tested within the transplant community. Commenters said they believed that the proposal meets the principles of equity and fairness, and the outcome measures can be applied equitably to all types of transplant centers, both large and small. However, one commenter stated that the OPTN outcome data were never designed as a test for Medicare approval and re-approval. The commenter recommended that we defer any approval or re-approval decisions regarding data submission or outcome requirements to the OPTN Board, which makes the final decision about transplant center performance.

Response: We have been using patient survival outcome measures as approval criteria for transplant centers since Medicare began paying for heart transplants in 1987. Over the years, we have established outcome requirements for approval of liver, lung, and intestine transplant centers, as well. The sophisticated SRTR methodology described in this final rule allows us to improve upon the current outcome requirements by incorporating risk adjustment and ensuring statistical validity. Clearly, the outcome requirements that we are establishing in this final rule also can be utilized as indicators for potential problems, which is how we will use them in the approval and re-approval processes. Non-compliance with data submission, clinical experience, or outcome measure requirements may trigger a review for compliance with the CoPs, similar to the OPTN process, which also uses transplant outcomes data to flag centers for further review and investigation. However, as stated previously, the OPTN does not have the oversight authority to approve or re-approve transplant centers for Medicare. We

must conduct the review and investigation of a transplant center that does not meet the outcome measures. We have made no changes in this final rule based on this comment.

Comment: A few commenters stated that the SRTR center-specific report that we cited for review and approval/re-approval of transplant centers is 1 to 3 yrs behind current data and does not reflect a transplant center's current outcomes. Therefore, centers that have improved recently may be sanctioned unnecessarily. The commenters recommended that we review more recent data or data in at least two previous SRTR reports to evaluate a transplant center's outcome trends.

A peer reviewer stated that the outcome measure review should be based on outcome trends over a longer period of time and not on a single snapshot in the SRTR report. Another reviewer recommended a review of graft and patient survival rates in two consecutive SRTR reports.

Response: We agree that some transplant centers' outcome trends may be best understood by reviewing two SRTR reports. However, since our approach to approving centers is multi-dimensional (data, clinical experience, outcomes, and process), and the OPTN review of transplant centers is ongoing, we believe that review of one SRTR report is sufficient to assess a transplant center's performance. If we consistently use the SRTR center-specific reports for outcome review, the trend of a center's performance or a clinically significant pattern should be reasonably apparent over an extended period of time. The SRTR updates its center-specific reports every 6 months. However, since the outcome requirements in this rule include 1-year post-transplant data, the delay in compiling and reporting the data by the SRTR is unavoidable. Thus, the age of the data that we review will vary from 1.5 to 3 years old.

Nevertheless, the SRTR reports provide the most cost-effective, transparent, and objective measures currently available. Since we will use the SRTR center-specific reports consistently to review outcomes, the trend of a center's performance or a clinically significant pattern should be reasonably apparent over an extended period of time. An on-site survey will counterbalance the outcomes data if the outcome trend is negative but is not reflective of the center's performance. On the other hand, the reporting of significant (negative) changes and inactivity to CMS will counterbalance the outcomes data if the center's performance trend appears to be positive but is, in fact, not reflective of the center's performance.

Comment: Some commenters were concerned that the proposed outcomes requirement may not be able to accommodate future changes in the OPTN's policies for application of the SRTR methodology or the methodology itself. A commenter suggested that we should include provisions to assure automatic adoption of future changes in the OPTN/SRTR data submission and outcome measure policies through issuance of Program Notices.

Response: The SRTR refines their methodology on an ongoing basis. For example, the SRTR reassesses the methodology's risk adjustment factors periodically and makes changes based on research and changes in the field of transplantation. The SRTR also adds or changes data sources, as appropriate. Periodically, the OPTN asks the SRTR to look into statistical techniques to improve data analysis. Such changes will not require us to engage in rulemaking. If the OPTN makes a substantive change to its policies regarding the methodology or chooses a different methodology for calculation of outcomes, we will assess the change to determine whether we should adopt it. For example, if the OPTN were to change the threshold for the p-value, and we determined that the change to the threshold would be appropriate for our outcome requirements, we likely would be required to engage in rulemaking so that the public would have the opportunity to comment. Based on our knowledge of the OPTN's past practices, we do not expect substantive changes to occur frequently. In fact, since the OPTN published the first annual report containing transplant center-specific outcomes data and transplant survival rates in 1992, there has been only one major change in the methodology used to measure outcomes—the change from the OPTN methodology to the SRTR methodology, which took place in 2002. We have made no changes based on these comments.

Risk-Adjustment Factors

Comment: Many commenters expressed concern that the SRTR model does not include all the risk-adjustment factors impacting outcomes, for example, new immunosuppression protocols, organs from extended criteria donors (ECDs) and donors after cardiac death (DCDs), steatosis, and centers' participation in research. The commenters were concerned that: (1) Transplant centers may be penalized for using organs from ECDs and DCDs if using such organs leads to poorer outcomes; (2) centers may refuse to use such organs because they fear their outcomes will be affected; (3) centers may be penalized for participating in research studies that yield negative outcomes; and (4) some centers may deny access to high-risk patients in order to meet the outcome measures.

One peer reviewer also expressed concern that the SRTR model does not risk adjust for organs from DCD or ECD donors, which the reviewer said may need to be incorporated into the model to meet the needs of an increasingly aging recipient population.

Response: We understand the commenters' and the peer reviewers' concerns. However, the SRTR methodology is not simply a list of covariates or values for parameter estimates. The SRTR revises risk-adjustment factors periodically in response to trends in organ donation and transplantation. For example, it has already included ECD organs as one of the risk-adjustment factors in its outcome methodology model so that centers using ECD organs frequently are not disadvantaged. We are confident that the OPTN/SRTR will be able to develop appropriate risk-adjusted outcome measures for DCD donor organs in the future. We made no changes based on these comments.

Appropriateness of Allowing a New Center to Use 1-Month Post-Transplant Data and Frequency of Subsequent Review of the Center's Post-Transplant Data

We proposed that if a new transplant center hired an experienced team from another transplant center, we would permit the new center to request that we review its 1-month post-transplant patient and graft survival for all transplants performed in the previous 1-year period, if the following conditions were met: (1) The key members of the center's transplant team performed transplants at a Medicare-approved transplant center for a minimum of 1 year prior to the opening of the new center; (2) the transplant team met the human resources requirement at § 482.98; and (3) the most recent SRTR report on the center did not contain 1-year post-transplant follow-up data on at least 9 transplants of the appropriate organ type for the reported time frame.

We proposed that if we approved a transplant center based on 1-month post transplant outcomes data, we would re-evaluate the center when 1-year post-transplant data became available.

We asked for comments on our proposal, as well as comments regarding the frequency with which we should re-

assess these new centers after they receive initial Medicare approval.

Comment: Some commenters supported the idea of approving new centers based on 1-month post-transplant data. The three peer reviewers did not object to the proposal to review a new center's 1-month post-transplant graft and patient survival outcome; however, they believed that reviewing a new center's 3-month or 6-month post-transplant data would provide more relevant information. One peer reviewer recommended an interim approval of new centers based on a 1-month post-transplant data review, pending a subsequent review of 3-month post-transplant data. Another peer reviewer recommended the comparison of projected 1-year post-transplant graft and patient survival rates with the expected 1-year post-transplant graft and patient survival rates, in addition to review of 1-month post-transplant data.

Some commenters stated that 1-month post-transplant data may be more reflective of the transplant team's surgical outcomes than the quality of the transplant center. One peer reviewer suggested that 1-month post-transplant data is too close to the date of the transplant and, thus, patient outcomes may not truly reflect the impact of the transplantation itself. The peer reviewer recommended that a 3-month post-transplant data review, in conjunction with three consecutive annual reviews, is a better marker for new center approval.

Another peer reviewer stated that approval of new centers based on review of 1-month post-transplant data for approval of new centers would be ill-advised. The peer reviewer said that 1-month post transplant data likely reflect primarily surgical expertise and the quality and the thoroughness of pre-transplant evaluation, rather than the skill of the multi-disciplinary transplant team. The peer reviewer stated that the use of 1-month post-transplant data for approval of new centers should be allowed only when the new center has demonstrated acceptable 1-year post-transplant graft and patient survival rates in other established organ transplant programs. The peer reviewer said that having acceptable 1-year post-transplant graft and patient survival rates for a minimum of 9 transplants should be mandatory for a new center that has no other organ transplant experience. Some commenters stated that simply having an experienced surgeon or transplant team should not be sufficient to qualify a new center. One commenter said that there are other factors besides surgical or transplantation experience that we should use to assess a new transplant center's performance. Another commenter expressed concern that Medicare approval of new centers based on review of 1-month post-transplant data would:

(1) Create an incentive for transplant teams to move from center to center, thus causing disruption to transplant patient services, negatively impacting patient follow up, significantly undermining the financial and human resource investment of transplant centers, and increasing costs to the health care system; and

(2) Raise patient safety issues, because experience indicates that it takes more than a year for a transplant center to develop and maintain a comprehensive transplant program.

Response: The comments from peer reviewers and the public, as well as the recent, abrupt closure of a new kidney transplant center following an investigation by the California Department of Managed Health Care, have led us to the conclusion that approving new transplant centers based on a review of 1-month post-transplant outcomes data and the experience of the transplant surgeon and transplant physician would not serve the best interests of Medicare beneficiaries who need transplants.

We share the commenter's concern that approving transplant centers based on 1-month post-transplant data has the potential to harm patient care. Most important, we have been unable to identify a need for centers to be approved quickly using abbreviated data.

Establishing a new transplant center is not an easy task. Clearly, a transplant center must provide non-surgical support services for transplant patients and perform many functions in addition to the transplant surgery itself, including, but not limited to, nursing, nutrition counseling, social services, pharmacology, immunology, pathology, and radiology. In fact, the president of the managed care organization that recently shut down its new kidney center was quoted as saying that establishing a transplant program was much more difficult than anticipated and that the organization was naïve to think the program could be established quickly.

Furthermore, we believe it would be inadvisable to approve a new center based on the fact that the hospital in which the center is located has a successful center that transplants another type of organ, as one commenter recommended (unless there is a direct relationship between organ types, such as a kidney center that seeks approval as a pancreas center). The SRTR center-specific reports indicate that the performance of organ transplant centers is not always consistent within a multi-center transplant hospital. Within the same transplant hospital, some centers may have outstanding outcomes while some centers may have marginal or sub-optimal outcomes.

Taking these factors into consideration, we believe it would be inappropriate for us to use the expertise of the key members of a transplant center's team as a proxy for the quality of a transplant center's overall operations.

Consequently, we have eliminated proposed § 482.80(b)(4) through (6). Under this final rule, we will use 1-year post-transplant patient and graft survival data to assess the performance of all transplant centers seeking initial Medicare approval.

Outcome Requirements for Heart-Lung, Intestine, and Pancreas Centers

We requested comments on the appropriateness of having no outcome requirements for heart-lung, intestine, and pancreas centers. We also asked for recommendations for alternative methods to evaluate centers that transplant these types of organs.

We proposed defining a heart-lung transplant center as a center that is located in a hospital with an existing Medicare-approved heart transplant center and an existing Medicare-approved lung transplant center that performs combined heart-lung transplants. We proposed defining an intestine transplant center as a Medicare-approved liver transplant center that performs intestine transplants, combined liver-intestine transplants, or multivisceral transplants. We proposed defining a pancreas transplant center as a Medicare-approved kidney transplant center that performs pancreas transplants alone or subsequent to a kidney transplant, as well as kidney-pancreas transplants. That is, we proposed that a Medicare-approved kidney transplant center would be permitted to perform all types of pancreas transplants.

Comment: Some public commenters supported having no outcome measure requirements for heart-lung, intestine, and pancreas transplant centers since there are no risk-adjusted outcome measure models for these types of transplants. Three peer reviewers agreed with our proposal for heart-lung, intestine, and pancreas centers but added that once a risk-adjusted outcome measure model becomes available in the

future, it should be applied to these centers.

Response: Once the SRTR has developed risk-adjusted models for heart-lung transplants, intestine transplants, and pancreas transplants, we will consider establishing outcome measure criteria for the approval and re-approval of centers that perform these transplants.

In the absence of risk-adjusted outcome measure models for these types of organ transplants, we believe the approach we proposed and have made final in this rule without change is most appropriate at this time.

Outcome Measures for Pediatric Transplants

We requested comments on our proposed approach to evaluating pediatric transplant centers' outcomes and approving centers performing pediatric transplants.

Comment: Some peer reviewers were concerned about pediatric centers' ability to maintain resources due to infrequent transplantation activities. A reviewer stated that the OPTN routinely peer reviews pediatric program case logs, and the peer reviewer recommended that the OPTN notify us about under-performing programs using pre-established thresholds.

One commenter agreed with our proposal to apply outcome requirements for adult centers to centers performing pediatric transplants. However, one commenter voiced concern that the inability of pediatric centers to perform 9 transplants in a 2.5-year period (as required for the SRTR methodology to be valid) may prevent them from participating in Medicare. Nonetheless, the commenter urged the SRTR to continue analyzing pediatric 1-year post-transplant outcomes. The commenter encouraged the SRTR to develop evidence-based outcome guidelines by analyzing center-specific 1-year outcomes of pediatric patients transplanted over a 2.5-year period.

Response: We intend to confer with the OPTN, as appropriate, about both pediatric and adult centers to ensure that we can effectively monitor the quality of transplant programs.

Proposed Process Requirements for Transplant Centers

Condition of Participation: Patient and Living Donor Selection (Proposed § 482.90)

We proposed requiring centers to use written patient selection criteria in determining a patient's suitability for placement on the waiting list for transplantation. We proposed that patient selection criteria must ensure fair and non-discriminatory distribution of organs.

We proposed that before a patient is selected for a non-renal transplant, the transplant center must consider or employ all other appropriate medical and surgical therapies that might be expected to yield both short and long-term survival comparable to transplantation.

We proposed that before a center places a patient on its waiting list, the center must ensure that the prospective transplant candidate receives a psychosocial evaluation and that the potential transplant candidate's medical record contains documentation of the candidate's blood type. (A psychosocial evaluation conducted by transplant centers of potential transplant recipients screens for issues that could affect the patient's compliance with the post-transplant treatment that is necessary to maximize the chances of a successful transplant, such as substance abuse or behavioral or psychiatric issues.) We also proposed that when a patient is placed on a center's waiting list, the center must document in the patient's medical record the patient selection criteria used.

We proposed that if a center performs living donor transplants, the center must use written donor selection criteria in determining the suitability of living donors for donation. We proposed that the living donor selection criteria must be consistent with the general principles of medical ethics. We proposed that the transplant center must: (1) Ensure that a prospective living donor receives a medical and psychosocial evaluation prior to donation; (2) document in the transplant candidate's and living donor's medical records the living donor's suitability for donation; and (3) document that the living donor has given informed consent, as required under § 482.102. The psychosocial evaluation conducted by a transplant center of a potential living donor assesses the donor's motivation and his or her understanding of the donation process and post-donation treatment. A center assesses whether the potential living donor has any behavioral or psychiatric issues that could influence the decision to donate and whether he or she is being pressured to donate.

Following are summaries of the comments we received and our responses.

Comment: Many commenters supported the proposed written patient and living donor selection requirements. Commenters stated that the requirements are reasonable and that many centers already have these selection criteria in place. One commenter applauded us for giving transplant centers the flexibility to develop their own criteria. The commenter commended us for refraining from defining patient selection criteria. However, some commenters opposed the requirement for transplant centers to have written patient and living donor selection criteria. Commenters stated that the requirements are too prescriptive and would be burdensome.

Response: We disagree that these requirements are too prescriptive. In fact, current Medicare requirements for heart, liver, and lung transplant centers have specific patient selection criteria guidelines for centers to use to select patients for transplantation. Conversely, this final rule permits transplant centers to develop the criteria that best fit the needs of their patients and gives centers the flexibility to change their criteria as transplant medicine changes over time. We will no longer require transplant centers to use the existing patient selection criteria. As long as their patient selection criteria are fair and non-discriminatory, transplant centers are free to develop their criteria based on the medical judgment of their transplant physicians and surgeons.

Comment: Some commenters said they believe that written patient selection criteria may pose undue risk to centers when the criteria used to select a transplant patient deviate from the transplant center's written criteria. Another commenter stated that the disclosure of deviations from patient selection criteria will pose legal risks for transplant centers.

Response: We disagree with the commenters that written patient and living donor selection criteria will pose undue legal risk to centers. Instead, we believe that well-written patient and living donor selection criteria can reduce the legal risk for a transplant center, as long as the center adheres to its criteria or documents the reason why it has deviated from its criteria. Given the scarcity of organs, we believe established written patient selection criteria, at a minimum, will ensure equity and consistency when transplant risk-benefit decisions are made. No change was made based on these comments.

Comment: Some commenters stated that patient selection is a medical judgment and that there are gray areas, subtleties, and subjectivities involved in selecting patients for transplants.

Response: We acknowledge that selecting patients for transplantation is the responsibility of the transplant surgeon and that transplant surgeons

must exercise their medical judgment when weighing the risks and benefits of transplantation. This final rule does not dictate how transplant candidates should be selected for placement on the waiting list and transplantation. Although we require transplant centers to have written patient selection criteria, transplant centers are free to include a process for justifying exceptions to the selection criteria.

Comment: A few commenters stated that the proposed requirement for written patient criteria is duplicative of the OPTN patient listing policies. The commenters said that a center's adherence to the OPTN policies should satisfy our patient selection criteria.

Response: The OPTN policies for patient placement on the waiting list focus mainly on the criteria for organ allocation and not on the criteria for placement on or exclusion from a center's waiting list. We believe that if transplant centers adhere to OPTN policies and comply with the patient selection criteria requirement in this final rule, they will place patients on their waiting lists appropriately. Therefore, we have finalized the patient selection criteria requirement as proposed.

Comment: A commenter stated that patient selection for transplants is usually a medical judgment based on guidelines developed by professionals. Guidelines change from time to time. A commenter recommended the Patient Care and Education Guidelines developed by the American Society of Transplantation as a helpful resource for transplant decisions.

Response: We support the concept of incorporating professional guidelines into a transplant center's transplant candidate selection policies, as the center deems appropriate. We expect that transplant centers will revise their policies periodically as needed. We have made no changes based on this comment.

Comment: A commenter stated that we should encourage patients to take some responsibility for their own care. The commenter suggested that in the transplant candidate evaluation process provision, we should include some patient self-management provisions.

Response: We agree with the commenter that transplant candidates should share responsibility for their own care. Transplant centers are free to incorporate this concept in their patient evaluation policies. However, including such a requirement in regulations would be unnecessarily prescriptive.

Comment: Some commenters opposed the requirement that a transplant center must employ or consider all other appropriate medical and surgical therapies that might be expected to yield both short and long-term survival comparable to transplantation before a patient is selected for placement on the waiting list. The commenters said this practice interferes with medical judgment and may place transplant centers at legal risk. A few commenters requested an exemption for kidney, heart, and pancreas transplant centers from this requirement because transplant decisions for these organ types are sometimes based on quality of life considerations, rather than survival alone. Commenters pointed out that medical and surgical therapy changes constantly, and it is difficult for transplant centers to set the upper and lower parameters in exhausting all available therapies before placing patients on the waiting list. Some commenters asked us to define ''all other appropriate medical and surgical therapies'' and questioned how compliance with this requirement would be determined.

Response: We understand the commenters' concerns that some transplant risk-benefit decisions are not based on survival alone and that it may be difficult for transplant centers to establish parameters for alternative medical and surgical therapies. Therefore, we are not finalizing our proposed requirement at § 482.90(a)(1).

Comment: Some commenters supported our proposal to require a psychosocial evaluation for prospective transplant candidates and suggested that a transplant center should designate qualified staff to perform the evaluation. One commenter suggested that prospective transplant candidates who have a history of psychiatric illness and substance abuse should be further evaluated by a psychologist or psychiatrist.

Response: We agree that a psychosocial evaluation should be performed by qualified staff. For good patient care, we expect that the individual who performs a psychosocial evaluation of a transplant candidate or prospective living donor will make a referral for further evaluation if a patient shows symptoms of, or has a history of, psychiatric illness or substance abuse. However, we have made no changes based on this comment.

Comment: Many commenters recommended changing our proposed language to state that a prospective transplant candidate or prospective living donor must receive a ''qualified social worker evaluation'' because the proposed language ''psychosocial evaluation'' is too ambiguous and does not indicate who conducts the evaluation. Other commenters recommended that a qualified social worker should be designated to perform the evaluation using the Standards for Social Work Services in ESRD Facilities developed by the ESRD Network of Texas, Inc. as the standardized assessment tool.

Response: We appreciate the commenters' recommendations. However, since there is more than one category of qualified professional who can conduct a psychosocial evaluation of a prospective transplant candidate, we have chosen to give transplant centers the flexibility to designate the type of qualified individual who will conduct the psychosocial evaluation. This individual may be a qualified social worker or another qualified individual.

In our view, there is no standardized psychosocial evaluation tool that would be applicable to all prospective organ transplant candidates. Therefore, this final rule, as proposed, provides a transplant center with the flexibility to select a standardized psychosocial evaluation tool or to devise its own psychosocial evaluation tool. We have made no changes based on this comment.

Comment: One commenter stated that it is impractical and inappropriate to require transplant centers to conduct a psychosocial evaluation of some prospective transplant candidates, such as infants and very small children, as well as patients who are acutely ill with fulminate hepatic failure or acute cardiomyopathy.

Response: In nearly all cases, a transplant center should ensure that patients receive a psychosocial evaluation prior to placement on the center's waiting list. However, we agree with the commenters that conducting a psychosocial evaluation is not always possible, for example, in emergency situations or when the patient is very young. Therefore, we have revised the regulation text at § 482.90(a)(1) to state that ''prior to placement on the center's waiting list, a prospective transplant candidate must receive a psychosocial evaluation, if possible.'' We expect transplant centers to perform psychosocial evaluations in every situation in which it is possible to do so.

Comment: A few commenters supported the requirement for determining and documenting a transplant candidate's blood type in medical records prior to being placed on the waiting list. However, one commenter suggested that we should refer to the UNet℠ system to determine a candidate's ABO blood type, instead

of establishing a new blood type documentation requirement.

Response: We are not establishing a new blood type documentation requirement. We require only that before a transplant center places a transplant candidate on its waiting list, the candidate's medical record must contain documentation of the candidate's blood type. Similarly, OPTN policies require a transplant program to be responsible for ensuring the accuracy of candidate ABO data on the waiting list. OPTN policies also include on-line verification of a candidate's ABO data against the source document by an individual other than the person initially entering the candidate's ABO data in UNet℠. The OPTN expects a transplant program to maintain records documenting that such separate verification of the source document against the entered ABO has taken place and make such documentation available for audit. Our requirements complement these OPTN policies. The individual who verifies the source document (which could be the determination of blood type in the candidate's medical record against the UNet℠) may simply annotate the verification in the medical record.

Comment: A commenter questioned the rationale for requiring documentation of the patient selection criteria used. One commenter stated that documenting patient selection criteria would be time-consuming and a departure from current practice. Another commenter suggested that adherence to some written basic patient selection criteria or cross-referencing the patient selection criteria should be adequate evidence of compliance. A few commenters stated that the documentation of patient selection criteria, including the evaluation process and analysis of extensive medical work-up, would add administrative burden to transplant centers and increase Medicare expenses.

Response: The rationale for requiring documentation of the patient selection criteria used is to ensure that the transplant center's written patient selection policies and procedures are consistently implemented and that this is reflected in medical records. We agree that repeating a written narrative of all previous pre-transplant evaluation processes and medical work-ups would be burdensome. However, in documenting the patient selection criteria used, a transplant center may choose to use electronic formats, forms, or checklists to indicate the applicable criteria, as set forth in the center's own policies and procedures manual. We believe that any administrative burden associated with the patient selection criteria documents will be minimal and will not raise Medicare expenses appreciably.

Comment: A few commenters supported the requirement that living donor selection criteria must be consistent with general medical ethics. Commenters stated that selection criteria are important in bringing some standardization to the living donor evaluation and selection processes. A commenter recommended giving flexibility to transplant centers to evaluate medical ethics issues on a case-by-case basis. However, one commenter stated that there is no consensus on what constitutes medical ethics. Another commenter requested more explicit clarification of the meaning of general medical ethics.

Response: We expect a transplant center to assess the prospective living donor carefully to ensure, insofar as possible, that donation will not cause long-term harm to the individual's health. Furthermore, we expect transplant centers to apply the ethical principle of ''equipoise'' to assess whether the benefits to both the donor and the recipient outweigh the risks associated with the donation and the transplantation. We believe the provisions set forth in this final rule provide flexibility for transplant centers to evaluate every prospective living donor individually, using the same medical ethics they would use in providing health care to any patient. No changes were made based on these comments.

Comment: A commenter questioned if Internet donor matching is ethical.

Response: The commenter is correct that the transplant community has not reached consensus on the ethics of certain donation practices, such as Internet donor matching. However, such issues are beyond the scope of this final rule.

Comment: Some commenters suggested adopting the OPTN Ad Hoc Living Donor Committee Living Liver and Kidney Donor Evaluation Guidelines or the Living Donor Evaluation Criteria developed by the American Society of Transplantation.

Response: We support the concept of incorporating professional guidelines into a transplant center's living donor selection policies. However, we believe incorporating the suggested guidelines or evaluation criteria into this final rule would be too prescriptive and would not provide centers with sufficient flexibility. We made no changes based on this comment.

Comment: Although some commenters supported medical and psychosocial evaluation of living donors, one commenter did not support the requirement for a living donor to receive a psychosocial evaluation, as it might delay transplantation and would add to the cost of the transplantation. The commenter noted that, in the case of parent to child donation, the psychosocial evaluation would not be warranted.

Response: Transplant centers are free to include a process in their policies and procedures to respond to emergency situations when it may not be possible to conduct a psychosocial evaluation prior to donation. However, in the absence of such a situation, we expect transplant centers to conduct psychosocial evaluations of all prospective living donors. An evaluation can assist the prospective living donor in evaluating the pros and cons of donating and the potential psychological impact of donating and thus aid the individual in making an appropriate donation decision. Even a parent donating to a child may feel conflicted; for example, a parent may worry about the possible impact of the parent's donation on other children in the family.

Comment: One commenter supported the documentation of living donor suitability in medical records. However, some commenters had concerns that such documentation in the transplant candidate's medical records would compromise the privacy of the donor's individually identifiable health information and violate the HIPAA regulations, putting transplant centers at legal risk. Another commenter stated that this requirement deprives the potential living donor of an exit out of the donation process if the individual is reluctant to donate but prefers the transplant candidate to think he or she cannot donate for medical reasons.

Response: We believe the commenters have valid concerns, and we agree that documentation of a living donor's suitability for donation in the transplant recipient's medical records would be inappropriate. Therefore, we have eliminated the proposed requirement at § 482.90(b)(2) to document the transplant recipient's medical record with the living donor's suitability for donation. However, we have finalized our proposal to require documentation of the living donor's suitability for donation in the living donor's medical record. (See § 482.90(b)(2).)

Availability of Patient Selection Criteria

In the proposed rule, we requested comments on whether transplant centers should be required to make the

patient selection criteria available to patients routinely or upon request.

Comment: One commenter stated that providing transplant patients with patient selection criteria would restore public trust in the transplant system and ensure fairness in organ allocation. However, another commenter stated that providing candidates with patient selection criteria may set unrealistic expectations in the complex organ allocation and transplantation process. A few commenters recommended that a copy of the patient selection criteria should be given to patients only if requested.

Response: We agree that the knowledge of a transplant center's patient selection criteria would help a patient to better understand his or her treatment options. However, given that transplantation is not a straightforward decision, we agree with the commenter who expressed concern that providing the patient selection criteria to patients may lead to misunderstanding or give some patients unrealistic expectations of their likelihood of receiving a transplant. Some patients may want to rely on their surgeons and physicians to give them advice and recommendations about transplantation. Therefore, this final rule requires a transplant center to provide a copy of its patient selection criteria to a patient only upon the patient's request.

We are sympathetic to the view of the commenter who said that providing copies of patient selection criteria to patients would ensure fairness in organ allocation. We believe that additional transparency in the selection process can further the goal of equity in transplantation and give dialysis facilities a tool to ensure that referral of dialysis patients to kidney transplant centers for evaluation is fair and non-discriminatory. That is, once a dialysis facility knows the specific patient selection criteria used by each kidney transplant center in its vicinity, it can better ensure that it refers all patients who may be eligible for transplantation. Therefore, we have added a requirement to this final rule specifying that a kidney transplant center must provide a copy of its transplant patient selection criteria to a transplant candidate or a dialysis facility, at the request of the patient or the facility. (See § 482.90(a)(4).)

We note that a patient who believes that a transplant center's patient selection criteria are unfair or discriminatory or that a transplant center has not followed its patient selection criteria may find a remedy in the grievance process of the hospital in which the transplant center is located. Section 482.13, Patient Rights, requires hospitals to protect and promote each patient's rights. Section 482.13(a)(2) further requires that hospitals establish a grievance process for the prompt resolution of patient grievances and that the hospital's grievance procedures are clearly explained to the patient.

Condition of Participation: Organ Recovery and Receipt (Proposed § 482.92)

We proposed that transplant centers must have written protocols to validate donor-recipient matches and other vital data for deceased organ recovery, organ receipt, and living donor transplantation. We proposed assigning responsibility to the transplanting surgeon for ensuring the medical suitability of donor organs for transplantation into the intended recipient.

We proposed that a transplant center's organ recovery team would have to review and compare the recipient and donor data with the recipient blood type and other vital data before recovery took place. We also proposed requiring that, when an organ arrives at a transplant center, the transplanting surgeon and at least one other individual at the transplant center must verify prior to transplantation that the donor's blood type and other vital data indicate that the donor's organ is compatible with transplantation of the intended recipient.

We proposed that if a center performed living donor transplants, the transplanting surgeon and at least one other individual at the transplant center would be required to verify that the living donor's blood type and other vital data indicated that the donor's organ is compatible for transplantation of the intended recipient, immediately before the removal of the living donor organ(s) and, if applicable, prior to the removal of the recipient's organ(s).

Following are summaries of the comments we received and our responses.

Comment: Some commenters supported the proposed requirement for transplant centers to have written protocols to validate donor-recipient compatibility in organ recovery, receipt, and transplantation to prevent unintended transplantation of organs mismatched by blood type. However, a commenter stated that protocols for validation of data may pose a legal risk for transplant centers.

Response: A crosscheck verification of the donor's blood type with the blood type of the intended recipient is a critical step in organ allocation and transplantation. Therefore, in this final rule, as we proposed, we require transplant centers to have written protocols to ensure that this essential process takes place. We believe that consistent application of such sound protocols ultimately will reduce legal risks for transplant centers.

Comment: A commenter stated that it is impossible to be inclusive of all possible scenarios encountered in organ recovery; therefore, the use of a written protocol for organ recovery would be limited.

Response: We recognize that the unexpected may happen during organ recovery. However, a well-written organ recovery protocol should anticipate as many of these scenarios as possible.

Comment: Some commenters disagreed that the transplant surgeon should be fully responsible for suitability of donor organs during organ recovery because:

(1) Information provided by an OPO may not be accurate;

(2) At the time of organ recovery, the identity of the intended recipient may not be known; and

(3) At the time of organ recovery, information about the organ donor may not be complete.

Response: The requirement does not mean that the transplant surgeon is responsible for the suitability of donor organs prior to or during recovery. The transplant surgeon is responsible for ensuring the medical suitability of a donor organ for transplantation into the intended recipient only after the organ has arrived at the transplant center. If the transplant surgeon makes the determination of medical suitability based on inaccurate information provided by the OPO about the donor organ (for example, the paperwork that accompanies the organ to the transplant center is marked with the wrong blood type), the transplant surgeon will not be held responsible for his or her determination of medical suitability.

Comment: A commenter suggested that the transplant coordinator should be responsible for blood type verification.

Response: Transplant centers may delegate this responsibility to transplant staff or the transplant coordinator. No change was made based on this comment.

Comment: Some commenters stated that the proposed blood type validation is duplicative of OPTN policies; therefore, additional requirements would not be necessary. Some commenters suggested that the OPTN policies and Medicare requirements should be consistent.

Response: The commenters are correct that our requirement is similar to the OPTN policy, which requires a

transplant center, upon receipt of an organ and prior to transplantation, to perform and document crosscheck verification of the donor's blood type with the blood type of the intended recipient. As we have stated previously in this preamble, with the exception of OPTN data submission requirements, OPTN policies are not enforceable unless they are approved by the Secretary under 42 CFR 121.4.

Comment: Some commenters suggested that our proposals for organ recovery were unnecessary. For example, a commenter stated that organ procurement procedures start before the recipient is identified or the transplant center is notified. Another commenter stated that many large OPOs already have developed protocols for organ recovery teams that recover organs for the OPO or for transplant centers, which means that transplant centers would have minimal involvement in the organ recovery process. However, another commenter agreed with our proposal and said that a transplant center's recovery team should validate donor and recipient blood type and other vital data before organ recovery takes place.

Response: We recognize that in many cases, transplant centers may have little involvement in the process of organ recovery. Therefore, we have revised the regulation text at § 482.92(a) to reflect that when the intended recipient is known, and the transplant center sends a team to recover organ(s), the transplant center's recovery team must review and compare the donor data with the recipient blood type and other vital data before organ recovery takes place.

Comment: A commenter suggested that instead of requiring at least one other individual to verify donor-recipient blood type and vital information, we should specify that the individual must be a licensed health care professional.

Response: We agree with the commenter. We have changed the regulatory text at § 482.92(b) to require that after an organ arrives at a transplant center, prior to transplantation, the transplanting surgeon and another licensed health care professional must verify that the donor's blood type and other vital data are compatible with transplantation of the intended recipient. In addition, we have changed the regulatory text at § 482.92(c) to say that if a center performs living donor transplants, the transplanting surgeon and another licensed health care professional at the center must verify that the living donor's blood type and other vital data are compatible with transplantation of the intended recipient immediately before the removal of the donor organ(s) and, if applicable, prior to the removal of the recipient's organ(s). Since cross checking donor and recipient information generally is performed in the operating room just prior to transplantation, nurses and other licensed health care professionals should be readily available.

Condition of Participation: Patient and Living Donor Management (Proposed § 482.94)

We proposed that transplant centers must have written patient management policies for the pre-transplant, transplant, and discharge phases of transplantation. We proposed that if a center performs living donor transplants, it must have written donor management policies for the donor evaluation, donation, and discharge phases of the living organ donation. We proposed that a transplant center must ensure that each transplant patient and living donor is under the care of a multidisciplinary patient care team coordinated by a physician throughout all phases of the transplantation or living donation.

We proposed that transplant centers must keep their waiting lists current, including updating waiting list patients' clinical information on an ongoing basis. We also proposed that a transplant center must remove a patient from its waiting list if the patient receives a transplant, if the patient dies, or if there is any other reason that the patient should no longer be on a center's waiting list.

We proposed requiring transplant centers to notify the OPTN of a patient's removal from the center's waiting list no later than 24 hours after the removal.

We proposed that transplant centers must maintain up-to-date and accurate patient management records for each patient who receives an evaluation for placement on a center's waiting list and who is admitted for organ transplantation. For each patient who receives an evaluation for placement on a center's waiting list, we proposed that the center must document in the patient's record that the patient is informed of his or her transplant status, including notification of: (1) The patient's placement on the center's waiting list; (2) the center's decision not to place the patient on its waiting list; or (3) the center's inability to make a determination regarding the patient's placement on its waiting list because further clinical testing or documentation is needed.

We proposed that once a patient is placed on a center's waiting list, the center must document in the patient's record that the patient has been notified of: (1) His or her placement status (at least once a year, even if there was no change in the patient's placement status); and (2) his or her removal from the waiting list for reasons other than transplantation or death no later than 10 days after removal.

We proposed that kidney transplant centers must document in the patient's record that both the patient and the patient's usual dialysis facility have been notified of the patient's transplant status and of any changes in the patient's transplant status.

We proposed that when a patient is admitted for transplantation, the patient's record must contain written documentation of multidisciplinary patient care planning during the pre-transplant period and multidisciplinary discharge planning for the patient's post-transplant care.

We proposed that transplant centers must make social services, furnished by qualified social workers available to transplant patients, living donors, and their families. We proposed that a qualified social worker is an individual who meets licensing requirements in the State in which he or she is practicing and: (1) Has completed a course of study with specialization in clinical practice and holds a master's degree from a graduate school of social work accredited by the Council on Social Work Education; or (2) has served for at least 2 years as a social worker, 1 year of which was in a transplantation program, and has established a consultative relationship with a social worker.

We proposed that transplant centers must make nutritional assessment and diet counseling services furnished by a qualified dietitian available to all transplant patients and living donors.

We proposed that a qualified dietitian is an individual who: (1) Is eligible for registration by the American Dietetic Association under its requirements in effect on June 3, 1976 and has at least 1 year of experience in clinical nutrition; or (2) has a baccalaureate or advanced degree with major studies in food and nutrition or dietetics and has at least 1 year of experience in clinical nutrition.

We also are responding to comments we received on the ESRD proposed rule from dialysis facilities relating to transplant referral tracking of dialysis patients and the grandfather requirement for social workers. Although these comments were submitted along with comments on the ESRD proposed rule (February 4, 2005, 70 FR 6184), we are responding to them in the preamble to this final rule because they are relevant to our

proposed requirements for notification of waiting list patients and our proposed requirements for social workers.

Following are summaries of the comments we received and our responses to the comments.

Comment: Commenters agreed that transplant centers should play an active role in the care and management of transplant patients. Some commenters suggested that transplant centers should be required to provide pre-transplant and post-transplant care to transplant recipients in conjunction with the recipient's local provider team. However, many commenters stated that transplant centers should not be held accountable for transplant patients' pre- and post-transplant care because many waiting list patients do not live near the transplant center and are cared for by their local providers, particularly in the case of dialysis patients. Kidney transplant patients usually receive their pre- and post-transplant care from their local nephrologists and dialysis facilities. Commenters stated that pre-transplant care planning for kidney patients is the responsibility of the dialysis facilities where the patients receive care.

Response: As stated previously, we agree with the commenters that the care of transplant patients is best coordinated by local health care providers and transplant centers. Transplant patients require clinical evaluation before being placed on the waiting list, clinical care while they are on the waiting list, and follow-up monitoring after transplantation. In most cases, while transplant candidates are waiting for suitable organs, they continue to receive non-transplant-related routine medical care from their local health care providers and (for kidney patients) dialysis facilities, rather than from the transplant center where they are listed. Therefore, based on public comments, we have not finalized our proposed requirement at § 482.94 that transplant centers must have written patient management policies for the pre-transplant phase of transplantation or our proposed requirement that they must provide pre-transplant care to transplant patients.

We agree with the commenters that transplant patient management is better coordinated with the transplant patient's local providers, and we expect that for the most part, this is already a standard practice. However, we see no reason to prescribe explicitly how transplant centers should work with other providers, with the exception of dialysis facilities.

The relationship between dialysis facilities and kidney transplant centers is unique because dialysis facilities treat and monitor their patients more frequently than other health care providers. Any changes in a dialysis patient's' clinical status may affect his or her transplant suitability. Thus, it is important for kidney transplant centers to have open and frequent communication with dialysis facilities to ensure that all transplant-related issues are communicated clearly to the patient and to the patient's provider(s) of care. Based on these comments, we have added a requirement at § 482.104(a) that a kidney transplant center must have written policies and procedures for ongoing communication with dialysis patients' local dialysis facilities.

Coordination also ensures that the transplant center has the information about the patient's status that it needs to keep its waiting list and the OPTN's waiting list current. For example, a patient may have to be removed from the waiting list because he or she has become too ill to receive a transplant. Therefore, we are finalizing the proposed requirement at § 482.94(c) as follows. Section 482.94(c)(1) specifies that for each patient who receives an evaluation for placement on a center's waiting list, the center must document in the patient's record that the patient (and in the case of a kidney patient, the patient's usual dialysis facility) has been informed of his or her transplant status, including notification of: (i) The patient's placement on the center's waiting list; (ii) The center's decision not to place the patient on its waiting list; or (iii) The center's inability to make a determination regarding the patient's placement on its waiting list because further clinical testing or documentation is needed. Section 482.94(c)(2) requires that if a patient on the waiting list is removed from the waiting list for any reason other than death or transplantation, the transplant center must document in the patient's record that the patient (and in the case of a kidney patient, the patient's usual dialysis facility) was notified no later than 10 days after the date the patient was removed from the waiting list

For post-transplant care, we expect a transplant center to use the discharge planning process to coordinate transplant-related follow-up care. (See § 482.94(c)(3)(ii).) As a general rule, patients receive several months of post-transplant care from the transplant center that performed the transplant, even if they do not live near the transplant center. After that, patients often continue to receive care from the transplant center for an extended period of time in conjunction with their local physician or dialysis center. Coordination of care ensures that the transplant center will have access to the patient follow-up data it needs to abide by the OPTN data collection and submission policies.

Comment: One commenter stated that the provision for multidisciplinary patient care planning is overly detailed and would place a burden on centers.

Response: We disagree with the commenters. We believe the multidisciplinary patient care planning provision proposed at § 482.94(c)(4) is flexible and general in nature. We believe the requirements will allow a transplant center to assemble a multidisciplinary patient care team using in-house hospital staff, which should create little or no extra burden. Therefore, we are finalizing this requirement as proposed.

Comment: One commenter stated that the proposed patient care requirements are duplicative of the JCAHO survey standards for inpatient care planning and discharge planning. Another commenter noted that the OPTN policies already address transplant care and patient management guidelines.

Response: We agree that there are similarities between the JCAHO survey standards for inpatient care planning and discharge planning and our requirements for patient care in this final rule. However, some requirements in this final rule (such as living donor care, management of the waiting list, and patient records) are absent from JCAHO's survey standards for acute care hospitals. Furthermore, even if Medicare requirements were identical to JCAHO standards and OPTN policies, this fact would not eliminate the need to incorporate the requirements into our regulations because JCAHO standards and the OPTN's policies are not legally enforceable by CMS.

Comment: Many commenters stated that kidney transplant centers should be exempt from the requirement for a written long-term care plan because kidney transplant candidates are usually cared for by their referring physicians, nephrologists, social workers, dietitians, and dialysis facilities while awaiting transplants. Some commenters suggested that instead of developing a care plan, kidney transplant centers should be required only to obtain a copy of the patient's long-term care plan from the dialysis facility and keep it with the transplant candidate's medical records.

Response: The commenters may have misunderstood the proposed patient management requirement. We are not requiring transplant centers to develop long-term care plans for transplant patients. We agree that this is the

responsibility of each patient's local health care providers and dialysis facility, as appropriate. As stated earlier, we strongly encourage transplant centers to collaborate with local providers and dialysis facilities to tailor patient management policies to their patients' needs. Given that it is a standard practice for health care providers to request medical records from other providers who are actively treating their patients, we do not believe we need to require a transplant center to obtain a copy of the patient's long-term care plan from the dialysis facility, nor do we need to exempt kidney transplant centers from these requirements. No changes have been made to this final rule based on these comments.

Comment: One commenter supported the proposal that living donors should be under the care of a multidisciplinary team to safeguard their interests and well-being. The commenter suggested that we should require centers to be responsible for living donors' post-discharge issues or complications and provide specialists to follow living donors.

Response: Since some living donors may receive immediate post-donation care in hospital units outside the transplant center, we want to ensure that living donor care is well coordinated.

We expect transplant centers to coordinate follow-up care for living donors upon discharge as well. Although this final rule does not specifically delineate transplant centers' responsibilities for living donors' post-discharge care, we expect a transplant center to provide care, as needed, if a living donor experiences donation-related problems or complications post-discharge.

Comment: Many commenters commended us for our clarity in describing the waiting list management requirements that would positively impact the organ allocation system. The commenters stated that it is important for transplant centers to update the status of waiting list patients continuously to increase the efficiency of organ allocation and ultimately reduce organ wastage and organ discard rates. However, a few commenters stated that the waiting list management requirements are overly detailed and may put centers at legal risk.

Response: We disagree that the waiting list management standard is overly detailed. The waiting list management requirements in this final rule are steps transplant centers must take to help the OPTN keep the waiting list current, so that: (1) Organ allocation is prioritized based on medical urgency and other relevant factors; (2) OPOs do not waste valuable time contacting centers about patients who should no longer be on the waiting list; and (3) organ wastage is minimized.

We have no evidence that keeping its waiting list current will create a legal risk for a transplant center.

Comment: One commenter suggested that we should specify how frequently transplant centers must update their waiting lists (that is, daily, weekly, or monthly).

Response: We are not imposing an arbitrary timeframe for transplant centers to keep their waiting lists up to date. The availability of waiting list patients' clinical information varies from patient to patient, and clinical information may change frequently or infrequently. We expect transplant centers to update their waiting lists, including updates of clinical information and removal of patients from waiting lists an ongoing basis as the information becomes available. For clarity we have added ''on an ongoing basis'' at § 482.94(b) to emphasize that transplant centers must keep their waiting lists up to date.

Comment: Some commenters expressed appreciation that we did not propose to mandate an annual evaluation of all patients on the waiting list. One commenter suggested that waiting list management should be clinically driven. That is, we should require centers to identify ''high risk'' transplant candidates and evaluate them annually. A commenter suggested requiring centers to conduct periodic clinical re-evaluations of transplant candidates to enhance updating of clinical information in those patients' medical records and their information on the waiting list.

Response: We developed the requirement for transplant centers to update clinical information for their waiting list patients on an ongoing basis based on the assumption that updating of patients' clinical information is clinically driven. We understand that some patients are in critical condition, requiring more intense evaluation and monitoring, and other patients remain stable for longer periods of time. We expect transplant centers to keep their waiting lists updated accordingly. We expect that transplant centers will determine how often waiting list patients should be evaluated, based on the acuity of the individual patient. No changes were made in this final rule based on these comments.

Comment: A commenter stated that it is unreasonable to expect large centers with long waiting lists to update all patients' clinical information on an ongoing basis because the requirement would be too burdensome.

Response: We believe it is essential for a transplant center to stay abreast of its waiting list patients' clinical status and keep its waiting list updated on an ongoing basis so that when an organ offer is made, the transplant center knows the clinical status of the potential recipient. If a long waiting list is the reason for a center's failure to update waiting list patients' clinical status, the transplant center may need to re-evaluate its policies to determine if the number of patients on its waiting list is beyond its capacity to manage.

Comment: Some commenters stated that managing a transplant center's waiting list is a very complex task and is already subject to OPTN oversight. Some commenters suggested that the OPTN should be the entity to set guidelines for waiting list management, and one commenter recommended that we should ask the OPTN to develop guidelines for transplant centers. Another commenter suggested that the OPTN should incorporate and publish the transplant waiting list management guidelines developed by the American Society of Transplant Surgeons (ASTS). Commenters said that our regulations should require only that transplant centers comply with OPTN waiting list policies.

Response: As appropriate, we have included OPTN patient waiting list policies in this final rule for oversight and enforcement purposes. The OPTN has waiting list management policies that go beyond our requirements, including patient screening and listing criteria, waiting time modifications, multiple listings, and removal of transplant candidates from waiting lists. As we proposed at § 482.94(c), we have included some OPTN patient waiting list policies in this final rule for oversight and enforcement purposes. Suggestions regarding the OPTN's incorporation of specific guidelines, such as those developed by ASTS, fall outside the purview of this final rule and should be addressed to the OPTN.

Comment: Some commenters stated that dialysis facilities do not always inform kidney transplant centers about changes in the clinical status of their dialysis patients. The commenters suggested that transplant centers, referring nephrologists, and dialysis facilities all should be held accountable for collaboration and communication regarding the clinical and listing status of patients on the waiting list. The commenter said that the collaboration process would help the transplant

center to keep patients' clinical information current.

Response: We agree. Based on public comments, we have added a requirement for kidney transplant centers to have written policies and procedures for ongoing communication with dialysis patients' local dialysis facilities. (See § 482.104(a).) We believe this requirement will resolve the commenters' concern about insufficient communication or lack of communication between transplant centers and dialysis facilities.

Comment: A commenter stated that the requirement to notify the United Network of Organ Sharing (UNOS) (i.e., the OPTN Contractor) within 24 hours after a patient's removal from the center's waiting list does not take into consideration the inaccessibility of the UNet℠ over the weekend for on-call staff.

Response: UNet℠ is available 24 hours a day, 7 days a week to the transplant community. Transplant centers need to provide access for on-call or weekend staff so that they can notify the OPTN timely outside of normal business hours.

Comment: A commenter stated that timely notification to the OPTN about patients' removal from the waiting list is affected by data provided by dialysis facilities and local clinicians. One commenter suggested that we purchase software to help centers interface with dialysis facilities timely.

Response: As we developed the proposed ESRD rule, we recognized the need for dialysis facilities to inform transplant centers about changes in the status of kidney transplant candidates.

Although currently there is no software available to provide an interface between transplant centers and dialysis facilities, we do not expect transplant centers to have difficulty communicating with dialysis facilities.

Comment: Some commenters supported the requirement for centers to notify each patient who is evaluated for transplant of his or her transplant status. However, some commenters stated that our patient notification requirements would be duplicative of OPTN policies.

Response: Current OPTN bylaws for transplant hospitals include notification of patients in writing within 10 business days of: (1) A patient's placement on the waiting list, including the date the patient was listed; (2) completion of a patient's evaluation as a candidate for transplantation, if the evaluation has been completed and the patient will not be placed on the waiting list; or (3) removal from the waiting list as a transplant candidate for reasons other than transplantation or death. Further, transplant hospitals are expected to maintain documentation of these notifications and make the documentation available to the OPTN. As we proposed at § 482.94(c)(2), we have incorporated similar notification policies into this final rule for purposes of oversight and enforcement. In addition, as proposed at § 482.94(c)(3), this final rule requires a transplant center to document that it has notified the patient and dialysis facility, if applicable, if the transplant center is unable to make a decision whether to place the patient on the waiting list because further clinical testing or documentation is needed, as required by § 482.94(c)(1)(iii).

Comment: A commenter stated that communicating waiting list status to patients via mail is too labor-intensive. A few commenters stated that our impact analysis in the proposed rule underestimated the cost of notifying patients and dialysis facilities. One commenter stated that the cost quoted to notify patients and dialysis facilities does not include management oversight time and expenses. Another commenter suggested that centers should use a letter to notify patients whether they will be placed on the waiting list and use phone calls for other types of communication.

Response: As we proposed, the patient notification requirements in this final rule do not mandate how transplant centers will notify patients and dialysis facilities about patients' waiting list status. Transplant centers have the flexibility to determine how they will communicate such information to patients and dialysis facilities. Further discussion of the paperwork and the economic impact of these requirements are found in the Collection of Information and Impact Analysis sections of this preamble.

Comment: Some commenters stated that the yearly requirement to notify transplant patients goes beyond the OPTN requirement and is unreasonable, costly, prescriptive, burdensome, and impractical.

Response: We have carefully evaluated all the public comments we received on this issue and concluded that annual notification to patients would be unduly burdensome for transplant centers and is not necessary, as long as transplant centers can document that they notified transplant candidates, as appropriate, about the transplant candidate's placement status in accordance with § 482.94(c) in this final rule. Therefore, we are not adopting the yearly notification requirement we proposed at § 482.94(c)(2)(i).

However, as we proposed at § 482.94(c), we are requiring that if a transplant center evaluates a patient for placement on the waiting list, the center must document in the patient's record that the patient is informed of his or her transplant status, including notification of: (1) The patient's placement on the center's waiting list; or (2) the center's decision not to place the patient on its waiting list. Furthermore, as we proposed, once a patient is placed on a center's waiting list, the center must document in the patient's record that the patient is notified of his or her removal from the waiting list for reasons other than transplantation or death no later than 10 days after the patient's removal from the center's waiting list.

To clarify that the requirement for notifying patients of their status after they have been evaluated for transplantation is the same for all patients but that a kidney patient's usual dialysis facility also must be notified, we have removed proposed section 482.94(c)(3) and added language to sections 482.94(c)(1) and (2). Section 482.94(c)(1) now reads in part, ''For each patient who receives an evaluation for placement on a center's waiting list, the center must document in the patient's record that the patient (and in the case of a kidney patient, the patient's usual dialysis facility) has been informed of his or her transplant status, including notification of * * *.'' Section 482.94(c)(2) now reads in part, '' If a patient on the waiting list is removed from the waiting list for any reason other than death or transplantation, the transplant center must document in the patient's record that the patient (and in the case of a kidney patient, the patient's usual dialysis facility) was notified * * *.''

Comment: A commenter stated that patients should take some responsibility for waiting list accuracy. Another commenter suggested that transplant patients should be given the ''Patient Bill of Rights and Responsibilities'' package in which the patient acknowledges in writing that he or she has the responsibility to keep the transplant center informed of his/her whereabouts.

Response: We agree that waiting list patients should keep the center or centers where they are listed informed of their whereabouts and informed of any other relevant information. We encourage transplant centers to educate potential transplant candidates about their responsibilities. However, we have made no changes based on this comment.

Comment: A commenter suggested that a center should be found in

compliance if it documents that it made a reasonable attempt to notify a patient without actually succeeding.

Response: When notification of a waiting list patient or a prospective waiting list patient is required under this final rule, we expect the transplant center to make a concerted effort to locate and notify the patient. Nevertheless, we understand there may be circumstances in which the patient cannot be found. At a minimum, a transplant center should maintain documentation in the medical record that it made several attempts to contact the patient.

Comment: Some individuals who commented on the ESRD proposed rule stated that dialysis facilities should relinquish transplantation referral tracking responsibility once the referral has been made. Commenters expressed concerns that some transplant centers do not communicate with dialysis facilities regularly. One commenter stated that transplant centers should provide dialysis facilities with the information they need to monitor transplantation status.

Response: As we proposed, and as adopted in this final rule, a kidney transplant center bears considerable responsibility for patient tracking once a dialysis facility has referred a patient for evaluation. Section 482.94(c)(1) requires documentation of notification of the patient of his or her placement on the center's waiting list, the center's decision not to place the patient on its waiting list, or the center's inability to make a determination regarding the patient's placement on its waiting list because further clinical testing or documentation is needed. Under § 482.94(c)(3), transplant centers must document in the patient's medical record that both the patient and the patient's local dialysis facility have been notified of the patient's transplant status and of any changes in the patient's transplant status (in accordance with § 482.94(c)(1)).

Comment: Many commenters supported the requirement that transplant centers must make social services furnished by qualified social workers available to transplant patients, living donors, and their families. Some commenters recommended that transplant centers should be required to provide transplant patients and living donors with ongoing access to qualified transplant social workers for continuity of care after discharge. One commenter inquired about the time frame for post-transplant social services provided by transplant centers and the potential for Medicare reimbursement for the services.

Response: Under the final rule and as we proposed, transplant centers are responsible for making social services furnished by a qualified social worker available to all transplant patients, living donors, and their families while a transplant patient or living donor is hospitalized. For Medicare beneficiaries (and their living donors), the services are often reimbursed. We did not propose requiring, nor does this final rule require, transplant centers to provide post-discharge social services to all transplant recipients or living donors. Nonetheless, we expect any social services needed post-discharge would be arranged through the discharge planning process. Some centers may choose to continue to provide such services to patients and living donors even though they may not be Medicare reimbursable. Medicare reimbursement for post-transplant social services outside the hospital setting falls outside the purview of this rule.

Comment: Many commenters supported the proposed definition of a qualified social worker as an individual with a master's degree in social work (MSW). Commenters noted that the MSW degree requires an additional 900 hours of specialized training beyond a baccalaureate degree in social work, which prepares the individual with an MSW to work independently in the transplant setting where supervision and peer support is not always readily available.

Many commenters recommended that we not allow social work experience to substitute for an MSW, as we proposed. We proposed permitting social workers to qualify if they served for at least 2 years as a social worker, 1 year of which was in a transplantation program, and had established a consultative relationship with a social worker who qualified under our requirements for social workers with a master's degree. (See proposed § 482.94(d)(2).) Conversely, in the ESRD proposed rule (70 FR 6184), we proposed eliminating a provision found in the current ESRD regulations at § 405.2102 (which applies both to dialysis facilities and to kidney transplant centers), which defines a social worker, in part, as an individual who, ''* * * Has served for at least 2 years as a social worker, 1 year of which was in a dialysis unit or transplantation program prior to September 1, 1976 * * *''

Many who commented on the ESRD proposed rule said that we should retain this ''grandfather clause'' for non-MSWs so that currently employed non-MSWs working as social workers do not lose their jobs. Some commenters said that experienced non-MSW social workers are competent and have a lot to offer, and they recommended that we continue the grandfather clause.

Response: In general, we agree with commenters who stated that a social worker with an MSW degree is the best qualified individual to evaluate and assess transplant candidates, recipients, families, and living donors who are facing multiple psychosocial stressors. However, we also agree with commenters who said that non-MSW social workers who were employed as such prior to September 1, 1976 have much to offer patients and families. We also believe that there should be one standard for all transplant centers.

To reconcile the conflicting viewpoints of commenters opposed to non-MSW social workers providing social services in transplant centers and commenters who urged us to retain the grandfather clause in the ESRD final rule, we have finalized the requirements for an individual to be a qualified social worker in any transplant center (not just a kidney transplant center) as follows. This final rule states that a qualified social worker is an individual who meets licensing requirements in the State in which he or she practices and: (1) Has completed a course of study with specialization in clinical practice and holds a masters degree from a graduate school of social work accredited by the Council on Social Work Education; or (2) is working as a social worker in a transplant center as of the effective date of this final rule and has served for at least 2 years as a social worker, 1 year of which was in a transplantation program, and has established a consultative relationship with a social worker who is qualified under § 482.94(d)(1).

This grandfather clause applies only to individuals who are currently employed as social workers in a transplant center as of the effective date of this final rule. Although we believe the number of these individuals to be small, we do not intend that these employees should lose their jobs because of the deletion of the ''grandfather clause.''

Comment: A commenter suggested that we adopt the OPTN policies for the psychosocial services that transplant centers should offer without defining the required qualifications for a social worker.

Response: We do not agree that adopting OPTN policies without establishing requirements for social worker qualifications would serve the best interests of patients and living donors. As commenters overwhelmingly agreed, master's degree-prepared social workers are best qualified to provide

social services to transplant candidates and recipients, as well as living donors. Social workers often perform psychosocial evaluations of prospective transplant candidates and prospective living donors, and social workers provide critical services to transplant recipients and living donors during the inpatient and discharge phases of donation and transplantation. For example, prior to discharge, social workers provide counseling services to transplant recipients to assist them in maintaining the resolve they need to remain compliant with their immunosuppressive and other medications, which are necessary to prevent graft failure. We made no changes based on this comment.

Comment: A commenter recommended that a qualified social worker should have training in, and knowledge of, pediatric transplant issues.

Response: We agree that qualified social workers should have transplant training and knowledge of pediatric transplant issues, which can be achieved through on-the-job training or continuing education, if they are providing services in a pediatric center. We expect transplant centers to ensure that qualified social workers working in pediatric transplant programs receive ongoing staff development training to better handle issues that are unique to pediatric transplantation. We made no changes based on this comment.

Comment: Some commenters supported the requirement for transplant centers to have nutritional assessments and diet counseling services furnished by a qualified dietitian available to all transplant patients and living donors. One commenter stated that medical nutrition therapy is important for patients and living donors. However, some commenters stated that transplant centers should not be responsible for transplant candidates' pre-transplant nutritional care or care during the evaluation phase for transplant, which is usually provided by candidates' local providers. A few commenters stated that transplant centers should not be required to provide ongoing post-transplant nutritional services to patients and living donors. The commenters requested clarification of the time frame for nutritional services provided to post-transplant patients, and stated that Medicare should reimburse for such services.

Response: We agree that pre- and post-transplant nutritional care is usually provided by transplant patients' and living donors' local health care providers. This final rule requires transplant centers to provide nutrition services to transplant recipients and living donors only during their inpatient stay. For example, a transplant recipient may need to be counseled on the modification of his or her dietary regimen after organ transplant or a living donor may need to be counseled for his or her temporary adjustment in nutritional intake after living organ donation. These services are part of the hospital inpatient services reimbursed by Medicare for beneficiaries and often for their living donors.

Comment: Some commenters suggested that living donors, particularly living kidney donors, should be exempt from nutritional services since they are healthy individuals.

Response: Although living donors are usually healthy individuals, we believe they should receive the same care provided to transplant recipients. Under the final rule and as proposed, transplant centers are responsible for making nutritional assessment and dietary counseling services furnished by a qualified dietitian available to all living donors while they are hospitalized for organ donation.

Comment: A commenter suggested that we should adopt the OPTN policy for nutritional services without defining the qualifications for a qualified dietitian.

Response: Currently, the OPTN does not have a policy for nutritional services furnished by transplant centers.

Comment: One commenter suggested adopting the Medical Nutrition Therapy (MNT) regulation definition of ''qualified dietitian.'' A few commenters suggested that the definition of a qualified dietitian in the transplant center rule and the ESRD rule should be consistent.

Response: We have not used the MNT definition for registered dietitian in this final rule because it includes both registered dietitians and other nutritional professionals, and we believe this may cause confusion. However, we have revised the proposed requirements at § 482.94(e).

In this final rule, we require that a qualified dietitian must be a registered dietitian with the Commission on Dietetic Registration (CDR), who meets the practice requirements in the State in which he or she is employed. (See § 482.94(e).) For the most part, these requirements are similar to those included in the proposed rule for new conditions for coverage for ESRD facilities published February 4, 2005 (70 FR 6184). To date, the ESRD facility final rule has not yet been published.

Condition of Participation: Quality Assessment and Performance Improvement (QAPI) (Proposed § 482.96)

We proposed that every transplant center must develop, implement, and maintain a written, comprehensive, data-driven QAPI program designed to monitor and evaluate the performance of all transplantation services, including services provided under contract or arrangement.

We proposed requiring a transplant center's QAPI program to use objective measures to evaluate the center's performance with regard to transplant activities and outcomes. We proposed that these activities and outcomes may include, but would not be limited to, patient and donor selection criteria, accuracy of the waiting list in accordance with the OPTN waiting list, accuracy of donor-recipient matching, patient and donor management, techniques for organ recovery, consent practices, patient satisfaction, and patient rights. We proposed that the transplant center must take actions that result in performance improvements and track performance to ensure that improvements are sustained.

We proposed that transplant centers must establish and implement written policies to address and document any adverse events that occur during any phase of an organ transplantation case. We proposed that a transplant center must have policies to address, at a minimum, the process for identification, reporting, analysis, and prevention of adverse events. We also proposed that a transplant center must conduct a thorough analysis of, and document, any adverse event and must utilize the analysis to effect changes in the transplant center's policies and practices to prevent repeat incidents. Following are summaries of the comments we received and our responses.

Comment: Some commenters supported the proposed requirement for a transplant center to have a defined QAPI process. Commenters said the proposed objective measures and adverse events standards were reasonable and would provide impetus for transplant centers to scrutinize and improve performance. A commenter stated that QAPI programs should be quality-driven and not complaint-driven.

Response: We appreciate the commenters' support of the proposed QAPI requirements. We anticipate that transplant centers will take advantage of their own transplant data as well as the wealth of transplant data available

through the OPTN and the SRTR and utilize them effectively to evaluate their own performance and effect positive changes.

Comment: Some commenters stated that the proposed requirement for a transplant center to develop, implement, and maintain a QAPI program would not contribute to improving patient outcomes.

Response: We disagree with the commenters. The effectiveness of QAPI programs in improving the delivery of health care is widely accepted throughout the health care community. An effective QAPI program uses objective data to study and make improvements to all patient care processes on a continuing basis. We expect transplant centers to focus on areas of sub-optimal performance and prioritize outcome measures for improvement. Using this approach, a transplant center can: (1) Identify areas where outcomes indicate a need for improvement; (2) define systematic changes needed to improve outcomes; (3) review implementation of improvement actions; and (4) determine the success of the actions to improve performance.

Comment: Some commenters stated that the QAPI program of a JCAHO accredited hospital and the OPTN oversight of transplant centers should eliminate the need for a separate transplant center-based QAPI program. Some commenters were concerned about the extra resources needed for a transplant center to have a separate QAPI program. Commenters suggested using the OPTN and SRTR as surrogates for transplant centers' QAPI programs. Some commenters recommended that transplant centers should be given the choice of using the hospital QAPI program or establishing a transplant-center-based QAPI program. A few commenters suggested using a formal QAPI program as part of a remediation process for centers that failed to comply with outcome measures.

Response: It is a common practice to use QAPI programs to improve the delivery of health care to patients. The intent of the QAPI requirement in this final rule is to develop a structured process for transplant centers to analyze and evaluate transplant patient outcomes data and transplant center processes continuously and effect changes accordingly. Hospitals have the flexibility to incorporate a transplant center's QAPI program into the hospital QAPI process. However, given the complexity and the uniqueness of some transplant issues, we disagree that a general hospital QAPI program or OPTN oversight alone could adequately substitute for a transplant center-based QAPI program. Further, we disagree that the OPTN and the SRTR should serve as surrogates for transplant centers' QAPI programs. Every transplant center should tailor its QAPI program to meet its needs and its patient population to better serve the best interests of its patients.

Comment: A commenter recommended expanding the components of the QAPI program to include adverse events, electronic prescribing, clinical decision support, bar coding, and provider and patient education.

Response: We thank the commenter for the suggestions. We agree that it is appropriate to include patient education as part of the QAPI components, and we have included this requirement in the regulation text at § 482.96(a) in this final rule.

As we proposed, this final rule includes a separate QAPI standard at § 486.92(b) that requires transplant centers to establish and implement written policies to address and document adverse events. Therefore, we do not believe it is necessary to list adverse events as one of the specific components of a QAPI program at § 482.96(a).

We believe the other components suggested by the commenter belong in the hospital's overall QAPI program because they affect patient care and other functions throughout the organization. Therefore, no other changes have been made based on this comment.

Comment: A few commenters supported the proposed standard for transplant centers to address transplant-related adverse events. A commenter noted that we should specify the frequency of internal and external audits of the adverse events reporting and analysis.

Response: We expect transplant centers to analyze adverse events as they occur and to make systemic and other changes promptly, as necessary, based on their analysis. However, this final rule does not specify the frequency of internal audits or external audits of adverse events. The frequency of adverse events reporting and analysis should be contained in a transplant center's QAPI adverse events policies.

Comment: Some commenters stated that JCAHO survey standards require hospitals to have QAPI policies and sentinel events reporting and investigation. The commenters were concerned that the proposed adverse event standard is redundant and resource-intensive.

Response: As stated earlier, to reduce redundancy, a transplant-oriented QAPI program can be integrated into a hospital's QAPI program for accreditation purposes. Therefore, we do not believe the adverse events requirement, which is one of the QAPI standards in this final rule, will be excessively resource-intensive.

Comment: A few commenters requested the exclusion of non-transplantation-related end-stage organ disease in the adverse events definition.

Response: We did not propose including non-transplantation-related end-stage organ disease in the definition of ''adverse events.'' The examples of adverse events provided in the definition of adverse events in both the proposed rule and this final rule relate only to donation by living donors and to transplantation.

Condition of Participation: Human Resources (Proposed § 482.98)

We proposed that transplant centers must ensure that all individuals who provide services and/or supervise services at the center, including individuals furnishing services under contract or arrangement, are qualified to provide or supervise such services.

We proposed that each transplant center must be under the general supervision of a qualified transplant surgeon or a qualified physician-director with designated responsibilities. We proposed that the director of a transplant center need not serve full-time and may also serve as a center's primary transplant surgeon or transplant physician in accordance with § 482.98(b).

We proposed that the director would be responsible for planning, organizing, conducting and directing the transplant center and must devote sufficient time to carrying out these responsibilities, which include, but are not limited to, ensuring:

(1) Adequate training of nursing staff in the care of transplant patients;

(2) That tissue typing and organ procurement services are available;

(3) That transplantation surgery is performed under the direct supervision of a qualified transplant surgeon in accordance with § 482.98(b).

We proposed that transplant centers must identify to the OPTN both a primary transplant surgeon and a primary transplant physician with the appropriate training and experience to provide transplantation services. We proposed that the transplant surgeon is responsible for providing surgical services related to transplantation, and the transplant physician is responsible

for providing and coordinating transplantation care.

We proposed that transplant centers must have a qualified clinical transplant coordinator to ensure the continuity of care of patients and living donors during the pre-transplant, transplant, and discharge phases of transplantation and the donor evaluation, donation, and discharge phases of donation. We proposed requiring that a qualified clinical transplant coordinator must be certified by the American Board of Transplant Coordinators (ABTC).

We proposed that a transplant center must identify a multidisciplinary transplant team and describe the responsibilities of each member of the team. We also proposed that the team must be composed of individuals with the appropriate qualifications, training, and experience in the relevant areas of medicine, nursing, nutrition, social services, transplant coordination, and pharmacology.

We proposed that a transplant center must demonstrate the availability of expertise in internal medicine, surgery, anesthesiology, immunology, infectious disease control, pathology, radiology, and blood banking as related to the provision of transplantation services. Following are summaries of the comments we received and our responses.

Comment: Although some commenters supported the proposal that transplant centers must ensure that all individuals providing transplant services are qualified, one commenter stated that transplant centers should have the flexibility to determine their own personnel needs. The commenter voiced concern that the cost of meeting the proposed staffing requirements would increase costs to such an extent that facilities would no longer be able to contract with managed care companies because managed care reimbursement would be insufficient to cover costs.

Response: We believe the staffing requirements in this final rule are critical for the protection of the health and safety of living donors and transplant recipients. Based on public comments, we have eliminated our proposed requirement for ABTC certification for clinical transplant coordinators, and we have added a requirement in this final rule for a living donor advocate or advocate team, which may increase overhead costs for some transplant centers. However, as we discuss in more detail in the Impact Analysis Section of this preamble, we do not expect the donor advocate or donor advocate team requirement in this final rule to increase costs substantially. In fact, we expect an average increase of less than $18,500 per transplant center annually.

Comment: Some commenters stated that the OPTN policies for transplant personnel are industry gold standards and that they should be adopted by us and monitored by the OPTN. One commenter stated that the OPTN and CMS human resources requirements should be consistent.

Response: We believe our requirements are consistent with OPTN policies and bylaws. Section 482.72 of this final rule requires transplant centers to be OPTN members. While the final rule governing the operation of the OPTN does not require transplant programs within OPTN member hospitals that receive their designation by virtue of their Medicare approval to meet the OPTN's on-site primary transplant surgeon and transplant physician requirements, such programs are reviewed by the OPTN, on a voluntary basis, for compliance with such requirements. We expect that transplant centers, as members of the OPTN, will have no difficulty meeting these regulatory requirements, as the OPTN requirements are more extensive than our requirements.

Comment: One commenter suggested that we should add a ''grandfather clause'' for transplant staff to § 482.98, Human resources, as a transition to the new human resources requirements. That is, transplant centers should be permitted to continue to employ their current staff, even if some staff do not meet specific education, training, or licensure requirements in the final rule.

Response: As we stated in our previous response, we expect that transplant centers who are OPTN members will have no difficulty meeting our requirements. Our requirements for transplant surgeons and physicians are congruent with OPTN requirements. Furthermore, we have eliminated the proposed requirement for ABTC certification for transplant coordinators based on public comments, and we replaced it with a requirement for a clinical transplant coordinator to be an RN or clinician licensed in the State in which the coordinator practices and to have specific job-related skills. We expect that all or nearly all currently-employed clinical transplant coordinators already have these qualifications. We are requiring a donor advocate or donor advocate team to have certain knowledge and abilities but not specialized education or training.

Comment: A commenter recommended that we require transplant centers to have a transplant pharmacist on the transplant team.

Response: Section 482.98(e) of this final rule states that the multidisciplinary transplant team must be composed of individuals with the appropriate qualifications, training, and experience in the relevant areas of medicine, nursing, nutrition, social services, transplant coordination, and pharmacology. Therefore, we expect that the team will include an individual with expertise in transplant pharmacotherapy. We have not made any changes in this final rule based on this comment.

Director of a Transplant Center

Comment: Some commenters supported the proposal that a transplant center be under the general supervision of a qualified transplant surgeon or a qualified transplant physician director. However, one commenter suggested that we clarify the requirements for a qualified director of a transplant center. The commenter suggested that we permit a surgeon or a physician who meets the OPTN requirements for a designated surgeon or physician to be a transplant center director. Other commenters suggested that we cross-reference the OPTN definition for transplant surgeon or transplant physician qualification in the final rule. Some commenters recommended that we require the qualified transplant center director to be a certified surgeon or physician who has completed an approved American Society of Transplant Surgeons (ASTS) training/fellowship and who has been certified for all transplant programs.

Response: We did not define the qualifications for a transplant center director, so that transplant centers will have the flexibility to recruit an OPTN-qualified transplant surgeon or physician for the position. The ASTS training/fellowship is one of the options for transplant surgeons to meet the OPTN training program requirement. However, there are other options surgeons can choose to meet the OPTN training requirement. We do not believe it is necessary to require transplant surgeons to participate in a specific organization's training program to be qualified to provide transplantation services in a Medicare-approved transplant center.

As we have stated in some of our previous responses, we are not incorporating OPTN policies and bylaws into regulations by cross reference because we would be required to go through notice and comment rulemaking every time the policies and bylaws changed. OPTN policies for transplant surgeons and physicians are very detailed and subject to frequent

changes. We believe that such changes will occur too often for us to incorporate them expeditiously into our regulations. We will provide guidance regarding the definitions of qualified transplant center directors, surgeons, and transplant physicians in the Interpretive Guidelines. However, we can assure transplant centers that transplant surgeons and physicians who meet current OPTN requirements will meet the requirements in this final rule.

Comment: One commenter pointed out that nurses do not routinely report to physicians in hospital settings. The commenter suggested that instead of holding the director of a transplant center responsible for ensuring adequate training of nursing staff in the care of transplant patients, we should require the hospital in which the transplant center is located to be responsible for the training of nursing staff.

Response: The commenter was correct in stating that nursing staff do not usually report to physicians in a hospital setting. Therefore, we have modified our proposed language at § 482.98(a)(1) in this final rule, to state that the director of a transplant center must collaborate with the transplant hospital in which the transplant center is located to ensure adequate training of nursing staff and clinical transplant coordinators in the care of transplant patients and living donors.

Transplant Surgeon and Physician

Comment: Some commenters recommended grandfathering all currently active transplant surgeons who have not completed an ASTS fellowship. They also recommended that we require an ASTS fellowship for all new transplant surgeons.

Response: Given that the OPTN gives transplant surgeons different options toward meeting the OPTN qualification requirements, we do not believe a grandfather clause is advisable. As stated previously, the ASTS training/fellowship is just one of the options for transplant surgeons to fulfill the OPTN training program requirements. Requiring all new transplant surgeons to complete an ASTS fellowship would be far too prescriptive and would be inconsistent with the OPTN bylaws.

Availability of Primary Transplant Surgeon and Physician

We received many comments urging us to conform our requirements to the OPTN policies and bylaws for transplant surgeons and physicians, and we believe that we should be consistent with the OPTN rules in this regard. Under OPTN bylaws, a transplant center designated under 42 CFR 121.9(a)(2) must have a primary transplant surgeon and a primary transplant physician onsite at all times. The immediate availability of a transplant surgeon is imperative to minimize time on the waiting list and mortality of transplant candidates. Recently, our surveyors discovered that the inability of a liver transplant center in California to retain a full-time transplant surgeon was a contributing factor to the center's high organ refusal rate, low numbers of transplants, and prolonged waiting time for transplant candidates.

Therefore, under the final rule, we require not only that a transplant center must identify to the OPTN a primary transplant surgeon and a transplant physician with the appropriate training and experience to provide transplantation services as proposed at § 482.98(b), but also that these individuals are immediately available to provide transplantation services when an organ is offered for transplantation. By ''immediately available,'' we mean that the transplant surgeon and transplant physician must be available to provide transplantation services within a time frame that ensures there is no compromise to the viability of the organ or the health of the organ transplant recipient.

Clinical Transplant Coordinator

Comment: Most commenters supported the proposed requirement for a transplant center to have a clinical transplant coordinator.

Response: Clinical transplant coordinators are important links for transplant patients and living donors to transplant centers and dialysis facilities. We believe that clinical transplant coordinators are essential in coordinating the continuity of care of patients and living donors. They provide guidance to transplant recipients during the pre-transplant, transplant, and post-transplant phases and to living donors during the pre-donation, donation and post-donation phases.

Comment: Many commenters supported the proposed requirement for American Board of Transplant Coordinators (ABTC) certification for a qualified clinical transplant coordinator and stated that the ABTC certification would minimize medical errors associated with donation and transplantation. A commenter stated that the ABTC certification is the ''gold standard''.

However, many commenters strongly objected to our proposed requirement for ABTC certification. The commenters said that a requirement for ABTC certification would be arbitrary, given that there are other agencies that certify coordinators. Many transplant center commenters attested that their clinical transplant coordinators are Advance Practice Nurses, have received in-house training, have received continuing education training, or are ABTC-qualified but not ABTC certified, yet they perform their responsibilities well and provide excellent patient care. The commenters suggested accepting sub-specialty certifications, such as critical care or case management, to qualify clinical transplant coordinators.

Some commenters stated that the ABTC requirement would create recruitment hardship, especially for pediatric centers, and eventually raise overhead expenses for transplant centers. A few commenters requested an extension for pediatric centers to meet the ABTC requirement. The commenters noted that pediatric transplant programs usually hire Pediatric Advanced Practice Nurses who then acquire pediatric transplant experience through on-the-job training. Some commenters estimated that it takes about 18 months for a clinical transplant coordinator to become ABTC certified. To ease the difficulty of recruiting ABTC certified transplant coordinators, especially pediatric clinical transplant coordinators, some commenters suggested that we should allow 2 years for a newly-hired transplant coordinator to obtain ABTC certification while he or she continues to work under the supervision of an ABTC-certified coordinator. One commenter suggested requiring ABTC certification for non-RN clinical transplant coordinators while allowing RNs to be certified by credentialing bodies other than the ABTC. Some commenters recommended grandfathering all clinical transplant coordinators with at least 5 years of work experience.

Some commenters did not believe that ABTC certification would improve the care of transplant patients. Other commenters suggested requiring the transplant director to be responsible for ensuring that clinical transplant coordinators receive adequate education and training. Several commenters recommended eliminating the ABTC certification requirement in the final rule.

Response: Since the publication of the proposed rule, we have further examined the education, training, and experience of individuals who serve as clinical transplant coordinators. Although the ABTC certification examination is a valuable avenue to demonstrate transplant knowledge and skill, we found that many clinical transplant coordinators are RNs, clinical

nurse specialists, and nurse practitioners who have acquired transplant knowledge and practice experience in a variety of roles and settings. In recent decades, alternative health care practice models have provided the opportunity for nurses and clinicians to take on an expanded role in transplantation. Therefore, we have concluded that commenters were correct that there is more than one way to acquire the necessary knowledge and skill to be a clinical transplant coordinator. Furthermore, we agree with the commenters that limiting certification to a single organization is not appropriate. Therefore, we have not included a requirement for ABTC certification for transplant coordinators, as we proposed at § 482.98(c).

However, we believe that clinical transplant coordinators should be registered nurses or have clinical experience, and we note that OPTN policies require the clinical transplant coordinator to be either a registered nurse or other licensed clinician. Therefore, in this final rule, we have added a requirement that the clinical transplant coordinator must be either a registered nurse or a clinician licensed by the State in which the clinical transplant coordinator practices, who has experience in and knowledge of, transplantation and living donation issues. (See § 482.98(c).) In addition, this final rule requires that the director of the transplant center must ensure that clinical transplant coordinators have adequate training in the care of transplant patients and living donors. (See § 482.98(a)(1).) Also, we have added language that describes the responsibilities of the clinical transplant coordinator, which include, but are not limited to: (1) Ensuring the coordination of the clinical aspects of transplant patient and living donor care; and (2) acting as a liaison between a kidney transplant center and dialysis facilities, where applicable. (See § 482.98(c).)

Comment: Some commenters asked how many ABTC-certified coordinators are required, that is, whether one coordinator per transplant hospital or organ-specific transplant center is sufficient or whether all coordinators would need to be ABTC certified. A commenter suggested requiring only one ABTC-certified coordinator on site to provide overall supervision to other non-ABTC certified coordinators. A commenter recommended requiring a transplant center to have either an ABTC-certified clinical transplant coordinator or a State-licensed nurse with proficiency in complex professional and administrative transplant skills.

Response: Although this final rule does not require ABTC certification, each organ-specific transplant center must have at least one clinical transplant coordinator who meets the requirements at § 482.98(c) of this final rule. Small transplant centers may share one clinical transplant coordinator.

Donor Advocate or Donor Advocate Team

Comment: The majority of commenters supported our proposed requirement for an independent living donor advocate or a multidisciplinary advocate team. The commenters stated that a living donor advocate or multidisciplinary advocate team can ensure continuity of care of living donors during the pre-donation, donation and post-donation phases.

Only one commenter said that the services of a donor advocate or donor advocate team would not add value to the process of living donation. A few commenters stated that the requirement for a living donor advocacy team would cause hardship for small transplant programs.

Response: We agree with the commenters who said that this requirement will serve the best interests of living donors. We expect that donor advocates and donor advocate teams will educate potential living donors about living donation, ensure that living donors have comprehensive medical and psychosocial evaluations, and make recommendations to the transplant team regarding prospective donors' suitability for donation. The presence of either a living donor advocate or an advocate team will encourage accountability for the protection of living donors' health and safety and ensure that principles of medical ethics and informed consent standards are applied to the practice of living donation.

Under this final rule at § 482.98, we state that a transplant center may choose to have either a living donor advocate or a donor advocate team. These individuals may be in-house hospital staff members who perform other duties in addition to their living donor advocate responsibilities. We believe this flexible approach will minimize the burden of providing donor advocacy services.

Comment: Some commenters stated that transplant centers should be given the flexibility to define their own policies for a living donor advocate program. A few commenters stated that it is unnecessary to require a transplant center to designate a living donor advocate or an advocate team as long as there is an independent process to assess a living donor's risks and the benefits of donation. One commenter suggested that transplant centers should be required only to offer the consulting services of an in-house transplant-educated health care worker not directly involved in transplant procedures.

Response: This final rule provides transplant centers with great flexibility in providing either a living donor advocate or donor advocate team. We do not specify requirements for a donor advocate's background, education, or training or the donor advocate team's composition. Instead, we specify their duties and the skills they must be able to demonstrate, specifically: (1) Knowledge of living organ donation, transplantation, medical ethics, and informed consent; and (2) understanding of the potential impact of family and other external pressures on the prospective living donor's decision whether to donate and the ability to discuss these issues with the donor. The independent living donor advocate or living donor advocate team is responsible for: (1) Representing and advising the donor; (2) protecting and promoting the interests of the donor; and (3) respecting the donor's decision and ensuring that the donor's decision is informed and free from coercion. A transplant center must identify either an independent living donor advocate or an independent living donor advocate team to ensure protection of the rights of living donors and prospective living donors. The living donor advocate or living donor advocate team must not be involved in transplantation activities on a routine basis.

Comment: Many commenters suggested that the donor advocate team should include a qualified social worker as described in the proposed rule or a medical social worker (a social worker working in a medical setting). One commenter suggested that a multidisciplinary advocate team should include an internal medicine physician, a transplant coordinator/nurse clinician, a licensed social worker with a master's degree, a psychiatrist, and an ethicist. Some commenters suggested that either the living donor advocate or advocate team members should be educated in organ transplants.

Response: We appreciate the commenters' suggestions for the composition of the multidisciplinary donor advocate team, and we agree that all the named professionals would be an asset to a donor advocate team. Transplant centers that choose to have a multidisciplinary donor advocate team may want to consider these suggestions in selecting appropriate team members to meet their needs. However, we believe it would be unnecessarily

prescriptive to require that donor advocate teams be composed of individuals from specific professions.

Comment: Many commenters stated that the living donor advocate or the advocate team should be independent from the transplant team. That is, transplant centers should use different physicians and social workers to work with transplant patients and living donors. A commenter stated that it is difficult for a hospital-employed living donor advocate to stay independent.

Response: We agree that the living donor advocate or donor advocate team should function independently from the transplant team to avoid conflicts of interest. Therefore, as stated earlier, this final rule at § 482.98 (d)(1) requires that the living donor advocate or living donor advocate team not be involved routinely in transplantation.

Comment: A commenter suggested that we designate the United Network for Organ Sharing (UNOS) as the gatekeeper for living donor rights and establish an Ombudsman as a resource for all donors nationwide.

Response: UNOS functions as a contractor for the OPTN to collect and track all transplant data, including living donor transplants. CMS does not have the authority to designate UNOS as the gatekeeper for living donor rights. Such suggestions should be referred to UNOS and HRSA. The suggestion that we establish an Ombudsman as a resource for all donors nationwide falls outside the purview of this regulation. Therefore, no changes have been made based on this comment.

Multidisciplinary Transplant Team and Resource Commitment

Comment: A few commenters stated that the OPTN policies already stipulate personnel requirements for transplant centers and that our proposed requirements either duplicated or were inconsistent with OPTN policies.

Response: We proposed that a transplant center must identify a multidisciplinary transplant team and describe the responsibilities of each member of the team. The team must be composed of individuals with the appropriate qualifications, training, and experience in the relevant areas of medicine, nursing, nutrition, social services, transplant coordination, and pharmacology. The OPTN has personnel requirements for certain personnel, such as a clinical transplant coordinator, transplant pharmacist, and financial coordinator. However, the OPTN does not have the transplant team requirements that we proposed and that we have finalized in this rule.

Comment: Many commenters suggested changing the term ''social services'' to ''social work'' (because there is ambiguity about who provides such services), and the term ''pharmacology'' to ''pharmacist'' because not all centers have pharmacologists but all centers have pharmacists.

Response: This final rule requires transplant centers to employ individuals with expertise in different relevant areas. We do not believe the terms ''social services'' or ''pharmacology'' need to be changed or clarified because this standard addresses the expertise of the individual transplant team members, and not the profession of these individuals. We made no changes based on this comment.

Comment: A commenter recommended changing ''immunology'' to ''immunology and immunosuppression management''.

Response: One facet of immunology as a science is the study of organ transplantation and immunosuppression. We expect that to comply with the requirement in this final rule to demonstrate resource commitment in immunology, a transplant center will demonstrate resource commitment and availability of expertise in both immunology and immunosuppression. We have made no changes based on this comment.

Comment: A commenter requested that we require pediatric transplant centers to demonstrate availability of expertise in ''pediatric medicine, pediatric surgery, pediatric urology, pediatric nursing, pediatric dialysis and pediatric intensive care.''

Response: To be in compliance with the requirements in this final rule, a transplant center must provide services appropriate to its patient population. For example, § 482.98(e) requires a transplant center to identify a multidisciplinary transplant team composed of individuals with the appropriate qualifications, training, and experience in the relevant areas of medicine, nursing, nutrition, social services, transplant coordination, and pharmacology. This means that the individuals who are part of a transplant team at a pediatric transplant center must have the qualifications, training, and experience to provide transplantation services to pediatric patients. Section 482.98(f) requires a transplant center to demonstrate availability of expertise in internal medicine, surgery, anesthesiology, immunology, infectious disease control, pathology, radiology, blood banking, and patient education as related to the provision of transplantation services. To meet this requirement, a pediatric transplant center must ensure that the expertise is commensurate with the needs of pediatric patients. Furthermore, the Department's OPTN regulations at 42 CFR 121.9 require transplant programs in OPTN member hospitals designated under OPTN criteria in § 121.9(a)(2)(v) to show evidence of collaborative involvement with experts in the fields of, among other disciplines, pediatrics as appropriate.

Comment: One commenter anticipated the rule will increase demand for nursing staff and suggested that we should recognize that Advanced Practice Registered Nurses (APRN) can play a role in transplant patient care.

Response: We agree with the commenter that APRNs play an important role in health care. Transplant centers certainly have the discretion to recruit APRNs for their transplant teams as they believe necessary.

Comment: One commenter said that the proposed resource commitment requirements would enhance patient's self-care management and positive patient outcomes. The commenter suggested that we add patient education.

Response: We agree that patient education enhances patient's self-care management and positive patient outcomes. In fact, most transplant centers provide ongoing patient education, which is provided by the transplant center staff, including transplant surgeons, physicians, nurses, transplant coordinators, dietitians, pharmacists, and social workers. We have adopted the comment to include patient education in this final rule as a required resource commitment for transplant centers at § 482.98(f).

Condition of Participation: Organ Procurement (Proposed § 482.100)

We proposed requiring transplant centers to ensure that the hospital in which the center operates has a written agreement for the receipt of organs with an OPO designated by the Secretary.

We proposed that the transplant center would be required to ensure that the transplant hospital's agreement with the OPO identifies specific responsibilities for the hospital and for the OPO with respect to organ recovery and organ allocation.

We proposed that the transplant center must notify us in writing no later than 30 days after the termination of any agreement between the hospital and the OPO. Following is a summary of the comments we received on our proposed

provisions and our responses to the comments.

Comment: A commenter stated that the proposed organ procurement provision is duplicative of 42 CFR 121.9(a)(2)(i).

Response: The commenter was correct in identifying similarities between this provision and the designated transplant program requirements in the Department's regulations for the OPTN at 42 CFR 121.9(a)(2)(i). Including the organ procurement requirements in this final rule provides us with oversight and enforcement authority and imposes the requirements on transplant programs that received their designation by virtue of their approval for reimbursement for Medicare.

Comment: A few commenters suggested requiring a center to notify the OPTN if its hospital's agreement with an OPO has been terminated.

Response: We do not believe terminating an agreement with an OPO is a step a hospital would take without the knowledge of the OPTN. Thus, we do not believe it is necessary for us to require a transplant center to notify the OPTN if the hospital in which it is located terminates its agreement with an OPO. We have made no change in this final rule based on this comment.

Note that for the sake of consistency and to facilitate transplant centers' use of the regulations, we have moved the requirement to notify us if the hospital in which a transplant center is located terminates its agreement with an OPO for organ recovery and receipt from § 482.100 to § 482.74(a)(3), Notification to CMS. This change locates all events that must be reported to us within the same condition of participation and results in consistent time frames for notification. The requirement for notifying us if the hospital in which a transplant center is located terminates its agreement with an OPO for organ recovery and receipt is changed from 30 days to ''immediately,'' to facilitate monitoring of waiting list patients' access to organs.

Condition of Participation: Patient and Living Donor Rights (Proposed § 482.102)

In our discussion of patient rights in the preamble to the proposed rule, we said that we believed a living donor advocate or advocate team would ensure that the informed consent standards meet ethical principles as applied to the practice of living donor organ transplantation. Thus, we requested comments on whether we should include a requirement in the final rule for transplant centers performing living donor transplants to provide the services of an independent living donor advocate or advocate team, as well as recommendations for individual or team credentials. Based on public comments, we have added a requirement in this final rule, at § 482.98(d) CoP: Human resources, for an independent living donor advocate or living donor advocate team. The preamble discussion of an independent living donor advocate or living donor advocate team is located under the Human resources section of this final rule.

We proposed that in addition to meeting the general hospital requirements for patients' rights in the hospital CoPs at § 482.13, a transplant center must protect and promote each transplant patient's and living donor's rights.

We proposed that the transplant center must have a written informed transplant patient consent process that informs each patient of: (1) The evaluation process; (2) the surgical procedure; (3) alternative treatments; (4) potential medical and psychosocial risks; (5) national and transplant center-specific outcomes; (6) the fact that future health problems related to the transplantation may not be covered by the recipient's insurance and that the recipient's ability to obtain health, disability, or life insurance may be affected; (7) organ donor risk factors that could affect the success of the graft or the health of the patient, including, but not limited to, the donor's history, condition or age of the organs used or the patient's potential risk of contracting the human immunodeficiency virus and other infectious diseases if the disease cannot be detected in an infected donor; and (8) his or her right to refuse transplantation.

We proposed that transplant centers must implement a written living donor informed consent process that informs prospective living donors of all aspects of living donation and potential outcomes from living donation. We proposed that transplant centers must ensure that prospective living donors are fully informed about the following: (1) The fact that communication between the donor and the transplant center will remain confidential in accordance with the requirements at 45 CFR parts 160 and 164; (2) the evaluation process; (3) the surgical procedure, including post-operative treatment; (4) availability of alternative treatments for the transplant recipient; (5) potential medical and psychosocial risks to the donor; (6) national and transplant center-specific outcomes for both donors and recipients; (7) the possibility that future health problems related to the donation may not be covered by the donor's insurance, and that the donor's ability to obtain health, disability, or life insurance may be affected; and(8) the donor's right to opt out of donation at any time during the donation process.

We proposed that a transplant center must notify its waiting list patients of information about the center that could impact the patient's ability to receive a transplant should an organ become available, and the procedures that are in place to ensure the availability of a transplant team.

We proposed that a transplant center served by a single transplant surgeon or physician would be required to inform its waiting list patients of the potential unavailability of the transplant surgeon or physician and whether the center had a mechanism to provide an alternate transplant surgeon or transplant physician that meets the hospital's credentialing policies.

We proposed that at least 30 days before a center's Medicare approval was terminated, whether voluntarily or involuntarily, the center would have to inform the patients on the waiting list of this fact, and must provide assistance to patients who choose to transfer to another Medicare-approved center, without loss of the patient's time accrued on the waiting list.

We also proposed that if a transplant center were terminated, such transplant center would have to inform Medicare beneficiaries on the center's waiting list that Medicare would no longer pay for transplants performed at the center after the effective date of the center's loss of approval.

We requested comments on the proposed requirement for a transplant center to inform patients of potential organ donor risk factors that could affect the success of the graft or the health of the patient, including, but not limited to, the donor's history; condition or age of the organs used; or the patient's possible risk of contracting the human immunodeficiency virus and other infectious diseases if the disease could not be detected in an infected donor. We also solicited comments regarding our proposed informed consent requirements for living donors, including those requirements we proposed adopting from the Secretary's Advisory Committee on Transplantation (ACOT) recommendations, and whether we would need to establish additional criteria for transplant centers performing living donor transplants.

Following are summaries of the comments we received and our responses.

Comment: Some commenters said that all kidney transplant centers should be

exempt from initial approval requirements (such as the requirement to perform 9 transplants) because a lengthy initial approval process would delay access to the new kidney center's transplantation services for Medicare beneficiaries.

Response: We share the commenters' concern that a lengthy approval process for kidney centers, particularly a requirement to perform 10 transplants prior to approval, may disadvantage Medicare beneficiaries who need kidney transplants by limiting their access to transplantation services at new kidney transplant centers. Under section 1861(s)(2)(J) of the Act, almost all ESRD transplant candidates must have their transplant surgery and follow-up care provided by a center that is already Medicare-certified in order for their immunosuppressant drugs to be paid for under Part B of Medicare as part of the Medicare transplantation services. Therefore, we are concerned that some new kidney centers may offer to provide free kidney transplants to Medicare beneficiaries in order to meet the Medicare clinical experience requirements and thus obtain Medicare approval expeditiously. These prospective kidney transplant candidates may not be aware of the implications for such free transplants that Medicare only pays for prescription drugs used in immunosuppressive therapy under Medicare Part B if the transplant was performed in a Medicare-approved facility.

Therefore, we have added a requirement under the CoP for Patient and Living Donor Rights at §§ 482.102(a)(8) and 482.102(b)(9) that a transplant center must inform Medicare beneficiaries who are prospective transplant recipients and their living donors that receiving a transplant that is not provided in a Medicare-approved transplant center could affect the transplant recipient's ability to have his or her immunosuppressive drugs paid for under Medicare Part B. See further discussion of this requirement in this preamble under ''Centers With Current Medicare Approval.''

Comment: A commenter recommended that the OPTN incorporate ACOT recommendations on transplant patient and living donor rights into its policies and monitor transplant center compliance. Another commenter suggested that we or the OPTN should provide transplant centers with sample education materials to educate donors about their rights.

Response: The OPTN has published a variety of transplant education brochures for centers to distribute to patients and living donors; the list of resources is available at *www.transplantliving.org*. Although the OPTN does not have any publications specific to living donation (with the exception of some limited information published in the booklet titled ''What Every Patient Needs to Know'') it has posted extensive living donation information on its Web site. Suggestions that the OPTN adopt ACOT recommendations are beyond the scope of this rule.

Informed Consent

We are removing the proposed requirement that transplant centers inform transplant candidates of ''the fact that future health problems related to the transplantation may not be covered by the recipient's insurance, and that the recipient's ability to obtain health, disability, or life insurance may be affected.'' This language was included in the proposed rule in the standard for informed consent for transplant patients at § 482.102(a)(6); similar language was included in the standard for informed consent for living donors at § 482.102(b)(7). It was intended to apply only to living donors. Thus, it has been removed at § 482.102(a)(6).

Comment: Many commenters supported the requirement for informed consent to protect patient rights. However, some commenters supported the adoption of the ACOT recommendations in their entirety, rather than the limited number of specific informed consent elements that we proposed. One commenter recommended that we require a standardized informed consent process for all transplant centers.

Response: We have chosen not to adopt the ACOT recommendations in their entirety because they are extensively detailed and go beyond what we perceive as necessary for Medicare approval. Instead, we have adopted the ACOT recommendations that are directly related to transplant patient and living donor rights. We have not included other recommendations that address organ donation, organ allocation, and organ procurement organizations. This final rule does not require a standardized informed consent process because such a requirement would deprive transplant centers of the flexibility we believe they need to develop informed consent policies that best serve their needs.

Comment: A few commenters stated that the proposed informed consent provisions for transplant patients and living donors are too prescriptive and not a standard practice in medicine. The commenters said that a transplant center's only legal obligation is to provide patients and living donors with sufficient information to make an informed decision. A few commenters said that the requirement for a written informed consent process is burdensome and unnecessary since hospitals already have informed consent policies that may be applicable to transplants.

Response: As a standard practice for any type of surgical procedure, a hospital has the obligation to provide patients with sufficient information to make informed decisions. We believe the elements of informed consent that we proposed and that we require under this final rule are the minimum necessary to ensure transplant patients and living donors can make an informed decision. (See § 482.102(a).) We believe this basic information should be provided to patients and living donors by all transplant centers.

We recognize that a transplant center's informed consent process may overlap with the hospital's informed consent process. A transplant center may choose to integrate the required elements for the transplant center informed consent process into the hospital informed consent process. We note, however, that transplant patients and living donors are uniquely vulnerable patients. Prospective transplant recipients desperately need scarce, life-saving organs, and many of them will die waiting. Prospective living donors are healthy individuals who are contemplating undergoing surgery, at some risk to themselves, to provide a life-saving transplant to another individual. These patients and prospective living donors must absorb a great deal of information in order to provide a truly informed consent.

In their recommendation, ACOT endorsed two ethical principles: (1) Equipoise; that is, the benefits to both the donor and the recipient outweigh the risks associated with the donation and transplantation of the live donor organ; and (2) that the potential donor's participation is completely voluntary and may be withdrawn at any time. We believe transplant centers should base their informed consent policies and procedures on these principles and implement them scrupulously. We made no changes based on these comments.

Comment: A commenter stated that once a transplant center documents in medical records that a patient's informed consent was obtained (including the specifics that were discussed), it should be sufficient evidence that an informed consent policy exists.

Response: We disagree. We expect a transplant center to have informed consent policies that include a written informed consent process and documentation that informed consent was given. Therefore, the documentation of informed consent alone would not be sufficient to substitute for a written informed consent policy.

Comment: Some commenters suggested eliminating the prescriptive informed consent language. One commenter stated that the requirement for a transplant center to inform patients about the patient evaluation process is too prescriptive.

Response: We believe the information in the elements of informed consent that we proposed and that are set forth in this final rule are necessary for patients to make an informed decision about transplantation. We also believe it is important for transplant candidates to understand how they will be evaluated for placement on the waiting list, how their readiness for transplant will be ascertained while they are awaiting transplantation (for example, through periodic blood tests), and what factors could require their removal from the waiting list.

Comment: Some commenters said that a transplant center should be required to use a patient education checklist to educate patients about transplant risks. One commenter asked how patient informed consent should be documented to comply with this requirement.

Response: A transplant center may use any patient education tools, such as a patient education checklist, to educate patients about transplant risks, as long as the center includes the required elements. A transplant center may choose to document the discussion of informed consent in any format as long as the discussion is documented in the patient's medical record.

Comment: One commenter stated that a last-minute discussion of potential donor risk with a transplant recipient would be extremely difficult because the window of time between organ procurement and transplantation is very short. The commenter said that it is unrealistic to require centers to repeat the extensive informed consent process at the time of transplantation and suggested that the discussion with transplant candidates about potential risks should be done well before an actual organ offer takes place. The commenter recommended that the informed consent process be limited to the point in time when a patient is placed on a transplant waiting list.

Response: We agree with the commenter. Our expectation is that discussion of potential donor risk factors should occur well before an organ is offered, for example, when the patient is first placed on the waiting list, and the information should be reviewed with the patient from time to time. We agree with the commenters that the time period between organ procurement and the offer of an organ may be too short for a thorough discussion of informed consent with patients. We do not expect a transplant center to rush through a detailed discussion of potential donor risk factors with transplant candidates just prior to transplantation.

Comment: Some commenters expressed concern that it could be impossible for transplant centers to discuss all potential organ donor risk factors with transplant candidates. Another commenter stated that requiring a transplant center to provide a written explanation of organ-specific risk factors to patients would be burdensome.

Response: Although it may not be possible for transplant centers to discuss every single potential organ donor risk factor with patients on their waiting lists, we expect centers to cover, at a minimum, the factors listed in the text of this final rule, that is, donor history; condition or age of the organs used; and the patient's risk of contracting the human immunodeficiency virus and other infectious diseases if the disease cannot be detected in an infected donor. Providing this information should ensure that patients understand before they make transplant decisions that certain factors may affect the success of their transplant. Transplant centers certainly have the flexibility to discuss other risk factors beyond those we have delineated in this final rule.

The requirement for transplant centers to have a written informed consent process does not mean that centers must provide a written explanation of organ-specific risk factors to transplant patients. As proposed, this final rule requires only that a transplant center inform patients of organ and organ donor risk factors.

Comment: A commenter recommended that we require transplant centers to provide some minimal information for patients contemplating acceptance of an extended criteria donor (ECD) kidney as follows: (1) The increased likelihood of delayed graft function; (2) decreased graft survival compared to a non-ECD kidney; (3) increased longevity compared to remaining on dialysis; (4) the potential for decreased waiting time for a donated kidney; and (5) the benefit of receiving a transplant prior to beginning dialysis, which may cause related morbidity and mortality.

Response: We agree with the commenter that these factors should be discussed with patients contemplating acceptance of an ECD kidney. As discussed in our previous comment, the fact that transplantation of certain types of organs (such as ECD or DCD organs) may have an effect on patient or graft survival must be discussed with transplant candidates, as appropriate. Thus, if a kidney transplant center transplants organs from ECDs, they should include all relevant facts about ECD organs in their discussion of organ donor risk factors with patients who are candidates for transplantation with an ECD organ, especially information about patient morbidity and mortality on dialysis versus transplantation with an ECD organ.

Comment: A commenter suggested letting the transplant surgeon decide based on OPTN guidelines whether the organ donor risk factors are significant enough to warrant a discussion with a patient.

Response: We agree with the commenter that the transplant surgeon should be responsible for taking the lead in discussing potential organ donor risk factors with the patient. At a minimum, we expect the transplant surgeon to discuss the potential organ donor risk factors described at § 482.102(a). The transplant surgeon also should decide whether other factors should be discussed. Although currently, there are no universal guidelines for organ donor risk factors, we believe surgeons should be able to reference current practices in their discussions with patients.

Comment: Some commenters objected to the proposed requirement to inform patients of national and center-specific transplantation outcomes, as indicated in the SRTR reports. The commenters stated that expected survival rates indicated in the SRTR do not reflect the potential compromise of outcomes resulting from the use of ECD/DCD organs by some centers.

In addition, the commenters were concerned that some patients may not have adequate knowledge to interpret the expected survival data properly.

Response: The national and center-specific outcomes as indicated in the SRTR reports are already publicly available at *http://www.ustransplant.org*. The SRTR has added ECD as one of the risk-adjustment factors used in calculating expected survival rates. The OPTN may consider including DCD organs as one of the risk-adjustment factors when more data are available.

Some patients may not be able to fully comprehend the SRTR reports. Nonetheless, we expect a transplant center to provide guidance to patients and families in finding and interpreting the SRTR reports in relation to the center's own patient outcomes. At a minimum, we expect a transplant center to provide prospective transplant recipients, their families, and prospective living donors with information from the most recent SRTR center-specific report, including (but not limited to) the transplant center's observed and expected 1-year patient and graft survival, national 1-year patient and graft survival, and notification about all Medicare outcome requirements not being met by the transplant center.

Comment: Many commenters supported establishing requirements for an informed consent process for living donors. Some commenters noted that informed consent for living donors protects the donor and reduces legal liability for the transplant team. Many commenters said that they specifically supported incorporating the ACOT recommendations into Medicare requirements. In fact, one commenter was concerned that we had not adopted all of ACOT's initial recommendations related to living donation.

Response: We agree that protections for living donors are essential. Therefore, as proposed, we are adopting the ACOT recommendations that address the health and safety of living donors.

Although we have not adopted the ACOT recommendations for living donors in this final rule in their entirety, because some of them fall outside the purview of this rule, we recommend that transplant centers that perform living donor transplants consider them when developing informed consent policies for living donors.

Comment: A commenter stated that there is no compelling reason why the proposed informed consent process for living donors should go beyond the OPTN requirements.

Response: Currently, the OPTN Living Donor Committee workgroup has identified living donor safety promotion as a major focus of the OPTN. However, standardized OPTN informed consent language for living donors has yet to be developed. In light of the fact that living donation is becoming more common, there is an increasing need to protect the health and safety of living donors. Further, as we have stated in our responses to previous comments including these requirements in regulations provides us with the authority for oversight and enforcement.

Comment: A commenter stated that the requirement for transplant centers to model the ACOT recommendations for informed consent for living liver donors is overbearing and noted that it should not apply to living kidney donors as living kidney donation is a more simplified procedure requiring fewer informed consent details.

Response: We did not propose requiring hospitals to adopt the ACOT recommendations for informed consent for living liver or kidney donors. We cited the documents in the preamble to the proposed rule only to provide guidance for transplant centers developing informed consent polices for living donors. However, all living donors deserve the same level of protection. Although individuals contemplating living donation of different organ types may need different information, all living donors should be provided with sufficient information on which to make a fully informed decision.

Comment: A commenter requested clarification on the requirement for documentation of informed consent for living donors, and the commenter asked if separate informed consent forms are needed for living donors.

Response: A transplant center may choose to document the discussion of informed consent with living donors in any manner it chooses. The center may document every discussion in detail or use a checklist or any other tool of its choice to indicate that all the core components were covered. We expect that transplant centers will use different informed consent forms for living donors since the informed consent components are slightly different than for transplant recipients.

Comment: A commenter noted that the presentation of the elements of informed consent to potential recipients and living donors should be easy to understand and consistent with each patient's native language and educational level. The commenter said that adequate time should be given to donors to make a donation decision that is free from coercion and noted that New York State law gives living donors 2 weeks to make a decision.

Response: We agree with the commenter's observations. Nevertheless, we have not specified requirements in this final rule for educational level or language for informed consent documents, nor have we specified a standard period of time prospective living donors be given to make a donation decision. We have avoided such prescriptive requirements throughout this final rule to provide transplant centers with the maximum flexibility to implement the rule's requirements according to their needs and the needs of their patient populations. Although we have not incorporated the commenter's suggestions into this final rule, we would urge transplant centers to consider the suggestions as they develop their informed consent process.

Comment: Some commenters supported the concept of informing living donors of short and long-term risks but suggested eliminating the requirement because providing this information would require the availability of a living donor registry that tracks these risks. A commenter recommended that the Secretary pursue action to establish a living donor registry.

Response: Currently, there is no official living donor registry. However, collection of living donor outcome metrics by the OPTN is ongoing, and the follow-up data period for live donors has been extended from 1 year to 2 years post-transplant. The OPTN is re-evaluating living donor follow-up forms, developing strategies to improve their completeness, and considering the development of a living donor registry. Once data for national and transplant center-specific outcomes for living donors are readily available to transplant centers, centers must begin providing the data to living donors to assist them in making a decision whether to donate. In the interim, each center must provide whatever data are available on its own living donor outcomes to prospective living donors. Should national living donor data become available in the future, transplant centers must provide this information to prospective living donors. Thus, we have added language at § 482.102(b)(6) that specifies living donors must be informed about national and center-specific outcomes for living donors, as data are available.

Notification to Patients

Note that we have removed the phrase ''that meets the hospital's credentialing policies'' from the end of the sentence ''whether or not the center has a mechanism to provide an alternate transplant surgeon or transplant physician that meets the hospital's credentialing policies'' in § 482.102(c)(1)(ii) of the proposed rule. A hospital where a transplant center is located should have a process for credentialing of its staff as required by § 482.22. Therefore, a requirement for an alternate transplant surgeon or transplant physician ''that meets the hospital's credentialing policies'' is unnecessary.

Comment: Some commenters supported the requirement for a transplant center to notify patients of information that could impact the patients' ability to receive an organ. Such information would include informing patients of the possibility that a center's sole transplant team might be unavailable when an organ becomes available and whether the center has a mechanism to provide an alternate transplant surgeon or transplant physician. However, other commenters said that the requirement would be burdensome. They stated that a requirement to notify patients about short-term absences (for example, sickness, vacation, and conferences) would be unrealistic. The commenters suggested that a requirement to notify waiting list patients of the unavailability of the transplant surgeon or physician for more than 30 days would be realistic.

Response: We did not propose nor do we require in this final rule that transplant centers notify waiting list patients about specific absences as they occur. Instead, we are requiring a transplant center served by a single transplant surgeon or physician to inform each waiting list patient of the possibility that the center's transplant surgeon(s) or physician(s) may not be available at the time an organ becomes available. We also require a transplant center to tell each waiting list patient whether the center has a mechanism to provide an alternate transplant surgeon or physician.

Comment: A commenter suggested that in the context of termination under § 482.102(c)(2), which requires a transplant center whose Medicare approval is terminated to inform waiting list patients at least 30 days prior to the termination, we should modify the 30-day requirement by adding ''and following the exhaustion of all appeals provided pursuant to [part] 498 * * *.''

Response: The general provisions under 42 CFR part 498 provide for an administrative judicial review of administrative determinations, for providers facing termination of Medicare approval. Thus, if a transplant center appeals a termination of Medicare approval under 42 CFR, part 498, the termination will not occur until the appeals process, if any, is completed. Therefore, there is no need to incorporate the commenter's suggested language.

Comment: A commenter stated that the proposed rule does not address how care would be provided for patients on the waiting list of a transplant center whose Medicare approval was terminated.

Response: We disagree. Sections 482.102(c)(2)(i) and (ii) of both the proposed rule and this final rule provide that at least 30 days before a center's Medicare approval is terminated, whether voluntarily or involuntarily, the center must inform patients on the center's waiting list. The transplant center also must provide assistance to waiting list patients who choose to transfer to the waiting list of another Medicare-approved transplant center without loss of time accrued on the waiting list. Further, the transplant center must inform Medicare beneficiaries on the center's waiting list that Medicare will no longer pay for transplants performed at the center after the effective date of the center's loss of Medicare approval.

This final rule adds a requirement at § 482.102(c)(3) for patient notification if a transplant center voluntarily inactivates. We require that as soon as possible, prior to a transplant center's inactivation, the center must inform patients on the center's waiting list and, as directed by the Secretary, provide assistance to waiting list patients who choose to transfer to the waiting list of another Medicare-approved transplant center without loss of time accrued on the waiting list. As we stated earlier, we intend to monitor transplant center inactivity closely.

Condition of Participation: Additional Requirements for Kidney Transplant Centers (Proposed § 482.104)

We proposed to delete some sections from part 405, subpart U and move some of the sections in subpart U to this final rule.

We proposed that kidney transplant centers be required to furnish: (a) Transplantation and other medical and surgical specialty services required for the care of ESRD patients; and (b) inpatient dialysis services, directly or under arrangement. We proposed that such kidney dialysis centers or units must meet the conditions for coverage of suppliers of ESRD services contained in part 405, subpart U.

We proposed that kidney transplant centers would be required to cooperate with the ESRD Network designated for its geographic area in fulfilling the terms of the network's current statement of work.

Following are summaries of the comments we received and our responses. Note that based on public comments summarized earlier in this preamble, we have added a requirement at § 482.104(a) that a kidney transplant center must have written policies and procedures for ongoing communication with dialysis patients' local dialysis facilities.

Comment: A commenter requested clarification about the extent to which a dialysis facility providing acute services to transplant recipients must meet the requirements of a chronic dialysis facility under the ESRD rule. Another commenter suggested deleting the proposed requirement for transplant centers that furnish inpatient dialysis services to meet the conditions for coverage for suppliers of ESRD Services contained in part 405 Subpart U. A commenter recommended that we add a new condition of participation for inpatient dialysis units to provide regulatory guidance for providers of inpatient dialysis services in acute care settings.

Response: Based on these comments and further analysis of our proposal, we have concluded that it is unnecessary to require transplant centers that provide inpatient dialysis services to kidney transplant patients to comply with the Conditions for Coverage for Suppliers of ESRD Services in part 405 subpart U. Kidney transplant centers are located inside hospitals that must comply with the Medicare hospital CoPs, which include quality standards that apply to all services provided by hospitals. Since inpatient dialysis services furnished either directly by kidney transplant centers or under arrangement are subject to the requirements in the hospital CoPs, we see no need to regulate inpatient dialysis services separately.

Therefore, we have removed the proposed requirement at § 482.104(b) that inpatient kidney dialysis centers or units must meet the Conditions for Coverage, part 405, subpart U for suppliers of ESRD services. We have retained in this final rule only the requirement that kidney transplant centers must furnish inpatient dialysis services directly or under arrangement. However, a kidney transplant center that furnishes outpatient dialysis services directly or under arrangement in dialysis centers or units is required to meet the Conditions for Coverage for Suppliers of ESRD Services contained in part 405, subpart U.

Comment: A commenter suggested requiring transplant centers performing pediatric kidney transplants to provide inpatient pediatric dialysis services with appropriate pediatric equipment and nursing expertise.

Response: We expect both pediatric and adult transplant centers to provide staffing, equipment, and other resources appropriate to the needs of their specific patient population. Since providing inpatient dialysis services to pediatric patients may require specialized

pediatric equipment and specific pediatric nursing expertise, we believe transplant centers should have the flexibility to determine how they will provide these services. We have made no changes in this final rule based on this comment.

Comment: A few commenters supported the requirement for kidney transplant centers to remain associated with the ESRD Network. However, one commenter stated that the proposed requirement for participation in network activities is duplicative of 42 CFR part 405, subpart U and requested clarification.

Response: Existing §§ 405.2110 through 405.2112 contain provisions that relate to the designation and functions of the ESRD networks. These provisions focus primarily on the role and responsibilities of the ESRD networks. Although we do not believe the role and responsibilities of the networks need to be included in this final rule, we believe that kidney transplant centers must continue to share information and collaborate with the networks. Thus, under § 482.104(c), we are finalizing our proposal that kidney transplant centers must cooperate with the ESRD network designated for their geographical area in fulfilling the terms of the network's current statement of work.

Deeming Authority (§ 488.6)

Under § 1865 of the Act and § 488.5 of the regulations, hospitals that are accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the American Osteopathic Association (AOA) are not routinely surveyed by the State survey agencies for compliance with the CoPs. Instead, they are deemed to meet the requirements based on either their JCAHO or AOA accreditation. In order to receive this deemed status, hospitals as well as other providers and suppliers, which are accredited by JCAHO, AOA, or other national accreditation programs with deeming authority under § 488.6 of the regulations (see part 488, Survey and Certification Procedures), must meet requirements that are at least as stringent as the Medicare CoPs. Therefore, an accreditation organization could apply for and receive approval of deeming authority for the transplant center CoPs if the accreditation organization demonstrates that its requirements for transplant centers are at least as stringent as those in this final rule. In this final rule, we are amending § 488.6, as described at 42 CFR part 488, subpart A, to include transplant centers, except for kidney transplant centers, among those providers and suppliers that are eligible to receive deemed status based on such an accreditation. A transplant center can choose to meet the requirements through the accreditation process or through a State survey. As a designee of CMS, an accrediting organization or a State survey agency must survey each transplant center's compliance with the clinical experience, outcome, data submission, and process requirements. In either case, the special procedures for transplant centers, as described under § 488.61, will ultimately guide the survey process.

Special Procedures for Approval and Re-Approval of Organ Transplant Centers (Proposed § 488.61)

We proposed utilizing the survey, certification, and enforcement procedures described at 42 CFR part 488, subpart A, including the periodic review of compliance and approval contained in § 488.20. We would retain § 488.60 to apply exclusively to ESRD facilities. Following are summaries of the comments we received and our responses.

(a) Initial Approval Procedures

We proposed that a transplant center would be permitted to submit a letter of request to us for Medicare approval at any time. We proposed that the letter, signed by a person authorized to represent the center, would have to include the hospital's Medicare provider I.D. number, name(s) of the designated primary transplant surgeon and primary physician, and a statement from the OPTN that the center had complied with all data submission requirements.

We proposed that we or our designee would determine a transplant center's compliance with the data submission and outcome requirements proposed at § 482.80(b) and (c). We or our designee would review the 1-year patient and graft survival data contained in the SRTR's most recent center-specific reports.

We proposed that, if both of the conditions in § 482.80(b)(4) applied, the center could ask the SRTR to prepare a customized report of the center's 1-month patient and graft survival data for the previous 1-year period. We or our designee would determine compliance with the outcome requirements contained at § 482.80(b) using the data contained in these customized reports.

We proposed that if we or our designee determined that a transplant center met the data submission and outcome requirements of § 482.80, we or our designee would conduct a survey and review the center's compliance with the conditions of participation contained at § 482.68 through § 482.76 and § 482.90 through § 482.104, using the procedures described at 42 CFR part 488, subpart A.

We proposed that if a transplant center seeking Medicare approval was found to be in compliance with all conditions of participation at § 482.68 through § 482.104, except for § 482.82 (Re-approval requirements), we would notify the transplant center in writing of the effective date of its Medicare approval or notify the transplant center in writing if it were not approved. We proposed that we would grant initial approval to a transplant center for 3 years.

(b) Re-Approval Procedures

We proposed that once Medicare-approved, a transplant center would have to be in compliance with all conditions of participation for transplant centers at § 482.68 through § 482.104, except for § 482.80 (Initial approval requirements) throughout the 3-year approval period.

We proposed that at least 180 days before the end of the 3-year approval period, we or our designee would review the transplant center's data in making re-approval determinations.

We proposed that: (1) To determine compliance with the data submission requirements at § 482.82(a), we or our designee would request data submission data from the OPTN for the previous 3 calendar years; and (2) to determine compliance with the outcome requirements at § 482.82(c), we or our designee would review the data contained in the most recent SRTR center-specific reports.

We proposed that if we or our designee determined that a transplant center met the data submission and outcome requirements at § 482.82, the transplant center would be re-approved for 3 years.

We proposed that if we or our designee determined that a transplant center failed to meet the data submission or outcome requirements contained at § 482.82, the transplant center would be surveyed for compliance with § 482.68 through § 482.76 and § 482.90 through § 482.104, using the procedures described at 42 CFR part 488, subpart A.

We proposed that we or our designee would notify the transplant center in writing if it were re-approved or if its approval were being revoked. If re-approved, we or our designee would notify the transplant center of the effective date of the re-approval.

(c) Loss of Medicare Approval

We proposed that centers that lost their Medicare approval would be permitted to seek re-entry into the program at any time, using the procedures described at § 488.61(a). We proposed that a center that lost its Medicare approval would be required to be in compliance with §§ 482.68 through 482.104, except for § 482.82 (Re-approval procedures), at the time of the request for Medicare approval. We proposed that a center seeking to re-enter the Medicare program would be required to submit a report documenting any changes or corrective actions the center took as a result of the loss of its Medicare approval status.

We proposed that transplant centers with current Medicare approval would be permitted to continue to provide transplant services until we notified them whether they were approved under the new CoPs for transplant centers. For clarity we are adding the words ''OPTN Data Report'' to the regulation text for this section to describe the source of the data we will review to determine compliance with the clinical experience requirements. Following are summaries of the comments we received and our responses.

Initial Approval Procedures for New Transplant Centers

Comment: Some commenters disagreed with the proposed process for initial approval of transplant centers, specifically, that if a center did not meet the data submission and/or outcome requirements, the center would not be considered for approval. Some commenters stated that data submission and outcome measures should be used only as indicators and not as pass/fail tests to approve centers. Other commenters suggested that the initial approval procedures should be similar to the proposed re-approval procedures, so that centers failing to meet the data and outcome requirements would not be denied Medicare approval automatically but would be surveyed to determine whether they should be approved.

Response: In view of the public comments, as well as the potential disruption for Medicare beneficiaries if a large number of currently approved centers are denied initial approval under the requirements of this final rule, we will not deny initial approval to a transplant center automatically as we proposed at § 488.61, if it fails to meet the data, clinical experience, or outcome requirements at § 482.80. Instead, we will take a flexible approach to our initial approval of transplant centers, as described at § 488.61 in this final rule. For the initial approval process, we will conduct a follow-up survey in all instances at currently Medicare-approved transplant centers if the center has not met the clinical experience and/or outcome requirements. We will exercise our discretion for new applications to the Medicare program. CMS will prioritize the scheduling of follow-up surveys based on the center's volume and outcome measurements and the program's history. CMS will survey these centers for the remaining conditions of participation and develop plans of correction for any condition or standard that is not met. If a center has ''failed'' the outcome measures, we will expect the plans of correction to include steps to improve these outcomes within a reasonable time frame (for example, by the next release of outcomes in the center-specific report).

Thus, under this final rule at 488.61(a)(3), if we determine that a transplant center, including a kidney transplant center, applying for initial approval has not met the data submission, clinical experience, or outcome requirements, we may deny the request for approval or we may review the center's compliance with the conditions of participation at § 482.72 through § 482.76 and § 482.90 through § 482.104, using the procedures described at 42 CFR part 488, subpart A, to determine whether the center's request should be approved. Our review may include a survey of the transplant center. We will notify the transplant center in writing whether its request has been approved and, if approved, the effective date of its approval.

However, we will not grant initial approval unless: (1) The center has met or has come very close to meeting the data, clinical experience, and outcome requirements; and (2) the center is in compliance with all other conditions of participation. In the initial approval process, we will give the center an opportunity to correct any areas that do not meet the Conditions of Participation in a reasonable time period through a Plan of Correction that is developed by the Center, and approved and monitored by CMS.

Following are examples of situations in which a transplant center applying for initial approval fails to meet the data submission, clinical experience, or outcome requirements and, for each example, an explanation of why we would or would not approve the center.

Example 1: A large heart transplant center that is currently Medicare approved under the NCDs applies for initial approval under the new CoPs. The center consistently performs a large number of heart transplants annually and demonstrates superior performance on the outcome requirements. However, the transplant center has not met the data submission requirement by submitting 95 percent of the required data to the OPTN within 90 days of the due date. In fact, in the preceding 12 months, the transplant center submitted less than 90 percent of its transplant data within 90 days of the due date.

Because of the transplant center's extensive clinical experience and superior outcomes, we perform a review of the center and determine that the center meets all conditions of participation other than the standard for data submission. The transplant center submits a plan of correction to us, demonstrating how it plans to come into compliance with the data submission requirement by hiring additional staff to collect transplant data and report it to the OPTN. We review and accept the plan of correction and approve the center.

Example 2: A small, currently-approved liver transplant center applies for initial approval under the new CoPs. The center is the only liver center in a large western state that is primarily rural. The center meets the data submission requirement and its outcomes are acceptable. However, the center performed only 7 transplants in the preceding 12 months. Because the transplant center meets the data submission and outcome requirements and because it is the only liver transplant center in a largely rural state, we perform a review of the center and determine that it meets all the standards other than the clinical experience requirement. The center submits a plan of correction, detailing how it will attempt to meet the clinical experience requirement in the future (for example, by accepting more extended criteria organs for its patients). We accept the plan of correction and approve the center.

Example 3: A small kidney center that is currently approved under the ESRD CfCs applies for approval under the new CoPs. The kidney center meets the data submission requirement. The center performed 2 of the 10 transplants in the preceding 12 months and its outcomes are slightly below what is required under the CoPs. Although the center failed to meet both the clinical experience and the outcome requirements, we will review the transplant center's compliance with the other conditions of participation before making a decision on its request for approval. However, it is unlikely that we will grant approval under such conditions.

Example 4: A lung center located in a large city in the northeastern United States applies for Medicare approval under the requirements in the final rule. The lung center is currently Medicare approved. The center meets the data submission and clinical experience requirements. However, the center's 1-year observed patient and 1-year observed graft survival has been considerably below its expected 1-year expected patient and 1-year expected graft survival for the entire 2.5 year cohort. The center's outcomes show no sign of trending upward. We deny the center's request for approval. The center is free to re-apply at any time.

In summary, the flexibility of the initial approval process in this final rule will permit us to survey and possibly approve transplant centers that fail to meet the data submission, clinical experience, or outcome requirements when there are mitigating circumstances or when a transplant center's reported outcomes do not reflect the general high quality of its transplantation services. Based on the comments we received, § 488.61(a)(3) has been revised to read ''If CMS determines that a transplant center has not met the data submission, clinical experience, and outcome requirements, CMS may deny the request for approval or may review the center's compliance with the conditions of participation at § 482.72 through § 482.76 and § 482.90 through § 482.104, using the procedures described at 42 CFR part 488, subpart A, to determine whether the center's request will be approved. CMS will notify the transplant center in writing whether it is approved and, if approved, the effective date of its approval.''

Initial Approval Procedures For Centers With Current Medicare Approval

Comment: Commenters objected to the proposed requirement that all transplant centers with current Medicare approval must apply for initial approval under the CoPs.

Response: We do not believe it would be in the best interests of Medicare beneficiaries awaiting organ transplants to automatically approve centers with current Medicare approval because these centers were approved under NCDs for heart, liver, lung, and intestine centers or the ESRD CfCs for kidney transplant centers, which are different in many aspects from the CoPs in this final rule. For example, there are no outcome requirements for kidney transplant centers in the ESRD CfCs. Further, we know that some extra-renal transplant centers that were approved based on NCD criteria no longer meet those criteria. Therefore, automatically approving centers with current Medicare approval has the potential to permit a number of poor or marginal performers to continue to participate in Medicare. Based on these considerations, prior to approving currently approved transplant centers under our new requirements, we must first verify that they meet the CoPs in this final rule. The requirement for all currently-approved transplant centers to re-apply for initial approval under these new standards is consistent with our goals to increase transparency in the approval process and strengthen our oversight authority.

We expect all transplant centers, including kidney transplant centers, that are Medicare approved as of the effective date of this final rule that wish to continue to provide services to Medicare beneficiaries to be in compliance with the CoPs at §§ 482.72 through 482.104, as of the effective date of this final rule. Such transplant centers have 180 days from the effective date of this final rule to submit a request for Medicare approval under the CoPs at §§ 482.72 through 482.104, using the process described at § 488.61(b).

CMS will consider mitigating factors, including (but not limited to) the following in considering approval of a transplant center that does not meet the conditions of participation: the extent to which outcome measures are met or exceeded, availability of Medicare-approved transplant centers in the area, and extenuating circumstances (e.g., natural disaster) that may have a temporary effect on meeting the conditions of participation. In addition, the transplant center must submit to CMS and implement a plan of correction to meet the conditions of participation.

We will determine whether to approve the transplant center using the procedures described in paragraphs § 488.61(a)(2) through (a)(5). Until we make a determination whether to approve the transplant center's request for approval, the transplant center will continue to be approved under the ESRD CfCs (for kidney transplant centers) or the pertinent NCDs (for extra-renal transplant centers), as applicable. The transplant center will continue to be reimbursed for services provided to Medicare beneficiaries.

Once we approve a kidney transplant center under the CoPs, the ESRD CFCs will no longer apply to the transplant center as of the date of its approval. Once we approve an extra-renal transplant center under the conditions of participation, the NCDs will no longer apply to the transplant center as of the date of its approval. (See § 488.61(b).) Until we approve a currently approved transplant center under the CoPs in this final rule, the transplant center must continue to comply with the requirements in the NCDs or the ESRD CFCs, as applicable.

If a transplant center that is Medicare approved as of the effective date of this final rule does not submit a request to us for Medicare approval under the CoPs at §§ 482.72 through 482.104 within 180 days after the effective date of the final rule, or if the transplant center applies timely, but we do not approve the transplant center under the CoPs in this final rule, we will revoke the transplant center's approval under the CfCs for kidney transplant centers or the NCDs for extra-renal transplant centers, as applicable, and the transplant center will no longer be reimbursed for services provided to Medicare beneficiaries. CMS will notify the transplant center in writing of the effective date of its loss of Medicare approval.

Re-Approval Procedures

We asked the public and the five peer reviewers to comment on the following re-approval issues: (1) The feasibility and utility of the alternative approach to re-approve transplant centers based on random surveys; (2) methodology for selecting a random sample for surveys; (3) the necessity of surveying all centers every 3 years, regardless of their compliance with data submission and outcome measure requirements; and (4) the appropriateness of making re-approval survey decisions based on OPTN information (that is desk review, on-site audits and action(s) taken since last Medicare approval).

Following are the comments we received and our responses.

(1) The Feasibility and Utility of the Alternative Approach To Re-Approve Transplant Centers Based on Random Surveys

Comment: A peer reviewer agreed that a transplant center's compliance with data submission and outcome measure requirements by itself is not sufficient evidence for CMS to grant Medicare re-approval. However, two peer reviewers did not agree with using random surveys to identify transplant programs with deficiencies and stated that random surveys would miss many programs whose performance may warrant a survey. One peer reviewer supported using random surveys to re-approve transplant centers and believed it to be a systematic approach to assess transplant centers. One peer reviewer stated that Medicare's re-approval process should rely on the OPTN's monitoring and oversight process for transplant centers.

Many public commenters also agreed with our concern that a center's compliance with data submission and outcome requirements may not necessarily indicate a center is also in compliance with the process requirements. These commenters supported targeted or random surveys to determine re-approval decisions. However, one commenter said that random surveys for re-approval are unnecessary if a center has demonstrated consistent compliance with the requirements.

Response: We recognize that transplant center performance varies greatly and random surveys of centers may not be able to identify all poor performers. After carefully evaluating all the comments and taking into consideration the results of our recent survey of transplant centers, we believe finite resources are best used to survey the poorest performers and centers with significant deficiencies. Therefore, we will not perform random surveys as part of the re-approval process for transplant centers. Instead, we will review centers that do not meet the data submission, clinical experience, and outcome requirements for compliance with the CoPs before making our re-approval decision. The review may include an on-site visit. Under the final rule at § 488.61(c)(2), if we determine that a transplant center has not met the data submission, clinical experience, or outcome requirements at § 482.82, the transplant center will be reviewed for compliance with the conditions of participation at § 482.72 through § 482.76 and § 482.90 through § 482.104, using the procedures described at 42 CFR part 488, subpart A. Under the final rule at § 488.61(c)(3), if we determine that a transplant center has met the data submission, clinical experience, and outcome requirements at § 482.82, we may choose to review the transplant center for compliance with the conditions of participation at § 482.72 through § 482.76 and § 482.90 through § 482.104, using the procedures described at 42 CFR part 488, subpart A.

CMS will consider mitigating factors, including (but not limited to) the following in considering approval of a transplant center that does not meet the conditions of participation: The extent to which outcome measures are met or exceeded, availability of Medicare-approved transplant centers in the area, and extenuating circumstances (e.g., natural disaster) that may have a temporary effect on meeting the conditions of participation. In addition, the transplant center must submit to CMS and implement a plan of correction to meet the conditions of participation.

During the Medicare approval cycle, a transplant center will be reviewed at some point to ensure it is in compliance with the CoPs. The existing complaint investigation process and the use of relevant data, including the OPTN data, are good tools to identify centers with deficiencies.

As stated earlier, the OPTN and CMS oversight have a different focus, and they compliment each other. Therefore, we disagree with the commenter that OPTN oversight can substitute for CMS oversight. Further, we do not have the statutory authority to delegate regulatory authority to the OPTN to regulate transplant centers. No changes have been made in this final rule based on this comment.

(2) Methodology To Select a Random Sample for Surveys

Comment: Most peer reviewers had no comments on this issue. One peer reviewer suggested that 5–10% of small and large organ-specific centers should be selected for random surveys.

Response: We thank the peer reviewer for his suggestions. However, as stated in our responses earlier, we are not using random surveys to make re-approval decisions in this final rule. No changes have been made based on this comment.

(3) Whether Centers Should Be Surveyed Once Every 3 Years, Regardless of Their Compliance With Data Submission and Outcome Measure Requirements

Comment: A few commenters recommended surveying only centers that fail to comply with data submission and outcome measure requirements every 3 years. A commenter stated that all centers should be surveyed for compliance with the process requirements every 3 years, regardless of whether they are in compliance with data and outcome requirements. The commenter suggested allowing a plan of correction if a center is out of compliance with one or more conditions for coverage. Another commenter recommended that re-approval surveys be conducted only when a center has become an OPTN ''member not in good standing'' and only after exhaustion of all OPTN appeals processes and remedies. A commenter recommended that transplant centers be subject to only one survey every 3 years by either the OPTN or CMS but not both because surveys are burdensome, bureaucratic, and costly.

Two peer reviewers supported routine periodic survey of transplant centers for the purposes of: (1) Validating the timeliness and accuracy of data submission, (2) enhancing transplant centers' self-assessment process, and (3) sharing best practices to improve performance. A peer reviewer recommended surveying only centers that fail to comply with data submission and outcome measure requirements every 3 years. One peer reviewer stated that routine surveys are burdensome for centers that are performing well.

Response: We agree with the commenters and peer reviewers that transplant centers' data submission and outcome performance should be reviewed regularly to ensure they are in compliance with all of our requirements, even if they are consistently in compliance with data submission and clinical experience requirements. Nonetheless, we are also mindful of the potential burden on centers that are in compliance with the CoPs. Therefore, we will minimize the burden for transplant centers by conducting targeted re-approval surveys. For example, a center that barely meets the outcome requirements may be surveyed every 3 years, while a center that consistently has superior outcomes may be surveyed less often.

As stated previously, transplant centers will be subject to the same remediation process, including plans of correction, used for nearly all other Medicare providers and suppliers.

Also, we disagree with the commenter's suggestion to use the OPTN membership status of ''not in good standing'' as a trigger for surveys because the OPTN may designate a member as ''not in good standing'' for reasons that have nothing to do with the center's compliance with CMS's regulatory requirements (for example, OPTN organ allocation policies). If a transplant center were to become an OPTN ''member not in good standing,'' we most likely would treat the member's status with the OPTN as a complaint and conduct a survey of the center to determine its compliance with our regulatory requirements. If a Medicare provider is substantially out of compliance with our conditions of participation, we must take independent action promptly to oversee the provider's development and implementation of a plan of correction. We must base our decision whether to review or survey a center on issues that directly relate to the requirements in this final rule. Therefore, no changes have been made based on this comment.

Comment: Some commenters supported the re-approval procedures for Medicare-approved transplant centers and the 3-year re-approval cycle. However, some commenters suggested extending the approval cycle to 5 or 6 years.

Response: We agree with the commenters that centers should be monitored and re-approved every 3 years. Ongoing evaluation is critical to ensure that after Medicare approval, a center continues to meet Medicare requirements. Frequent, active oversight of transplants centers helps to ensure that Medicare beneficiaries continue to receive high quality transplantation services. We disagree that 5 or 6 years is an appropriate time period for re-

approval. Given rapid changes in the field of transplantation, a center's performance may change radically in 5 or 6 years from its initial Medicare approval.

Comment: A peer reviewer requested clarification on whether CMS will rely on the OPTN's Membership and Professional Standards Committee's (MPSC) extensive method to flag centers for further review or develop a similar method for this scrutiny.

Response: We plan to convene a technical expert panel to develop a similar methodology for targeting transplant centers for survey. However, we expect to minimize burden for transplant centers by conducting targeted re-approval surveys.

Comment: A peer reviewer favored a periodic ''self-study'' report by all programs regarding the state of their compliance with process requirements. A robust self-study process could potentially eliminate the need for, or reduce the frequency of, on-site surveys.

Response: We welcome the idea of transplant centers performing periodic ''self-study'' to assess their compliance with the process requirements. We urge transplant centers to consider incorporating a robust self-study process to enhance their preparedness for surveys. No changes have been made based on this comment.

(4) Use of OPTN Information To Identify Centers That Need To Be Surveyed

Comment: Many commenters agreed that it would be appropriate to make survey decisions based on OPTN information since it is widely accepted by U.S. health care payers. Nonetheless, a peer reviewer cautioned that routine use of OPTN information may alter the generally collegial responses that the OPTN receives from transplant programs. Transplant centers may become less open, less responsive, and more guarded. The peer reviewer said that this possibility should be carefully considered if the OPTN information-based survey approach is taken. The peer reviewer also recommended that we clearly define the thresholds for passing OPTN information to CMS.

Another peer reviewer was concerned that the sharing of OPTN data with CMS jeopardizes the confidentiality of transplant centers' data submissions to the OPTN under applicable laws and regulations protecting peer review processes employed by the OPTN committees. The reviewer recommended adding language to note that nothing in the final rule changes existing OPTN rules and policies with respect to confidentiality of data obtained from centers, as part of its oversight and compliance obligations.

Response: We agree that the use of OPTN information for survey decisions is appropriate since it is transparent, acceptable to the transplant community, and is publicly available. We will use relevant information such as OPTN data to prioritize survey decisions.

We do not believe the sharing of OPTN data with us jeopardizes the confidentiality of transplant centers' data under applicable laws and regulations because the OPTN final rule at 42 CFR part 121, states in § 121.11(b)(1)(iii) that the OPTN and the SRTR, as appropriate, shall provide to the Secretary any data that the Secretary requests. Because of the language in part 121, we do not see a need to add clarifying language with respect to confidentiality of data obtained from centers. We expect the OPTN/MPSC to continue its review process to flag centers for further review and we expect that centers will continue to maintain their collegial relationships with the OPTN.

Comment: A public commenter asked whether CMS or some other agency or organization will monitor transplant center's compliance with the outcome requirements. One commenter recommended that CMS consult with the OPTN.

A peer reviewer stated that we need to delineate the methodology we will use to survey transplant centers, identify the designated organization that will perform the surveys, and provide assurance that the organization has the experience and expertise to perform transplant center surveys.

Response: Although we have not yet determined which entity will monitor extra-renal transplant centers, we will inform them as soon as possible. Kidney transplant centers will not be monitored by any of the national accrediting bodies. Pursuant to sections 1865(b)(1) and 1881(b) of the Act, kidney transplant centers cannot be deemed by a national accreditation body to meet the Medicare conditions of participation. If a national accrediting organization applies for deeming authority for any of the extra-renal transplant centers, we will assess its expertise and review its application. If an accrediting organization is approved for deeming authority the transplant centers will be routinely reviewed (which could include surveys) by the accrediting organization. We will continue to have oversight responsibility for complaint surveys and validation surveys and will work closely with the accrediting organization on an ongoing basis. Most transplant centers are located in accredited hospitals and surveys of the transplant center may be combined with the routine survey of the hospital which may allow for a more efficient review since some of the transplant center documentation and records will be combined with the hospital records. We will include information about how transplant center surveys will be performed in the Interpretive Guidelines that we will develop following publication of the final rule. Under this final rule, we will monitor transplant center compliance with the clinical experience and outcome requirements. We will continue to work with the OPTN through HRSA on transplant center issues.

Accreditation, Corrective Actions, Appeal Process and Loss of Medicare Approval

We requested comments on whether transplant centers should be regarded as providers or as suppliers for the purpose of appealing adverse approval and re-approval decisions.

Comment: A commenter suggested that transplant centers should be identified as a provider in the regulations for accreditation and appeals purposes. One commenter suggested that the part 498 appeals process is an appropriate mechanism for transplant center appeals. Another commenter requested that we state clearly that the denial of initial approval and re-approval is a determination that triggers appeal rights under part 498.

Response: We agree with the commenter that transplant centers should have provider status for accreditation and appeals purposes because transplant centers are located within hospitals, which are considered providers under the Medicare program. Therefore, we have added transplant centers to the list of providers in 42 CFR 498.2 that have the right to appeal decisions that affect their participation in the Medicare program. Additionally, we have added transplant centers to the list of providers and suppliers in 42 CFR 488.6 that can receive deemed status through an accrediting organization. Transplant centers that apply for and are denied Medicare approval, as well as Medicare-approved transplant centers that are terminated from the Medicare program may appeal these decisions under part 498.

Comment: A few commenters recommended that a center should be allowed to continue Medicare participation pending exhaustion of any appeals, provided that its treatment of Medicare beneficiaries does not jeopardize their health and safety.

Response: In most cases, Medicare providers and suppliers are permitted to continue to participate in Medicare while an appeal is pending, unless the deficiency is such that the health and safety of patients is in immediate jeopardy.

Comment: Many commenters asked us to clarify whether transplant centers that do not meet the data and outcome requirements in the initial approval and re-approval process will have an opportunity for corrective action. A commenter suggested that we should provide a process of remediation and corrective actions for centers that fail to comply with the data submission and outcome requirements that is like the process for hospitals that face termination from the Medicare program. A commenter recommended 180 days for centers to submit acceptable plans of correction and correct deficiencies through the use of an acceptable QAPI program. Another commenter stated that we should consult with the OPTN before denying re-approval of Medicare-approved centers. A commenter suggested that we should review a center for potential termination of Medicare approval only when the Secretary has been notified of an OPTN decision to take adverse action against the center. A commenter recommended that we adopt the OPTN remediation process for centers failing to meet outcome requirements.

Response: Once approved under the requirements of this final rule, transplant centers will be subject to the same remediation process used for nearly all other Medicare providers and suppliers. Under the process for re-approval, a transplant center found to be out of compliance with one or more CoPs, including the CoP for data submission, clinical experience, and outcome requirements, will have an opportunity to come back into compliance once it has submitted an acceptable plan of correction. Generally, the transplant center will be permitted to continue to provide services to Medicare beneficiaries while we monitor implementation of the plan of correction. We also will use this process if we find, during a complaint investigation, that a transplant center is out of compliance with one or more conditions of participation. We do not have a remediation or corrective action process for entities that apply for initial Medicare certification or approval under this final rule and fail to meet the requirements. However, a transplant center that is not approved may re-apply for initial approval at any time.

We will include additional details about the processes for initial approval and re-approval, plans of correction, and other matters related to survey and certification of transplant centers in Interpretive Guidelines for surveyors and manual instructions that will be published following the effective date of this final rule.

III. Provisions of the Final Rule

In the final rule, we are adopting the provisions as set forth in the February 4, 2005 proposed rule with the following revisions:

Amend § 482.70, ''Definitions,'' by—

- Revising the term ''adverse event.'' The proposed definition listed two examples of adverse events related to living donors: ''living donor death due to mismanagement of the donor'' and ''avoidable loss of a healthy living donor.'' We have replaced these two examples with ''serious medical complications or death caused by living donation'' to clarify that the death or serious medical complications due to living donation of any living donor should be investigated as an adverse event. The proposed definition also listed another example of an adverse event as ''transplantation of organs of mismatched blood types due to failure to validate the donor and recipient's vital information.'' We have revised this example to now read ''unintentional transplantation of organs of mismatched blood types'' in order to further clarify this term.
- Removing the term ''intestinal'' wherever it appears, when referring to such transplants and transplant centers, and adding in its place the term ''intestine.''

Amend § 482.72, ''Condition of participation: OPTN membership,'' by—

- Revising the beginning of the last sentence in the condition statement by changing it from ''No transplant hospital * * *'' to ''No hospital that provides transplantation services * * *''

Amend § 482.74, ''Condition of participation: Notification to CMS,'' by—

- Redesignating the proposed introductory text as paragraph (a) and proposed paragraphs (a) and (b) as paragraphs (a)(1) and (a)(2) respectively.
- Revising the newly redesignated paragraph (a) to read ''A transplant center must notify CMS immediately of any significant changes related to the center's transplant program or changes that could affect its compliance with the conditions of participation. Instances in which CMS should receive information for follow up, as appropriate, include, but are not limited to: * * *''
- Redesignating § 482.100(b) as § 482.74(a)(3) and revising newly designated paragraph (a)(3).
- Adding a new paragraph (a)(4) to clarify that a transplant center must notify CMS immediately of its inactivation.
- Adding a new paragraph (b) to specify the actions CMS will take to follow-up with a transplant center that notifies us of significant changes in their program.

Amend § 482.76, ''Condition of participation: Pediatric transplants,'' by—

- Removing the word ''wishes'' and adding in its place ''seeks Medicare approval'' in the condition statement to clarify that it is only those centers seeking Medicare approval to perform pediatric transplants that must submit a request for this specific purpose.
- Adding the phrase ''in a 12-month period'' after ''A center that performs 50 percent or more of its transplants,'' at proposed § 482.76(b) to clarify that a center that performs predominately adult transplants must be approved to perform adult transplants in order to be approved to perform pediatric transplants.
- Adding the phrase ''in a 12-month period'' after ''A center that performs 50 percent or more of its transplants'' at proposed § 482.76(c) to clarify that a center that performs predominately pediatric transplants must be approved to perform pediatric transplants in order to be approved to perform adult transplants.
- Revising proposed § 482.76(c)(3) to read ''A center that performs 50 percent or more of its transplants on pediatric patients in a 12-month period is not required to meet the clinical experience requirements prior to its request for approval as a pediatric transplant center.
- Adding the citation of ''Omnibus Budget and Reconciliation Act (OBRA) 1987 criteria in section 4009(b) (Pub. L. 100–203)'' at paragraph (d) to clarify that the alternate criteria for Medicare approval of heart transplant centers providing transplantation services to pediatric heart patients are mandated by statute, and in paragraph (d)(1) changing the word ''center'' to ''hospital'' to conform with the language in OBRA 1987.

Amend § 482.80, ''Condition of participation: Data submission and outcome requirements for initial approval of transplant centers,'' by—

- Adding the phrase ''clinical experience'' to the CoP section heading and to the condition statement to clarify that there is a clinical experience requirement, and so that the heading now reads ''Data submission, clinical experience, and outcome requirements for initial approval of transplant

centers.'' (The appropriate revisions regarding the clinical experience requirements for approval and re-approval, including the special procedures for approval and re-approval described at § 488.61, have been made throughout the final rule.)

• Revising the condition statement. Throughout the proposed rule the terms ''outcome measure'' and ''outcome measure standards'' are used. We have replaced both terms with ''outcome requirements'' here and throughout the final rule in order to clarify, through the use of a uniform term throughout, that these are requirements and not measures or standards. We have done this, along with our removal of the reference to waivers in the proposed rule, in order to further clarify that centers not meeting the data submission, clinical experience, and outcome requirements may be reviewed to augment CMS's approval decisions.

• Removing in paragraph (a) ''transplant recipient registration, and recipient follow-up'' and adding in its place the words ''transplant recipient registration and follow-up.'' In addition, adding at the end of paragraph (a) ''and living donor registration and follow-up'' to clarify that they are part of the required data submissions.

• Adding a new paragraph (b), Standard: Clinical Experience requirements. An organ-specific transplant center generally must perform 10 transplants over a 12-month period.

• Re-designating proposed § 482.80 paragraph (b) as paragraph (c) and revising the paragraph heading to now read ''(c) Standard: Outcome requirements.'' All references to this paragraph have been amended accordingly.

• Revising proposed § 482.80 paragraph (b)(1) (now (c)(1)) by removing the words '' as long as the center has 1-year post-transplant follow-up on at least 9 transplants of the appropriate organ type.''

• Revising proposed § 482.80 paragraph (b)(2) (now (c)(2)) by removing the words ''The 9'' and adding in its place the words ''The required number of'' so that the paragraph now reads: ''The required number of transplants must have been performed during the time frame reported in the most recent SRTR center-specific report.''

• Removing proposed § 482.80 paragraphs (b)(4), (b)(5), and (b)(6) to clarify that a center may not request CMS to review its 1-month patient and graft survival outcomes for all transplants performed in the previous 1-year period in lieu of 1-year patient and graft survival outcomes if certain conditions are met. We are not finalizing the proposed review of 1-month post-transplant data of new centers seeking Medicare approval.

• Re-designating proposed § 482.80 paragraph (c) as paragraph (d) with the heading continuing to read ''Exceptions.'' All references to this paragraph have been amended accordingly.

• Revising newly re-designated paragraph (d)(1) to clarify that heart-lung transplant centers are not required to meet the clinical experience requirements or the outcome requirements for heart-lung transplants performed at the center.

• Revising newly re-designated paragraph (d)(2) to clarify that intestine transplant centers are not required to meet the outcome requirements for intestine, combined liver-intestine, or multivisceral transplants performed at the center.

• Revising newly re-designated paragraph (d)(3) to clarify that pancreas transplant centers are not required to meet the clinical experience requirements or the outcome requirements for pancreas and kidney-pancreas transplants performed at the center.

• Removing in newly re-designated paragraph (d)(4) the words ''perform a minimum number of pediatric transplants'' and adding in its place the words ''comply with the clinical experience requirements in paragraph (b)'' to clarify that a center requesting initial Medicare approval to perform pediatric transplants does not have to comply with the clinical experience requirements prior to its request for approval as a pediatric transplant center.

• Adding paragraph (d)(5) to state that ''a kidney transplant center that is not Medicare-approved on the effective date of this final rule is required to perform at least 3 transplants over a 12-month period prior to its request for initial approval.''

Amend § 482.82 ''Condition of participation: Data submission and outcome requirements for re-approval of transplant centers'' by—

• Adding the phrase ''clinical experience'' to the CoP section heading and to the condition statement to clarify that there is a clinical experience requirement, and so that the heading now reads ''Data submission, clinical experience, and outcome requirements for re-approval of transplant centers.''

• In paragraph (a), revising ''transplant recipient registration, and recipient follow-up'' to read ''transplant recipient registration and follow-up.'' In addition, adding the words ''and living donor registration and follow-up'' at the end of paragraph (a) to clarify that they are part of the required data submission.

• Adding a new paragraph (b), Standard: Clinical experience requirements. An organ-specific transplant center must generally perform an average of 10 transplants per year during the re-approval period.

• Re-designating proposed paragraph (b) as paragraph (c) and revising the paragraph heading to now read ''(c) Standard: Outcome requirements.'' All references to this paragraph have been amended accordingly.

• Revising proposed paragraph (b)(1) (now (c)(1)) by removing the phrase ''as long as the center has 1-year post-transplant follow-up on at least 9 transplants of the appropriate organ type.''

• Revising proposed § 482.82 paragraph (b)(2) (now (c)(2)) by removing the words ''The 9'' and adding in its place the words ''The required number of'' so that it now reads: ''The required number of transplants must have been performed during the time frame reported in the most recent SRTR center-specific report.''

• Re-designating proposed § 482.82 paragraph (c) as paragraph (d) with the paragraph heading continuing to read ''Exceptions.'' All references to this paragraph have been amended accordingly.

• Revising newly re-designated paragraph (d)(1) to clarify that heart-lung transplant centers are not required to meet the clinical experience requirements or the outcome requirements for heart-lung transplants performed at the center.

• Revising newly re-designated paragraph (d)(2) to clarify that intestine transplant centers are not required to meet the outcome requirements for intestine, combined liver-intestine, or multivisceral transplants performed at the center.

• Revising newly re-designated paragraph (d)(3) to clarify that pancreas transplant centers are not required to meet the clinical experience requirements or the outcome requirements for pancreas and kidney-pancreas transplants performed at the center.

• Revising newly re-designated paragraph (d)(4) by removing the phrase ''perform a minimum number of pediatric transplants'' and adding in its place the words ''comply with the clinical experience requirements in paragraph (b)'' in order to clarify that a center does not have to comply with the clinical experience requirements to be re-approved.

Amend § 482.90 ''Condition of participation: Patient and living donor selection'' by—

• Removing the word ''waitlist'' and adding in its place the words ''waiting list'' in the condition statement and throughout the requirements where applicable.

• Removing proposed paragraph (a)(1) and re-designating paragraphs (a)(2), (a)(3), and (a)(4) as paragraphs (a)(1), (a)(2), and (a)(3).

• Revising newly re-designated paragraph (a)(1) by adding the words, ''if possible'' at the end of the sentence to allow transplant centers the discretion to give psychosocial evaluation to prospective transplant candidates.

• Adding the words ''transplant patient'' to paragraph (a)(4) which reads ''A transplant center must provide a copy of its patient selection criteria to a transplant patient or dialysis facility, if requested by such transplant patient or facility.''

• Removing the words ''transplant candidate's'' in proposed paragraph (b)(2) so that the transplant center is only required to document the living donor's suitability for donation in the living donor's medical record.

Revise § 482.92 ''Condition of participation: Organ recovery and receipt'' by—

• Revising the first line of the condition statement to read ''Transplant centers must have written protocols for validation of donor-recipient blood type and other vital data for the deceased organ recovery, organ receipt, and living donor organ transplantation process.''

• Adding the phrase ''When the identity of an intended transplant recipient is known and the transplant center sends a team to recover organ(s),'' at the beginning of paragraph (a) to clarify that if the intended recipient for the organ being recovered is known, the transplant center's recovery team must review and compare the donor data with the recipient blood type and other vital data before organ recovery takes place.

• Adding the phrase ''a licensed health care professional'' to paragraph (b) to clarify that this individual must be present for the verification of donor's blood type and vital data when an organ arrives at the transplant center.

Amend § 482.94 ''Condition of participation: Patient and living donor management'' by—

• Removing the word ''pre-transplant'' in the condition statement and in paragraph (a)(1) to clarify that a transplant center is not required to provide the care of a multidisciplinary patient care team coordinated by a physician in the pre-transplant phase of transplantation.

• Removing the words ''on an ongoing basis'' in paragraph (b)(1) and adding them to paragraph (b) introductory text to clarify that transplant centers must keep their waiting lists up to date on an ongoing basis.

• Adding the phrase ''(and in the case of a kidney patient, the patient's usual dialysis facility)'' in paragraph (c)(1) to clarify that the dialysis facility of the kidney transplant patients must also be notified of the patient's transplant status''.

• Adding the phrase ''(and in the case of a kidney patient, the patient's usual dialysis facility)'' in paragraph (c)(2) to clarify that the dialysis facility of the kidney transplant patients must also be notified of the kidney patient's removal from the waiting list for any reason other than death or transplantation no later than 10 days after the date the patient was removed from the waiting list.

• Removing the requirement in proposed (c)(2)(i)that once a patient is placed on a center's waiting list, the center must document in the patient's record that the patient is notified of his or her placement status at least once a year, even if there is no change in the patient's placement status. We are not finalizing this proposed requirement.

• Re-designating the proposed paragraph (c)(2)(ii) as paragraph (c)(2).

• Removing proposed paragraph (c)(3).

• Revising proposed paragraph (c)(4)(i) to replace the word ''pre-transplant'' with ''transplant.''

• Re-designating proposed paragraph (c)(4) as paragraph (c)(3).

• Revising proposed paragraph (d) to now define a qualified social worker as ''an individual who meets licensing requirements in the State in which he or she practices; and (1) Has completed a course of study with specialization in clinical practice, and holds a masters degree from a graduate school of social work accredited by the Council on Social Work Education; or (2) Is working as a social worker in a transplant center as of the effective date of this final rule and has served for at least 2 years as a social worker, 1 year of which was in a transplantation program, and has established a consultative relationship with a social worker who is qualified under § 482.94(d)(1) of this paragraph.

• Revising proposed paragraph (e) by removing paragraphs (e)(1) and (e)(2), and now defining a qualified dietitian as an individual who meets practice requirements in the State in which he/she practices and who is a registered dietitian with the Commission on Dietetic Registration.

Amend § 482.96 ''Condition of participation: Quality assessment and performance improvement (QAPI)'' by—

• Adding in paragraph (a) the word ''requirements'' after the words ''OPTN waitlist (now waiting list)'' in order to further clarify this example of a QAPI program activity.

• Adding in paragraph (a) the words ''patient education'' to clarify that this is one of the included QAPI activities and outcomes.

Amend § 482.98 ''Condition of participation: Human resources'' by—

• Revising proposed paragraph (a)(1) to read: ''Coordinating with the hospital in which the transplant center is located to ensure adequate training of nursing staff and clinical transplant coordinators in the care of transplant patients and living donors' to further clarify the responsibilities of the Director of a transplant center.

• Revising paragraph (a)(3), to clarify that the director of the transplant center is responsible for ensuring that surgery is performed ''by, or under the direct supervision of, a qualified transplant surgeon.''

• Adding the phrase ''and who are immediately available to provide transplantation services when an organ is offered for transplantation'' at the end of the sentence at paragraph (b) to clarify that a transplant surgeon and physician must be immediately available to perform a transplant when an organ is offered.

• Removing in paragraph (c), the portion of the definition of a qualified clinical transplant coordinator, which requires an individual to be certified by the American Board of Transplant Coordinators, and adding in its place an expanded one that states ''The clinical transplant coordinator must be a registered nurse or other licensed clinician who has experience and knowledge of transplantation and living donation issues. The clinical transplant coordinator's responsibilities must include, but are not limited to, the following: (1) Ensuring the coordination of the clinical aspects of transplant patient and living donor care; and (2) Acting as a liaison between a kidney transplant center and dialysis facilities, as applicable.''

• Adding a new standard at paragraph (d) titled ''Independent living donor advocate or living donor advocate team.'' This new requirement states ''The transplant center that performs living donor transplantation must identify either an independent living donor advocate or an independent living donor advocate team to ensure

protection of the rights of living donors and prospective living donors.'' As noted below, this new standard also has three new provisions contained within it.

• Requiring under the new paragraph (d)(1) that the living donor advocate or living donor advocate team must not be involved in transplantation activities on a routine basis.

• Requiring under the new paragraph (d)(2) that these independent advocates or advocate teams must demonstrate: (i) Knowledge of living organ donation, transplantation, medical ethics, and informed consent; and (ii) understanding of the potential impact of family and other external pressures on the prospective living donor's decision whether to donate and the ability to discuss these issues with the donor.

• Requiring under the new paragraph (d)(3) that the independent living donor advocate's or living donor advocate team's responsibilities include: (i) Representing and advising the donor; (ii) protecting and promoting the interests of the donor; and (iii) respecting the donor's decision and ensuring that the donor's decision is informed and free from coercion.

• Re-designating proposed § 482.98 paragraph (d) as paragraph (e) with heading continuing to read ''Standard: Transplant team.'' All references to this paragraph have been amended accordingly.

• Re-designating proposed § 482.98 paragraph (e) as paragraph (f) with heading continuing to read ''Standard: Resource commitment.'' All references to this paragraph have been amended accordingly.

• Adding the words ''patient education'' in newly re-designated paragraph (f) to clarify that this is one of the areas of expertise that a transplant center is required to have available under its resources.

Amend § 482.100 ''Condition of Participation: Organ procurement'' by—

• Removing the paragraph designation ''(a)'' and combining the text with the condition statement.

• Re-designating proposed paragraph (b) as § 482.74(a)(3) and revising newly designated § 482.74(a)(3) to read ''Termination of an agreement between the hospital in which the transplant center is located and an OPO for the recovery and receipt of organs;''.

Amend § 482.102 ''Condition of participation: Patient and living donor rights'' by—

• Adding the words ''Patient rights'' to the condition statement to clarify that § 482.13 is the Patients rights CoP.

• Revising proposed § 482.102 paragraph (a) to read ''Transplant centers must implement written transplant patient informed consent policies that inform each patient of: * * *''

• Amending paragraph (a)(5) to specify that information provided to patients includes (but is not limited to) information from the most recent SRTR center-specific report, including (but not limited to) the transplant center's observed and expected 1-year patient and graft survival, national 1-year patient and graft survival, and notification about all Medicare outcome requirements not being met by the transplant center.

• Removing the text of proposed paragraph (a)(6);

• Re-designating the proposed (a)(7) as (a)(6).

• Re-designating the proposed (a)(8) as (a)(7).

• Adding a new paragraph (a)(8) to read ''The fact that if his or her transplant is not provided in a Medicare-approved transplant center, it could affect the transplant recipient's ability to have his or her immunosuppressive drugs paid for under Medicare Part B.''

• Revising proposed § 482.102 paragraph (b) to read ''Transplant centers must implement written living donor informed consent policies that inform * * * .''

• Adding paragraph (b)(9) to read ''The fact that if a transplant is not provided in a Medicare-approved transplant center, it could affect the transplant recipient's ability to have his or her immunosuppressive drugs paid under Medicare Part B.''

• Deleting the phrase ''that meets the hospital's credentialing policies'' from proposed § 482.102 paragraph (c)(1)(ii) in order to clarify this provision.

• Revising proposed § 482.102 paragraph (c)(2)(ii) to read: ''Inform Medicare beneficiaries on the center's waiting list that Medicare will no longer pay for transplants performed at the center after the effective date of the center's termination of approval.''

• Adding a new provision at § 482.102(c)(3) that reads ''As soon as possible prior to a transplant center's voluntary inactivation, the center must inform patients on the center's waiting list and, as directed by the Secretary, provide assistance to waiting list patients who choose to transfer to the waiting list of another Medicare-approved transplant center without loss of time accrued on the waiting list.''

Amend § 482.104 ''Condition of participation: Additional requirements for kidney transplant centers'' by—

• Revising proposed § 482.104 paragraph (a) by adding a new line that reads ''A kidney transplant center must have written policies and procedures for ongoing communications with dialysis patients' local dialysis facilities.''

• Removing the requirement at proposed § 482.104 paragraph (b) that kidney dialysis centers or units in kidney transplant centers providing dialysis services to inpatients directly or under arrangement must meet the Conditions of Coverage of Suppliers of ESRD Services contained in part 405 subpart U of this chapter. We are not finalizing this proposed requirement in the final rule.

Amend § 488.6 ''Other national accreditation programs for hospitals'' by—

• Revising paragraph (a), first sentence, by inserting the words ''transplant centers except for kidney transplant centers;'' after the words ''psychiatric hospitals;''.

Amend § 488.61 ''Special procedures for approval and re-approval of organ transplant centers'' by—

• Revising the heading to paragraph (a) to read ''Initial approval procedures for transplant centers that are not Medicare-approved as of June 28, 2007.''

• Revising paragraph (a) to clarify that a transplant center, including kidney transplant centers, may submit a request to CMS for Medicare approval at any time.

• Revising proposed § 488.61 paragraph (a)(2) to include provisions from proposed paragraph (a)(3) to read ''To determine compliance with the clinical experience and outcome requirements at § 482.80(b) and (c), CMS will review the data contained in the most recent OPTN Data Report and 1-year patient and graft survival data contained in the most recent Scientific Registry of Transplant Recipient (SRTR) center-specific report.''

• Deleting proposed paragraph (a)(3) and redesignating proposed paragraph (a)(4) as (a)(3). We revised proposed paragraph (a)(4), now (a)(3) to read: If CMS determines that a transplant center has not met the data submission, clinical experience, or outcome requirements, CMS may deny the request for approval or may review the center's compliance with the conditions of participation at § 482.72 through § 482.76 and § 482.90 through § 482.104 of this chapter, using the procedures described at 42 CFR part 488, subpart A, to determine whether the center's request will be approved. CMS will notify the transplant center in writing whether it is approved and, if approved, of the effective date of its approval.

• Adding a new paragraph (a)(4) to describe mitigating factors CMS will consider in determining initial approval

or re-approval of a transplant center that does not meet the data submission, clinical experience, outcome requirements and other conditions of participation.

• Revising paragraph (a)(5) to outline the initial Medicare approval review process and approval period, and to specify how transplant centers will be notified of approval.

• Deleting proposed paragraph (a)(6) and including its content in proposed paragraph (a)(4) (now (a)(3)).

• Adding a new paragraph (a)(6) to state that a kidney center may submit a request for initial approval after performing at lease 3 transplants over a 12-month period.

• Revising proposed paragraph (a)(7) for clarity.

All references to these paragraphs have been amended accordingly.

• Redesignating proposed paragraph (b) as paragraph (c).

• Adding a new paragraph (b) to clarify that all transplant centers, including kidney transplant centers, approved as of the effective date of this final rule that want to continue to be Medicare approved must submit a request to CMS for Medicare approval under the conditions of participation by December 26, 2007, using the process described in paragraph (a)(1) of the section. CMS will determine whether to approve a transplant center using the procedures described in paragraphs (a)(2) through (a)(5) of the section.

• Revising proposed paragraph (b) (now (c)), for clarity.

• Revising proposed § 488.61 paragraph (b)(1)(ii) (now (c)(1)(ii)) to read ''To determine compliance with the clinical experience and outcome requirements at § 482.82(b) and (c), CMS will review the data contained in the most recent OPTN Data Report and 1-year patient and graft survival data contained in the most recent Scientific Registry of Transplant Recipient (SRTR) center-specific report.''

• Revising proposed 488.61 paragraph (b)(4) (now (c)(1)) to read ''Prior to the end of the 3-year approval period, CMS will review the transplant center's data in making re-approval determinations.''

• Adding a new paragraph (c)(4) to describe mitigating factors CMS will consider in determining re-approval of a transplant center that does not meet the data submission, clinical experience, outcome requirements and other conditions of participation.

• Revising proposed § 488.61 paragraph (b)(4) (now (c)(5)) to read: ''CMS will notify the transplant center in writing if its approval is being revoked and of the effective date of the revocation.''

• Adding the phrase ''including kidney transplant centers'' to paragraph (c) to clarify that all transplant centers must be in compliance with all the CoPs for transplant center at § 482.72 through § 482.104, except for § 482.80 (Initial approval requirements) throughout the 3 year approval period.

• Adding a new transplant center inactivity requirement at paragraph (e) to state that a transplant center may inactivate its program for a period not to exceed 12 months during the 3-year approval cycle. A transplant center must notify CMS upon its voluntary inactivation as required by § 482.74(a)(4).

IV. Collection of Information Requirements

Under the Paperwork Reduction Act (PRA) of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA of 1995 requires that we solicit comments on the following issues:

• The need for the information collection and its usefulness in carrying out the proper functions of our agency.

• The accuracy of our estimate of the information collection burden.

• The quality, utility, and clarity of the information to be collected.

• Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We solicited public comments on each of these issues for the sections of this document that contain information collection requirements (ICRs).

General Comments

Comment: Some commenters said they were concerned that CMS generally underestimated the total burden hours and/or total estimated costs that this regulation would impose on transplant centers. Other commenters felt that some of the data used in the proposed rule were inaccurate.

Response: After further analysis of the tasks needed for the paperwork requirements in this final rule and review of more recent financial data, we agree with the commenters that for certain requirements, we underestimated the total burden hours (and in the economic impact analysis, the total estimated costs) associated with the paperwork requirements in the proposed rule. Therefore, we have increased our estimate of total burden hours and/or total costs for some of the conditions of participation. These changes are discussed below for each relevant condition of participation.

Comment: Some commenters said that many of the requirements in the proposed rule would be unnecessary because some of the proposed requirements are similar or identical to either current OPTN or JCAHO requirements.

Response: The commenters are correct; however, we disagree that these requirements are unnecessary. For these requirements to be enforceable by us through our oversight and survey and certification process, they must be promulgated as regulations.

Also, some commenters stated that the regulation would increase post-transplant health care costs. However, this final rule regulates only inpatient transplant services and will not increase the cost of providing post-transplant care once patients are discharged from the hospital.

Section 482.74 Condition of Participation: Notification to CMS

Section 482.74 requires a transplant center to notify us immediately of any significant changes related to the center's transplant program or changes that could affect its compliance with the CoPs. The instances in which a transplant center must notify us include, but are not limited to: any change in key staff members of the transplant team; a decrease in the number of the center's transplants or survival rates that could result in the center being out of compliance with § 482.82, Condition of participation: Data submission, clinical experience, and outcome requirements for re-approval of transplant centers; termination of an agreement between the hospital in which the transplant center is located and an OPO for the recovery and receipt of organs; and inactivation of the transplant center.

In the proposed rule, we estimated that the burden associated with this section would be the time required to notify us of significant changes. We estimated that there would be three occasions annually per center requiring notification. For each occasion, we estimated that it would take 5 minutes to notify us. Therefore, we estimated that it would take no more than 15 minutes annually for each center to notify us of any significant changes. We said that since there were approximately 900 transplant centers, we estimated that the total burden hours for

complying with this section would be a total of 225 hours. The estimate of 900 transplant centers included non-Medicare approved transplant centers. However, our analysis will only concern Medicare-approved centers.

Comment: One commenter said that we significantly underestimated the burden required for transplant centers to comply with this requirement. The commenter noted that notifying us of these changes required the involvement of the program's medical director, an administrator, and appropriate clerical/support staff. The commenter opined that large centers would have a significant number of changes per year, perhaps as many as 6–12, and that each change would require 15–30 minutes of time for each of the individuals involved or approximately one and one-half to two hours per change.

Response: We agree that we underestimated the burden of this requirement. We agree that reporting a significant change to us would require more than 5 minutes and would involve senior staff and management. After further analysis of the tasks involved in complying with this section and the personnel that generally would be involved.

TOTAL ANNUAL BURDEN HOURS AND TOTAL ANNUAL COST ESTIMATE FOR SUBMITTING SIGNIFICANT CHANGES TO CMS

Position	Hourly wage	Hours required per report	Total cost estimate for each report	Total annual burden hours per center (for 3 reports)	Total annual cost estimate per center (for 3 reports per year per center)
Medical Director	$116.60	.50	$58.30	1.5	$174.90
Senior Administrator	92.31	.50	46.16	1.5	138.46
Transplant Coordinator	43.87	.75	32.90	2.25	98.71
Secretary	21.81	.25	5.45	.75	16.36
Totals	.....	2.00	142.81	6.0	428.43

All salary information is from the salary.com Web site at *http://hrsalarycenter.salary.com.*

Section 482.76 Condition of Participation: Pediatric Transplants

Section 482.76 states that a transplant center that seeks Medicare approval to provide transplantation services to pediatric patients must submit to CMS a request specifically for Medicare approval to perform pediatric transplants using the procedures at § 488.61, Special procedures for approval and re-approval of organ transplant centers. The center requesting Medicare approval to perform pediatric transplants must meet all the conditions of participation in §§ 482.72 through 482.74 and §§ 482.80 through 482.104, with respect to its pediatric patients.

The burden associated with this requirement would be the time required to prepare and submit the required information and data to us. Since pediatric centers must comply with the procedures at § 488.61, the burden for pediatric centers to request Medicare approval will be analyzed under that section.

In lieu of meeting all of the requirements in those sections noted above, § 482.76(d) provides that a heart transplant center that wishes to provide transplantation services to pediatric heart patients may be approved to perform pediatric heart transplant by meeting the OBRA 1987 criteria in section 4009(b) (Pub. L. 100–203) as follows:

(1) The center's pediatric transplant program must be operated jointly by the hospital and another facility that is Medicare-approved;

(2) The unified program shares the same transplant surgeons and quality improvement program (including oversight committee, patient protocol, and patient selection criteria); and

(3) The center must demonstrate to the satisfaction of the Secretary that it is able to provide specialized facilities, services, and personnel that are required by pediatric heart transplant patients.

The burden associated with this requirement is the time required for heart transplant centers that choose to use the alternative criteria under § 482.76(d) to prepare and submit the required information to us. We believe that it would require additional time to apply using the alternative criteria in this section. However, we also believe that the additional burden would be minimal.

In addition, we believe that fewer than 10 entities would choose to apply for Medicare approval using the alternative criteria in this section in any given year. There are currently seven Medicare-approved pediatric heart transplant centers. Even if we should receive requests for Medicare approval from the equivalent of 50 percent of the currently approved centers, we would receive only about 4 requests. Under 5 CFR 1320.3(c), a ''collection of information'' does not include requirements imposed on fewer than ten entities. Therefore, the requirements under § 482.76(d) are not subject to the PRA.

Section 482.80 Condition of Participation: Data Submission, Clinical Experience, and Outcome Measure Requirements for Initial Approval of Transplant Centers

Section 482.80 requires that, except as specified in paragraph (d) of that section and at 488.61, transplant centers must generally meet all data submission, clinical experience, and outcome requirements to be granted initial approval by us. Section 482.80(a) requires transplant centers to submit to the OPTN at least 95 percent of the required data on all transplants (deceased and living donors) no later than 90 days after the date established by the OPTN. The required data submissions include, but are not limited to, submission of the appropriate OPTN forms for transplant candidate registration, transplant recipient registration and follow-up, and living donor registration and follow-up.

The burden associated with this requirement is the amount of time it would take the transplant center to submit the required data. In the proposed rule, we stated that we believed that these requirements reflected usual and customary business practice and would be followed even if there were no Medicare requirements. Thus, we said that the burden for these requirements would be exempt under 5 CFR 1320.3(b)(2).

Comment: A national organization that represents professionals in the transplant community commented that the data submission requirements

necessary for OPTN compliance have had a huge financial impact on transplant centers. The commenter noted that multiple forms are required for each patient, from the time of registration on the OPTN waiting list to several years post-transplant. They noted that the analysis did not account for the additional resources needed to complete and submit these forms.

Response: Although we appreciate that the data submission requirements necessitate significant resources from the transplant centers, we would point out that OPTN policies require transplant hospitals as a condition of membership to submit these required data to the OPTN. The final rule governing the operation of the OPTN (42 CFR 121.11) also imposes this requirement by Federal regulation. Further, existing Medicare regulations require that if a hospital performs transplants, it must be a member of the OPTN and provide organ-transplant-related data, as requested, to the OPTN, SRTR, and the OPOs. (See 42 CFR 482.45(b).) Therefore, complying with this section imposes little additional burden on the transplant centers and constitutes usual and customary business practice.

Under 5 CFR 1320.3(b)(2), if the activities that are needed to comply with an ICR constitute usual and customary business practices, those activities should be excluded from the burden analysis. Thus, these activities will not be included in the burden analysis for this final rule.

Section 482.82 Condition of Participation: Data Submission, Clinical Experience, and Outcome Measure Requirements for Re-Approval of Transplant Centers

Section 482.82 provides that, except as specified in paragraph (d) of this section and at 488.61, transplant centers must meet all the data submission, clinical experience, and outcome requirements to be re-approved. Section 482.82(a) requires that no later than 90 days after the due date established by the OPTN, a transplant center must submit to the OPTN at least 95 percent of the required data submissions on all transplants (deceased and living donors) it has performed over the 3-year approval period. The required data submissions include, but are not limited to, submission of the appropriate OPTN forms for transplant candidate registration, transplant recipient registration and follow up, and living donor registration and follow up.

The burden associated with this requirement is the time it would take the transplant center to submit the required data. As discussed above under § 482.80, we already require hospitals in which transplant centers are located to belong to the OPTN, and the OPTN requires that these hospitals submit data to the OPTN. (See § 482.45(b).)

Thus, complying with this section imposes little additional burden on the transplant centers and constitutes usual and customary business practice. Under 5 CFR 1320.3(b)(2), if the activities that are needed to comply with an ICR constitute usual and customary business practices, those activities should be excluded from the burden analysis. Therefore, these activities will not be included in this final rule's burden analysis.

Section 482.90 Condition of Participation: Patient and Living Donor Selection

Section 482.90 requires transplant centers to use written patient selection criteria in determining a patient's suitability for placement on the waiting list or a patient's suitability for transplant. If a center performs living donor transplants, the center must also use written donor selection criteria in determining the suitability of candidates for donation.

Section 482.90(a) states that before a transplant center places a transplant candidate on its waiting list, the candidate's medical record must contain documentation that the candidate's blood type has been determined. When a patient is placed on a center's waiting list or is selected to receive a transplant, the center must document in the patient's medical record the patient selection criteria that were used. Section 482.90(b) states that a transplant center also must document in the living donor's medical records the living donor's suitability for donation and that the living donor has given informed consent, as required under § 482.102(b).

Comment: Some commenters said that the patient selection criteria requirements would be burdensome. For example, one commenter said that it would take at least 30 minutes of staff time to document the patient selection criteria in the file of each patient or living donor.

Response: We disagree. Each center has the flexibility to determine the most expedient way to satisfy this requirement. Centers should be able to reduce the resources needed to document individual potential transplant recipient and living donor medical records significantly by using electronic formats, forms, or checklists. Therefore, complying with this requirement constitutes a minimal burden to the transplant centers.

Comment: One commenter said that we did not address the recordkeeping burden for this requirement.

Response: For the reasons discussed immediately below, we do not believe a burden analysis of this requirement should be included in this PRA analysis.

The burden associated with complying with this section is the time to develop the transplant recipient and living donor selection criteria and document each potential transplant recipient's and living donor's medical record. We expect that all transplant centers have policies regarding selection criteria for potential transplant recipients and living donors (if they perform living donor transplants). In addition, it is standard medical practice to document in the medical record of a hospital patient undergoing surgery whether the patient meets the hospital's criteria for surgery. Thus, we believe that the activities required by this section constitute usual and customary business practices for transplant centers. Therefore, pursuant to 5 CFR 1320.3(b)(2), we will not include these activities in the burden analysis for this final rule.

Section 482.92 Condition of Participation: Organ Recovery and Receipt

Transplant centers must have written protocols to validate donor-recipient matching of blood types and other vital data for deceased organ recovery, organ receipt, and living donor transplantation process.

The burden associated with this section is the time required to develop these written protocols. We believe that developing written protocols for critical functions such as those required by this section reflect usual and customary business practice for transplant centers. Therefore, the burden of these requirements is exempt under 5 CFR 1320.3(b)(2).

Section 482.94 Condition of Participation: Patient and Living Donor Management

Transplant centers must have written patient management policies for the transplant and discharge phases of transplantation. If a transplant center performs living donor transplants, the center also must have written donor management policies for the donor evaluation, donation, and discharge phases of living organ donation.

The burden associated with these requirements is the time it takes to develop written patient management policies. We believe that it is usual and customary business practice for

transplant centers, as it would be for any major health care facility, to have written patient management policies. Thus, under 5 CFR 1320.3(b)(2), these activities should be excluded from any burden analysis.

In addition, § 482.94(b) requires that transplant centers must keep their waiting lists up to date on an ongoing basis, including:

(1) Updating of waiting list patients' clinical information;

(2) Removing patients from the center's waiting list if a patient receives a transplant or dies, or if there is any other reason that the patient should no longer be on a center's waiting list; and

(3) Notifying the OPTN no later than 24 hours after a patient's removal from the center's waiting list.

Section 482.94(c) requires transplant centers to maintain up-to-date and accurate patient management records for each patient who receives an evaluation for placement on a center's waiting list and who is admitted for organ transplantation.

Section 482.94(c)(1) states that for each patient who receives an evaluation for placement on a center's waiting list, the center must document in the patient's record that the patient (and in the case of a kidney patient, the patient's usual dialysis facility) has been informed of his or her transplant status, including notification of: (i) The patient's placement on the center's waiting list; (ii) The center's decision not to place the patient on its waiting list; or (iii) The center's inability to make a determination regarding the patient's placement on its waiting list because further clinical testing or documentation is needed.

Section 482.94(c)(2) states that if a patient on the waiting list is removed from the waiting list for any reason other than death or transplantation, the transplant center must document in the patient's record that the patient (and in the case of a kidney patient, the patient's usual dialysis facility) was notified of his or her removal from the waiting list no later than 10 days after the date the patient was removed from the center's waiting list.

Section 482.94(c)(3) states that in the case of patients admitted for organ transplants, transplant centers must maintain written records of multidisciplinary patient care planning during the transplant period and multidisciplinary discharge planning for post-transplant care.

The burden associated with this section, except for notifying dialysis facilities, is the time required for a transplant center to document all the necessary information and maintain the waiting list. As described above, all transplant centers must already follow OPTN requirements for notification of patients and maintenance of their waiting lists. We believe that most, if not all, transplant centers have business practices that already comply with this section. For the remainder of centers, compliance should require only a minimal burden.

Under 5 CFR 1320.3(b)(2), if the activities that are needed to comply with an ICR constitute usual and customary business practices, those activities should be excluded from the burden analysis. Since the activities that are required to satisfy this section constitute usual and customary business practices, the burden associated with them will not be included in our PRA analysis for this final rule.

Section 482.94(c)(1) and (2) require kidney transplant centers, in the case of dialysis patients, to document in the patient's record that both the patient and the patient's usual dialysis facility have been notified of the patient's transplant status and all changes in the patient's transplant status as required under § 482.94(c)(1). Since this is not a requirement for OPTN members, we do not believe that all kidney transplant centers are currently notifying dialysis facilities.

The burden associated with this requirement is the time it would take for the transplant center to notify the various dialysis facilities of the status of their patients on the transplant center's waiting list. Rather than notifying dialysis facilities on an individual basis, we believe that transplant centers would chose to periodically notify the dialysis centers about their patients' status. Thus, for the purposes of determining the burden for this requirement, we will assume quarterly notifications by the transplant centers to the dialysis facilities. Note that this final rule does not establish a time frame transplant centers must use to notify dialysis centers about patient status. We are using quarterly notification only to estimate an economic impact for this notification requirement.

According to UNOS, as of December 31, 2005, there were 64,848 individuals awaiting kidney transplants. Currently, there are approximately 4,649 dialysis facilities and approximately 243 Medicare-approved kidney transplant centers. Therefore, the average transplant center will have to notify 19 dialysis clinics about the waiting list status of their patients (4,649 dialysis facilities divided by 243 Medicare-approved kidney transplant centers = 19.13 dialysis centers). Since there are 64,848 patients waiting for kidney transplants and 4,649 dialysis facilities, there are an average of 14 patients on the waiting list for kidneys at each dialysis facility (64,848 patients divided by 4,649 dialysis facilities = 13.9). Thus, for each of the 243 kidney transplant centers, there are about 267 waiting list patients (64,848 patients divided by 243 transplant centers = 266.86 or 14 patients per dialysis facility $\times$ 19 dialysis facilities = 266). Therefore, on average, each transplant center would have to determine the status of about 267 patients and notify an average of 19 dialysis facilities about the status of these patients 4 times a year.

Based upon our past experience, we believe that this notification would require the involvement of the transplant coordinator and appropriate support/clerical staff. We would anticipate that the transplant centers would utilize modern technology to minimize the burden of satisfying this requirement.

TOTAL ANNUAL BURDEN HOURS AND TOTAL ANNUAL COST ESTIMATE TO NOTIFY DIALYSIS FACILITIES OF THEIR PATIENTS' WAITING LIST STATUS

Position	Hourly wage	Burden hours per event*	Cost estimate per event*	Total annual hours required (for 4 events)	Total annual cost estimate (for 4 events)
Transplant Coordinator	$ 43.87	2.00	$87.74	8.0	$350.96
Secretary	21.81	.50	10.90	2.0	43.62
Totals	.....	2.50	98.64	10.0	394.58

All salary information is from the salary.com Web site at *http://hrsalarycenter.salary.com.*
*Each notification is an ''event.''

Thus, we anticipate that the burden hours for each time a transplant center notifies the relevant dialysis centers of the status of their patients on the center's waiting list would require 2.5 burden hours and the cost estimate would be $98.64. With the transplant centers conducting these notifications on a quarterly basis, that is, 4 notifications per year for each kidney center, the total annual burden hours for each center would be 10 and the total annual cost estimate would be $394.58. Since there are currently 243 current Medicare-approved kidney transplant centers, their total burden hours would be 2,430 (243 centers × 10 hours = 2,430) and the total cost complying with this ICR is $95,882.94 (243 centers × $394.58 = $95,882.94).

Section 482.96 Condition of participation: Quality assessment and performance improvement (QAPI)

Section 482.96 requires transplant centers to develop, implement, and maintain a written, comprehensive, data-driven QAPI program designed to monitor and evaluate performance of all transplantation services, including services provided under contract or arrangement.

Section 482.96(b) requires transplant centers to establish and implement written policies to address and document adverse events that occur during any phase of an organ transplantation case. These policies must address, at a minimum, the process for the identification, reporting, analysis, and prevention of adverse events. When an adverse event is identified, the transplant center must conduct a thorough analysis of and document any adverse event.

The burden associated with this rule is the time required to develop these policies and document each adverse event. In the proposed rule, we estimated that it would take 8 hours on a 1-time basis to comply with this requirement.

Comment: Some commenters disagreed with our analysis and said that we underestimated the time and staff hours required to comply with this section. One commenter stated that a large center would require one full-time equivalent (FTE) to comply with this requirement. Another commenter indicated that it took 160 staff hours to develop and establish the QAPI program at his or her hospital and 1.25 FTEs to maintain the program. This commenter indicated that eight hours would only be a ''start'' in complying with this requirement.

Response: We agree with the commenters that 8 hours is insufficient to develop the policies necessary to comply with this section. However, since all transplant centers are located in Medicare hospitals and Medicare hospitals are required to have a QAPI program (see 42 CFR 482.21), we believe that each center will have sufficient resources available to develop its own QAPI program in considerably fewer than 160 burden hours.

We believe that the typical transplant center would already have established a QAPI program as part of its usual and customary business practices and, thus, would not incur any additional associated burden. Therefore, since the activities required to comply with this section constitute usual and customary business practices, any burden associated with this requirement is exempt from the burden analysis under 5 CFR 1320.3(b)(2).

Section 482.98 Condition of Participation: Human Resources

Section 482.98(b) requires transplant centers to identify to the OPTN a primary transplant surgeon and a transplant physician with the appropriate training and experience to provide transplantation services who are immediately available to provide transplantation services when an organ is offered for transplantation.

The burden associated with this requirement is the time it will take to compile this information and forward it to the OPTN. Since this same information is required for the letter requesting initial approval for the transplant center at § 488.61(a), each transplant center will only need to notify the OPTN of the two individuals it has designed as its primary transplant surgeon and transplant physician. This could be done electronically or by a simple form, depending upon OPTN requirements. Thus, notifying the OPTN of the same information should not result in any additional appreciable burden to the transplant centers.

Section 482.100 Condition of Participation: Organ Procurement

Section 482.100 requires a transplant center to ensure that the hospital in which it operates has a written agreement for the receipt of organs with an OPO designated by the Secretary that identifies specific responsibilities for the hospital and for the OPO with respect to organ recovery and organ allocation.

The burden associated with this rule is the time required to draft a mutually acceptable agreement between the transplant center and the designated OPO for the receipt of organs. Section 121.9 of the Department's regulations governing the OPTN requires transplant centers to have letters of agreement or contracts with an OPO. However, such a letter of agreement or contract will not satisfy the requirements of this section if it does not identify specific responsibilities for the hospital and the OPO with respect to organ recovery and organ allocation. Thus, we believe that approximately 50 percent, or 252, transplant centers will need to re-draft the letters of agreement or contracts between themselves and their designated OPOs that identify specific responsibilities for the hospital and for the OPO with respect to organ recovery and organ allocation.

Based upon our experience with transplant centers, as well as other health care organizations, agreements of this type would require the involvement of the transplant center's attorney, medical director, administrator, transplant coordinator, and appropriate clerical/support staff. We believe that it would require a total of approximately

11 hours to negotiate and draft a mutually acceptable agreement that would be signed by both the transplant center and OPO.

TOTAL ANNUAL BURDEN HOURS AND TOTAL ANNUAL COST ESTIMATE TO DEVELOP AN AGREEMENT BETWEEN A TRANSPLANT CENTER AND AN OPO CONCERNING ORGAN RECOVERY AND ORGAN ALLOCATION

Position	Hourly wage	Total annual hours required	Total annual cost estimate
General Counsel or Attorney	$176.86	4.0	$707.44
Medical Director	116.60	2.0	233.20
Senior Administrator	92.31	2.0	184.62
Transplant Coordinator	43.87	2.0	87.74
Secretary	21.81	1.0	21.81
Totals	.....	11.00	1,234.81

All salary information is from the salary.com Web site at *http://hrsalarycenter.salary.com*.

Thus, for each transplant center to negotiate and draft an agreement with its designated OPO concerning organ recovery and organ allocation, the total annual burden hours would be 11 and the total cost estimate would be $1,234.81. For 252 transplant centers to negotiate and draft these agreements, the total burden hours would be 2772 (11 annual burden hours × 252 transplant centers = 2,268) and the total cost estimate would be $311.172.12 (252 transplant centers × $1,073.30).

Section 482.102 Condition of Participation: Patient and Living Donor Rights

Section 482.102 requires transplant centers to implement written transplant patient informed consent policies. The policies must inform each patient of: (1) The evaluation process; (2) the surgical procedure; (3) alternative treatments; (4) potential medical or psychosocial risks; (5) national and transplant center-specific outcomes; (6) organ donor risk factors that could affect the success of the graft or the health of the patient, including, but not limited to, the donor's history, condition or age of the organs used, or the patient's potential risk of contracting the human immunodeficiency virus and other infectious diseases if the disease cannot be detected in an infected donor; (7) his or her right to refuse transplantation; and (8) the fact that if his or her transplant is not provided in a Medicare-approved transplant center, it could affect the transplant recipient's ability to have his or her immunosuppressive drugs paid under Medicare Part B.

Section 482.102(b) also requires transplant centers to implement written living donor informed consent policies that inform the prospective living donor of all aspects of, and potential outcomes from, living donation. Each transplant center must ensure that the prospective living donor is fully informed about the following: (1) The fact that communication between the donor and the transplant center will remain confidential; (2) the evaluation process; (3) the surgical procedure, including post-operative treatment; (4) the availability of alternative treatments for the transplant recipient; (5) the potential medical or psychosocial risk to the donor; (6) the national and transplant center-specific outcomes for recipients; and national and center-specific outcomes for living donors, as data are available; (7) the possibility that future health problems related to the donation may not be covered by the donor's insurance and that the donor's ability to obtain health, disability, or life insurance may be affected; (8) the donor's right to opt out of donation at any time during the donation process; and (9) the fact that if a transplant is not provided in a Medicare-approved transplant center, it could affect the transplant recipient's ability to have his or her immunosuppressive drugs paid under Medicare Part B.

We expect that nearly all transplant centers currently have written policies regarding informed consent. Therefore, there would be no additional burden on them, as these policies are usual and customary business practices. Therefore, the burden of these requirements is exempt under 5 CFR 1320.3(b)(2) and will not be included in our PRA analysis for this final rule.

Section 482.102(c) requires each transplant center to notify patients placed on its waiting list of information about the center that could impact the patient's ability to receive a transplant should an organ become available, and what procedures are in place to ensure the availability of a transplant team. Section 482.102(c)(1) specifically requires a transplant center served by a single transplant surgeon or physician to inform patients placed on the center's waiting list of the potential unavailability of the transplant surgeon or physician and whether the center has a mechanism to provide an alternative transplant surgeon or transplant physician.

Comment: One commenter pointed out that complying with this requirement would entail the drafting of a letter by an administrator, approval by the surgeon, searching a database to identify appropriate patients, clerical or support resources to prepare and mail the letters, and the expense associated with actually mailing the letters. The commenter pointed out that this would be an extensive and unrealistic use of resources for short-term unavailability issues, such as the absence of the transplant surgeon.

Response: As discussed earlier in this preamble, this provision does not require transplant centers to inform waiting list patients on an ongoing basis about the short-term unavailability of a transplant surgeon, for example, when a transplant surgeon is on vacation. The provision simply requires that, at the time a patient is placed on the waiting list, the patient is informed about circumstances that could impact the patient's ability to receive a transplant should an organ become available and what procedures the transplant center has in place to address these circumstances. Clearly, this requirement is particularly important when a transplant center is served by a single transplant surgeon or transplant physician. We expect that most transplant centers already provide this information to patients when they are placed on the waiting list.

Therefore, the burden associated with this requirement is exempt under 5 CFR 1320.3(b)(2). The burden of these activities will not be included in our PRA analysis for this final rule.

Section 482.102(c)(2) states that at least 30 days before a transplant center's Medicare approval is terminated, whether voluntarily or involuntarily,

the center must inform patients on the center's waiting list of this fact and provide assistance to waiting list patients who choose to transfer to the waiting list of another Medicare-approved transplant center without loss of time accrued on the waiting list. The transplant center must also inform Medicare beneficiaries on the center's waiting list that Medicare will no longer pay for transplants performed at the center after the effective date of the center's loss of Medicare approval at least 30 days before their Medicare approval is terminated. In addition, § 482.102(c)(3) requires that as soon as possible prior to a transplant center's voluntary inactivation, the center must inform patients on the center's waiting list and, as directed by the Secretary, provide assistance to waiting list patients who choose to transfer to the waiting list of another Medicare-approved transplant center without the loss of time accrued on the waiting list.

The burden associated with this section would be the time required of a transplant center to draft a letter notifying patients on its waiting list of the loss of the program's Medicare approval status and, by mail or otherwise, provide the letter to all patients on the center's waiting list. We estimate that it would require an administrator approximately 30 minutes to draft the letter. It would then require a secretary or other support staff person 2.5 hours to copy and/or mail these letters to the individuals on the center's waiting list(s). Based on our estimate, complying with this section would require three burden hours and the total cost would be $100.69.

TOTAL BURDEN HOURS AND TOTAL COST ESTIMATE FOR NOTIFYING PATIENTS ON A CENTER'S WAITING LIST OF A TRANSPLANT CENTER'S LOSS OF MEDICARE APPROVAL

Position	Hourly wage	Hours required	Total cost estimate
Senior Administrator	$92.31	.50	$46.16
Secretary	21.81	2.50	54.53
Totals	.....	3.00	100.69

All salary information is from the salary.com Web site at *http://hrsalarycenter.salary.com*.

As discussed in more detail below under section § 488.61, we believe that, based upon the requirements contained in this final rule, up to two percent of transplant centers or approximately 10 centers may lose their Medicare-approved status annually. If 10 centers annually lost their Medicare-approved status, either voluntarily or involuntarily, then the total annual burden hours would be 30 (10 transplant centers × 3 burden hours = 30 total burden hours) and the total annual cost estimate would be $1,006.90 ($100.69 cost estimate × 10 transplant centers = $1,006.90).

Section 482.104 Condition of Participation: Additional Requirements for Kidney Transplant Services

Section 482.104(a) states that a kidney transplant center must have written policies and procedures for ongoing communications with dialysis patients' local dialysis facilities.

The burden associated with this requirement is the time and effort it would take for a kidney transplant center to develop the written policies and procedures for such communication. Under this final rule, one of the responsibilities of the clinical transplant coordinator is to act as a liaison between a kidney transplant center and dialysis facilities. (See § 482.98(c)(2).) We believe that most centers currently use their clinical transport coordinators in this role. Most centers will be able to meet this requirement by putting their current practice into writing. This will probably be done by the clinical transplant coordinators. Since they are memorializing their current practices, we believe it can be accomplished in a very short time. We believe that this communication policy and procedures will be straightforward and can be accomplished quickly by the coordinators. In addition, many centers may already have such policies and procedures in writing. Thus, complying with this requirement will constitute a minimal burden to the centers.

Section 488.61 Special Procedures for Approval And Re-Approval of Organ Transplant Centers

Section 488.61(a) requires transplant centers that are not Medicare-approved as of June 28, 2007 to submit a request to CMS for Medicare approval. Section 488.61(b) requires transplant centers, including kidney transplant centers, that are Medicare approved as of June 28, 2007 to submit a request for Medicare approval no later than December 26, 2007. The process for making the request for Medicare approval is the same for both types of transplant centers. (See § 488.61(b)(1).) The request for Medicare approval must be signed by a person authorized to represent the center (for example, a chief executive officer). The request must include the hospital's Medicare provider identification (I.D.) number; the name(s) of the designated primary transplant surgeon and primary transplant physician; and a statement from the OPTN that the center has complied with all data submission requirements.

The burden associated with this section would be the time required to prepare and submit this letter to us. In addition, the center would have to obtain a statement from the OPTN that the center had complied with all data submission requirements to submit with the letter.

In the proposed rule, we estimated that each hospital would spend approximately 15 minutes to prepare and submit the letter requesting Medicare approval to us. We did note that a hospital may have multiple transplant centers and, therefore, could be submitting more than one request for approval.

Comment: We received public comments on the proposed rule that said we had underestimated the time required for a transplant center to apply for Medicare approval. One commenter emphasized that transplantation centers take applying for Medicare approval very seriously. The commenter also indicated that the preparation, approval, and submission of the request for Medicare approval could take days at many large institutions.

Response: After further analysis of the tasks and the personnel that would be involved in applying for Medicare approval, we agree with the commenters that 15 minutes significantly underestimates the time required to prepare, obtain the required center approval(s), obtain the statement from

the OPTN, and submit the request for Medicare approval to us. However, we disagree with the commenter that said it could take ''days'' to accomplish all of the required tasks. Our analysis of the total burden hours and total cost estimate are discussed in detail below.

We now believe that accomplishing all of the tasks necessary for complying with § 488.61(a) would involve the transplant program's medical director, an administrator, a transplant coordinator, and appropriate support/administrative staff. We estimate that it would take these individuals approximately the same amount of time as it would take the transplant center to notify us of a significant change in their program or approximately 2 burden hours.

TOTAL ANNUAL BURDEN HOURS AND TOTAL ANNUAL COST FOR A TRANSPLANT CENTER TO APPLY FOR MEDICARE APPROVAL

Position	Hourly wage	Hours required	Total cost estimate
Medical Director	$116.60	.50	$58.30
Senior Administrator	92.31	.50	46.16
Transplant Coordinator	43.87	.75	32.90
Secretary	21.81	.25	5.45
Totals	.....	2.00	142.81

All salary information is from the salary.com Web site at*http://hrsalarycenter.salary.com.*

This final rule requires all transplant centers that are currently Medicare-approved to apply for initial approval under the requirements in this final rule. There are currently approximately 504 Medicare-approved transplant centers. We believe that all 504 transplant centers will submit requests to us to retain their Medicare approval. In addition, based on our previous experience, we believe that approximately 10 new centers a year may apply for Medicare approval. Thus, we anticipate 514 transplant centers will be applying for Medicare approval of their transplant programs in the first year following the effective date of this final rule.

For the first year after the effective date of this final rule, the total burden hours would be 1,028 (514 transplant centers × 2 burden hours = 1,028 total burden hours), and the total cost estimate would be $73,404.34 (514 transplant centers × $142.81 = $73,404.34). For subsequent years, we anticipate that about 10 transplant centers will request initial Medicare approval. For those subsequent years, the total burden hours are 20 (10 transplant centers × 2 burden hours = 20 total burden hours) and the total cost estimate would be $1,428.10 (10 transplant centers × $142.81 = $1,428.10).

Section 488.61(d) allows transplant centers that have lost their Medicare approval to seek re-entry into the Medicare program at any time. A center that has lost its Medicare approval must:

(1) Request initial approval using the procedures at § 488.61(a);

(2) Be in compliance with §§ 482.72 through 482.104, except for § 482.82 (Re-approval Requirements), at the time of the request for Medicare approval; and

(3) Submit a report to us documenting any changes or corrective action(s) taken by the center as a result of the loss of its Medicare approval status.

The burden associated with this section would be the time required to prepare and submit the request for approval to us pursuant to § 488.61(a) and the time to prepare and submit a report to CMS documenting any changes or corrective actions taken by the center as a result of the loss of its Medicare approval status. After further analysis of the tasks that would be involved and the personnel that would be needed, we believe that developing and submitting the required plan would involve the transplant program's medical director, an administrator, a transplant coordinator, and appropriate support/administrative staff.

In the proposed rule, we said that we believed no more than 9 entities would be affected by this requirement which made it exempt from the PRA, in accordance with 5 CFR 1320.3(c). This was based on our previous experience with transplant centers. Previously, only five centers had voluntarily terminated their Medicare approval.

However, this final rule has minimum clinical experience, outcome, and process requirements that transplant centers must meet to obtain initial Medicare approval and to stay in the program. Considering these requirements, we anticipate that more centers may voluntarily terminate their Medicare approval status in order to give themselves time to correct any problems they may have in meeting these requirements. In addition, it may become more common for transplant centers to be involuntarily terminated. Therefore, we estimate that up to two percent or approximately 10 of the currently Medicare-approved centers may lose their status at some point in any given year and later seek to re-enter the program.

We believe that accomplishing all of the tasks necessary for complying with § 488.61(d) would require the same staff as needed for § 488.61(a) and (b). However, we also believe that the center requesting re-entry into the Medicare program will spend more time preparing the request due to the preparation of the report documenting any changes or corrective action taken by the center as a result of the loss of its Medicare approval status. Thus, we believe that a transplant center complying with this sub-section's requirements would require a total of 5 burden hours and have a total cost estimate of $329.50. In any given year, we anticipate as many as 10 centers may seek to re-enter the Medicare program. For these 10 centers, the total burden hours would be 50 (10 centers × 5 burden hours to re-apply = 50 total burden hours) and the total cost estimate would be $3,295.00($329.50 per center to re-apply × 10 centers = $3,295.00).

TOTAL ANNUAL BURDEN HOURS AND TOTAL ANNUAL COST FOR TRANSPLANT CENTERS SEEKING RE-ENTRY INTO THE MEDICARE PROGRAM AFTER LOSS OF MEDICARE APPROVAL

Position	Hourly wage	Hours required	Total cost estimate
Medical Director	$116.60	1.00	$116.60
Senior Administrator	92.31	1.00	92.31
Transplant Coordinator	43.87	2.50	109.68
Secretary	21.81	.50	10.91
Totals	.....	5.00	329.50

All salary information is from the salary.com Web site at *http://hrsalarycenter.salary.com.*

Thus, for all of the PRA requirements in this rule, the total burden hours for the first year are 8,830, and the total cost estimate is $659,989.50. For subsequent years the total burden hours are 5,554 and the total cost estimate is $317,541,66. The burden hours and cost estimate are detailed in the chart below. All of the PRA requirements noted in this chart constitute new collections of information.

SUMMARY OF PRA REQUIREMENTS FOR TRANSPLANT CENTERS (TCS) IN THE FIRST YEAR OF THIS FINAL RULE

PRA requirement	Total annual cost estimate per TC	Total annual burden hours (BHs) per TC	Total annual cost estimate for "X" TCs	Total annual burden hours (BHs) for "X" TCs
§ 482.74—Notification to CMS of Significant Changes.	$428.43	6.0	$215,928.72 for 504 TCs (currently there are 504 Medicare approved TCs).	3,024 BHs for 504 TCs (currently there are 504 Medicare approved TCs).
§ 482.94(c)(3)—Notification to Dialysis Facilities of Patients' Waiting List Status.	394.58	10.0	$95,882.94 for 243 TCs (currently there are 243 Medicare-approved kidney TCs).	2,430 BHs for 243 TCs (currently there are 243 Medicare-approved kidney TCs).
§ 482.100—Development of Agreement Between T.C. and Each OPO on Organ Recovery and Allocation [1].	1,234.81	11.0	$311,172,12 for 252 TCs (we estimate that about 50 percent, or 252, TCs will need to re-draft letters of agreements of contracts between themselves and their designated OPOs).	2,772 BHs for 252 TCs (we estimate that about 50 percent, or 252, TCs will need to re-draft letters of agreements of contracts between themselves and their designated OPOs).
§ 482.102(c)(2)—Notification of Patients on Waiting List of Loss of Medicare Approval.	100.69	3.0	$1,006.90 for 10 TCs (we estimate that about 10 TCs would lose their Medicare Approval each year).	30 BHs for 10 TCs (we estimate that about 10 TCs would lose their Medicare Approval each year).
§ 488.61(a)—Application for Medicare Approval [2].	142.81	2.0	$73,404.34 for 514 TCs (first year—all 504 currently Medicare-approved TCs would need to apply and we estimate that 10 new TCs would also apply for a total of 514 TCs applying for Medicare approval in the first year).	1,028 BHs for 514 TCs (first year—all 504 currently Medicare-approved TCs would need to apply and we estimate that 10 new TCs would also apply for a total of 514 TCs applying for Medicare approval in the first year).
§ 488.61(d)—Application to Re-Enter Medicare Program.	329.50	5.0	$3,295.00 for 10 TCs (we estimate that 10 TCs who had lost their Medicare approved status would seek to re-enter the Medicare Program each year)..	50 BHs for 10 TCs (we estimate that 10 TCs who had lost their Medicare approved status would seek to re-enter the Medicare Program each year).
Totals	2,630.82	37.0	700,690.02	9,334 BHs.

[1] These estimates are for the first year of implementation only. After the first year, we estimate that fewer than 10 transplant centers will need to comply with this requirement. Therefore, in subsequent years, this requirement would not be subject to the PRA.

[2] This estimate is for the first year only. In subsequent years, we estimate that only 10 new transplant centers will apply for Medicare approval each year. Thus, for subsequent years, the estimated burden hours will be 20 (2 BHs × 10 TCs) and the cost estimate will be $1,428.10 ($142.81 × 10 TCs).

If you comment on these information collection and record keeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attn.: Melissa Musotto, CMS–3835–F, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Carolyn Lovett, CMS Desk Officer, CMS–3835–F, *carolyn_lovett@omb.eop.gov.* Fax (202) 395–6974.

V. Regulatory Impact Statement

A. Overall Impact

We have examined the impact of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the

Regulatory Flexibility Act (RFA) (September 16, 1980 Public Law 96–354), Section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibilities of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if new regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We estimate the overall economic impact of this final rule to be a cost of $28,420,259 and a benefit of $1,257,516 in the first year. The social benefits that should result from implementation of this final rule are significant. However, we have no reasonably accurate method of quantifying those social benefits. Thus, we do not believe that this final rule is economically significant.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, non-profit organizations, government agencies, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by non-profit status or by having revenues of $29 million or less in any 1 year (65 FR 69432). Individuals and states are not included in the definition of a small entity. We believe this rule will not have a significant impact on a substantial number of small businesses because most of the requirements in this final rule are already part of the transplant centers' standard practices.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area (superseded by Core Based Statistical Areas) and has fewer than 100 beds. We believe this final rule will not have a significant impact on small rural hospitals since small rural hospitals do not have the resources to perform organ transplants.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by state, local or tribal governments, in the aggregate, or by the private sector, of $110 million or more. We do not believe that this rule will have an effect on state, local or tribal governments, or the private sector, that could create an unfunded mandate greater than $110 million annually.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. This rule does not impose substantial direct requirement costs on state or local governments and does not preempt state law or have other Federalism implications. We have determined that this final rule will not significantly affect the rights, roles, and responsibilities of states.

This final rule will affect all facilities that perform, or are planning to perform, organ transplants and may have an effect on the ability of those facilities to compete. Thus, while we do not believe the requirements will have a significant economic impact on these facilities, we believe it is desirable to inform the public of the likely effect of this final rule on those facilities. Thus, we have prepared the following analysis, which in combination with the other sections of this final rule, is intended to conform to the objectives of the RFA and section 1102(b) of the Act.

B. Anticipated Effects

Our intent in developing and implementing these CoPs for transplant centers is to ensure Medicare-covered transplants are performed in an effective, efficient manner and that high quality transplantation services are provided to Medicare beneficiaries. This is critical due to the scarcity of transplantable organs for the individuals on organ transplant waiting lists. This final rule also serves to keep Medicare requirements current with the best practices in transplantation. We believe that adherence to these outcomes and process requirements will result in reduced organ wastage and, as a consequence, fewer graft failures and re-transplantations. We do not anticipate that the changes in our requirements for transplant centers will affect the number of organ transplants performed because this final rule will have no effect on the number of organs available for transplantation.

This final rule will establish CoPs for transplant centers that perform organ transplants. The final rule will maintain many of the same requirements that are in the current National Coverage Decisions (NCDs) for heart, liver, lung, and intestine transplants, and conditions for coverage (CfCs) for kidney transplant centers in 42 CFR, Part 405, subpart U. Some of the requirements in this final rule could result in additional costs for some centers. Although we do not believe the requirements in this final rule will have a substantial economic impact on a significant number of transplant centers, we believe it is desirable to inform the public of our projections of the likely effects of this final rule. There are two reasons this final rule will have a minimal economic effect.

As of October 1, 2006, 504 Medicare-approved transplant centers potentially will be affected by the requirements in this final rule to a greater or lesser degree. However, we believe the majority of the transplant centers have already put into practice most of the process requirements contained in this final rule. Since these requirements, for the most part, reflect advances in transplantation technology, we believe they are routine or standard practices for most transplant centers. Furthermore, although this final rule requires a large amount of data to be submitted, transplant centers are already submitting these data to the OPTN.

General Comments

In the public comments to the proposed rule, some commenters said that CMS had underestimated the impact the requirements in the proposed rule would have on transplant centers. They stated that the number of hours and the costs associated with some requirements were either inaccurate or were underestimated.

We agree with the commenters that in certain instances the economic impact was underestimated in the proposed rule. We have performed further analysis of the tasks and resources required to satisfy the CoPs in this final rule, and we have reviewed more recent economic data. Based on this further analysis, we have adjusted our estimate of the economic impact for the final rule. These adjustments are discussed below for each relevant condition of participation.

Some commenters said that some of the CoPs in the proposed rule were unnecessary because some of the requirements are similar or even identical to either current OPTN or JCAHO requirements. We agree that

some of the CoPs are similar or perhaps even identical to OPTN or JCAHO requirements. However, for these requirements to be mandatory and enforceable by CMS through our survey and certification process, they must be promulgated as regulations.

Some commenters expressed concern that these new requirements would increase costs. One commenter noted that increased costs could result in increased organ acquisition fees and subsequent increased expenses to the Medicare program and could also reduce access to transplantation services for some individuals. The commenter speculated that hospitals could have difficulty contracting with managed care organizations due to the increased costs.

As we stated above, we do not believe this rule will have a significant economic impact on most transplant centers because most of the requirements are routine practice in the majority of centers. In addition, all transplant centers are located in hospitals and thus, already have access to resources that should minimize the additional costs needed to satisfy the requirements in this final rule. Only the costs associated with the donor advocate or donor advocate team requirements will affect organ acquisition fees. We estimate that in the first year of its implementation, the requirements in this final rule will increase the cost of a transplant by approximately $1,071 per transplant ($28,420,256 total first year costs divided by 26,539 total transplants in 2004 = $1,070.88 or about $1,071). However, in subsequent years, the increase will drop to approximately $360 per transplant (about 9,566,291 implementation costs in subsequent years divided by 26,539 total transplants in 2004 = $360.46 or approximately $360). In light of the fact that the total first-year cost of an organ transplant (including both hospital and physician charges) varies from about $175,000 for a kidney transplant to nearly $400,000 for a heart transplant, the impact of this rule will be negligible. Thus, hospitals should have no difficulty contracting with managed care organizations due to the requirements in this final rule.

Section 482.72 Condition of Participation: OPTN Membership

Section 482.72 requires each transplant center to be located in a transplant hospital that is a member of and abides by the rules and requirements of the Organ Procurement and Transplantation Network (OPTN). Under § 482.45(b)(1) of the hospital CoPs, all transplant centers that are currently Medicare-approved are required to be located in hospitals that are members of the OPTN and that abide by the OPTN's rules. Thus, there is no additional burden or economic impact associated with this condition to centers that currently have Medicare approval. Since this final rule requires centers to perform a certain number of transplants prior to applying for Medicare approval, new centers also will be members of the OPTN. Thus, there is no economic impact from this requirement to centers that will be applying for Medicare approval after the effective date of this rule.

Section 482.74 Condition of Participation: Notification to CMS

Section 482.74 requires a transplant center to notify us immediately of any significant changes related to the center's transplant program or changes that could affect its compliance with the applicable CoPs. Instances in which CMS should be notified include, but are not limited to, changes in key staff members of the transplant team; a decrease in the center's number of transplants or survival rates that could result in the center being out of compliance with § 482.82; termination of an agreement between the hospital in which the transplant center is located and an OPO for the recovery and receipt of organs; and inactivation of the transplant center.

We believe that satisfying this requirement would require the involvement of the program's medical director, an administrator, a transplant coordinator, and appropriate support or administrative staff. Based upon our previous experience with transplant centers, we believe that three significant changes per year per center is an appropriate estimate. We also believe that it would take the above described personnel approximately 2 hours to comply with this section.

Thus, each time a transplant center is required to report a significant change to us, the total economic impact or cost estimate is $142.81. For the estimated three significant changes per transplant center per year, the total cost estimate would be $428.43. Since there are currently approximately 504 Medicare-approved transplant centers, the total annual cost estimate for complying with this section is $215,928.72 ($428.43 annual cost estimate per center × 504 transplant centers = $215,928.72).

Section 482.76 Condition of Participation: Pediatric Transplants

Section 482.76 requires transplant centers that want Medicare approval to provide transplant services to pediatric patients to submit to us a request specifically for Medicare approval to perform pediatric transplants using the procedures described in § 488.61, Special procedures for approval and re-approval of organ transplant centers. Section 482.76(d) allows heart transplant centers that want to provide transplantation services to pediatric heart patients to be approved to perform pediatric heart transplants by meeting the OBRA 1987 criteria in section 4009(b) (Pub. L. 100–203) as follows: (1) The center's pediatric transplant program must be operated jointly by the hospital and another facility that is Medicare-approved; (2) the unified program shares the same transplant surgeons and quality improvement program (including oversight committee, patient protocol, and patient selection criteria); and (3) the center demonstrates to the satisfaction of the Secretary that it is able to provide specialized facilities, services, and personnel that are required by pediatric heart transplant patients.

We believe that most transplant centers that want to obtain Medicare approval to do pediatric transplants will use the procedures at § 488.61. Therefore, the economic impact for centers requesting approval to do pediatric transplants will be discussed under that section. For those centers that want to request approval using the alternative criteria, we believe there will be some impact, but it will be minimal and should affect very few centers. Currently, there are approximately 13 pediatric heart centers; 6 of these centers are Medicare approved. Based on these figures, we expect that no more than one pediatric heart center will apply for Medicare approval per year.

Section 482.80 Condition of Participation: Data Submission, Clinical Experience, and Outcome Requirements for Initial Approval of Transplant Centers

Section 482.80 requires that transplant centers must generally meet all data submission, clinical experience, and outcome requirements to be granted initial approval by CMS. Section 482.80(a) states that no later than 90 days after the due date established by the OPTN, a transplant center must submit to the OPTN at least 95 percent of the required data on all transplants, (deceased and living donors) it has performed. The required data submissions include, but are not limited to, submission of the appropriate OPTN forms for transplant candidate registration, transplant recipient registration and follow-up, and living donor registration and follow-up. However, transplant centers already

submit these data to the OPTN, using the time frame specified by the OPTN, as required by 42 CFR 121.11, which regulates transplant hospitals' submission of data to the OPTN. Therefore, there is no additional cost to transplant centers from the data submission requirement in this final rule. Section 482.80(b) establishes a clinical experience requirement of 10 transplants in a 12-month period for initial Medicare approval for heart, intestine, kidney, liver, and lung transplant centers. The clinical experience requirement for initial approval for kidney centers is 3 transplants in a 12-month period. (See § 482.80(d)(5).)

Current national coverage decisions require 10 transplants for intestine and lung centers and 12 transplants for liver and heart centers. Current conditions for coverage for kidney transplant centers require 15 or more kidney transplants annually for a center to have unconditional status. Thus, all currently approved transplant centers should be performing the minimum number of transplants required.

Furthermore, even if a center does not meet the clinical experience requirements, we may grant the center initial Medicare approval based on a review of the center's compliance with the relevant conditions of participation at § 482.72 through § 482.76 and § 482.90 through § 482.104. (See § 488.61(a)(3).)

Nevertheless, some centers may not be granted Medicare approval due to their failure to satisfy the clinical experience requirements. Loss of Medicare approval is likely to result in the center losing patients. If a center with current Medicare approval applies for and is denied Medicare approval under this final rule, it has the option to leave the Medicare program voluntarily until it can satisfy the requirements.

Although we believe the economic impact of the clinical experience requirements will be minimal, we are not aware of any research that quantifies the cost or benefit to a hospital of having a transplant center. Anecdotal information indicates that some hospitals with a transplant center lose money or break even but that some hospitals experience a financial benefit. Whether a transplant center is a benefit or a cost to a hospital may depend at least in part on the type of organ transplanted, the volume of transplants performed, and the center's operational efficiency.

We also recognize that there may be benefits and/or costs to Medicare beneficiaries and other patients on the waiting lists of centers that lose Medicare approval, although we do not believe it is possible to quantify the benefits or costs. Benefits would include improved patient safety and better outcomes for patients who transfer to the waiting lists of transplant centers that furnish higher quality transplantation services. Costs could include increased cost for transportation to a center that is farther from a waiting list patient's home and an increase in the time until an organ becomes available, with the potential for increased morbidity and mortality.

Section 482.80(c) states that CMS will review outcomes for all transplants performed at a center, including outcomes for living donor transplants, if applicable. Except for lung transplants, CMS will review adult and pediatric outcomes separately when a center requests Medicare approval to perform both adult and pediatric transplants. Outcome data must be available for review. CMS will compare each transplant center's observed number of patient deaths and graft failures 1 year post-transplant to the center's expected number of patient deaths and graft failures 1-year post-transplant using the data contained in the most recent SRTR center-specific reports. (See § 488.61(d)(1).) The required number of transplants must have been performed during the time frame reported in the most recent SRTR center-specific report. (See § 488.61(c)(2).) CMS will not consider a center's patient and graft survival rates to be acceptable if: (1) A center's observed patient survival rate or observed graft survival rate is lower than its expected patient survival rate or expected graft survival rate; and (2) all three of the following thresholds are crossed over: (A) the one-sided p-value is less than 0.05, (B) the number of observed events (patient deaths or graft failures) minus the number of expected events is greater than 3, and (C) the number of observed events divided by the number of expected events is greater than 1.5. (See § 488.61(c)(3).)

Current national coverage decisions for heart, liver, lung, and intestine transplants already contain outcome requirements. However, those outcome requirements only concern patient (not graft) survival rates. The outcome requirements associated with § 482.80(c) are more comprehensive because they include graft survival. We believe that more centers may have difficulty in meeting these new standards. However, under § 488.61(a)(3), CMS, as an option, may approve a center that does not meet the patient and graft survival if a survey of the center demonstrates that the center was in compliance with § 482.72 through § 482.76 and § 482.90 through § 482.104. In addition, a center also may choose to withdraw voluntarily from the Medicare program and seek re-entry after it has corrected any problems. (See 42 CFR § 488.61(d).) Thus, we believe the economic impact from the new outcome measures will be minimal.

Section 482.82 Condition of Participation: Data Submission, Clinical Experience, and Outcome Measure Requirements for Re-Approval of Transplant Centers

Section 482.82 provides that transplant centers must generally meet all data submission, clinical experience, and outcome requirements in order to be re-approved. The data submission, clinical experience, and outcome requirements and exceptions to those requirements generally are identical to those in § 482.80, which contains the requirements for initial approval. However, in this section, the review will cover the 3-year approval period.

The economic impact of this section is the same as the economic impact of § 482.80, except that transplant centers will have to comply with these requirements for the entire time they have Medicare approval. Thus, the economic impact associated with this section constitutes an annual economic impact for all of the centers with Medicare approval. However, we believe the economic impact will be minimal.

Section 482.90 Condition of Participation: Patient and Living Donor Selection

Section 482.90 requires transplant centers to use written patient selection criteria in determining a patient's suitability for placement on the waiting list or a patient's suitability for transplant. If a center performs living donor transplants, the center also must use written donor selection criteria in determining the suitability of candidates for donation.

Section 482.90(a) requires that before a prospective transplant candidate is placed on a center's waiting list, each prospective transplant candidate shall receive a psychosocial evaluation, if possible. In addition, the candidate's medical record must contain documentation that the candidate's blood type has been determined. When a patient is placed on a center's waiting list or is selected to receive a transplant, the center must document in the patient's medical record the patient selection criteria used. A transplant center must provide a copy of its patient selection criteria to a transplant patient,

or a dialysis facility, as requested by the patient or the dialysis facility.

In our experience, all or nearly all transplant centers conduct psychosocial evaluations of transplant candidates. Such evaluations are performed routinely so that centers can evaluate how well a prospective candidate will do after transplantation (for example, whether the patient is likely to be compliant with the immunosuppressive medications needed to prevent graft failure). Thus, we expect no economic impact from this requirement for most transplant centers.

In the public comments we received on the proposed rule, some commenters said that the patient selection criteria requirements would be burdensome. For example, one commenter said that it would take at least 30 minutes of staff time to document the patient selection criteria in the file of each patient or living donor. Some commenters indicated that the patient selection criteria would need constant updating. They also noted that the proposed rule did not contain an analysis of the economic impact for this requirement.

We disagree that the requirement to have written patient selection criteria would have a significant impact on transplant centers. We expect that heart, liver, and lung transplant centers already have patient selection criteria because current NCDs require these centers to have such criteria. Further, Medicare coverage of pancreas and intestine transplants is based on specific clinical indicators. Although there are no current requirements for kidney transplant centers to have patient selection criteria, based on our experience, we expect that all or nearly all centers already have such criteria because many kidney transplant centers provide their patient selection criteria to local dialysis facilities. Therefore, complying with this requirement should have no additional impact on heart, liver, and lung centers and only a minimal impact on other transplant centers.

We believe that transplant centers should be able to document the patient selection criteria in a patient's medical record in considerably less than 30 minutes. Generally, documenting the patient selection criteria in a patient's medical record should involve no more than tracking the patient's primary diagnosis and any co-morbid conditions to the appropriate patient selection criteria. Under this final rule, each center has the flexibility to determine the most expedient way to satisfy this requirement. Centers should be able to significantly reduce the resources needed to document the required information in the potential transplant recipient and living donor medical records by using electronic formats, forms, or checklists.

In addition, it is standard medical practice to document in the medical record of a hospital patient undergoing surgery whether the patient meets the hospital's criteria for surgery. Although we do not know how many prospective transplant candidates would be interested in requesting a copy of a transplant center's patient selection criteria, we believe that the activities required by this section would have a minimal economic impact on transplant centers. Supplying a copy of patient selection criteria to a dialysis facility at its request can be done electronically and should require only minimal effort. Thus, we believe that the activities required by this section would require no additional staff and have only a minimal economic impact on transplant centers.

Section 482.90(b) provides that transplant centers performing living donor transplants must ensure that each prospective living donor receives a medical and psychosocial evaluation prior to donation and must document in the living donor's medical records both the living donor's suitability for donation and that the living donor has given informed consent, as required under § 482.102.

We expect the economic impact of these living donor requirements to be minimal, as they are similar to the requirements for transplant patients discussed previously. Due to the potential risks associated with donation, we expect that every transplant center that performs living donor transplants already has criteria for the selection of living donors, as well as protocols that require a medical and psychosocial evaluation of the donor. In addition, as with any other surgical procedure, documenting a living donor's informed consent should be standard practice for any transplant center. Thus, we believe that these activities would constitute a minimal economic burden to centers that perform living donor transplants.

Section 482.92 Condition of Participation: Organ Recovery and Receipt

Transplant centers must have written protocols for validation of donor-recipient blood type and other vital data for the deceased organ recovery, organ receipt, and living donor organ transplantation processes. There are also specific requirements related to each of these processes, such as a requirement that the transplanting surgeon and another licensed health care professional at the transplant center must verify that the donor's blood type and other vital data are compatible with transplantation of the intended recipient prior to transplantation. (See § 482.90(b).)

We expect that all transplant centers already have written protocols for critical functions addressed within this section. Although some centers' protocols may need to be reviewed and revised so that they satisfy the requirements in this section, the economic impact will be negligible.

Section 482.94 Condition of Participation: Patient and Living Donor Management

Transplant centers must have written patient management policies for the transplant and discharge phases of transplantation. If a transplant center performs living donor transplants, the center also must have written donor management policies for the donor evaluation, donation, and discharge phases of living organ donation.

We expect that it is standard practice for transplant centers to have written policies for the evaluation, transplant, and discharge phases of transplantation. Thus, developing written policies for these areas should have no economic impact on most transplant centers. However, we acknowledge that some of the centers' written policies may need to be revised to satisfy the individual standards in this section. Thus, the economic impact of individual standards will be discussed below.

Section 482.94(a) states that a transplant center's patient and donor management policies must ensure that each transplant patient is under the care of a multidisciplinary patient care team coordinated by a physician throughout the transplant and discharge phases of transplantation. If the center performs living donor transplants, the same patient care requirement applies for living donors throughout the donor evaluation, donation, and discharge phases of donation.

We believe that it is a standard practice for hospitals to have patient management policies that cover both the in-patient stay and discharge planning. Thus, we expect that transplant centers already have patient and donor management policies for the transplant and the discharge phases of transplantation. Due to the potential risks to living donors, we expect that every transplant center that performs living donor transplants already has written policies that cover the evaluation of living donors. We acknowledge that publication of this final rule may cause some centers to

review or revise their policies to ensure that they are in compliance. However, the economic impact on these transplant centers will be minimal.

Section 482.94(b) requires that transplant centers must keep their waiting lists up to date on an ongoing basis, including: (1) Updating of waiting list patients' clinical information; (2) removing patients from the center's waiting list if a patient receives a transplant or dies, or if there is any other reason why the patient should no longer be on a center's waiting list; and (3) notifying the OPTN no later than 24 hours after a patient's removal from the center's waiting list.

We believe these activities are standard practice for most transplant centers. Transplant centers must keep their patients' clinical information updated to ensure that organ offers are made for patients appropriately, based on their clinical status. Further, the OPTN requires transplant centers to: (1) Remove a patient from the waiting list if the patient receives a transplant or dies; and (2) notify the OPTN within 24 hours of the patient's transplantation or death. Thus, there should be no economic impact on transplant centers from this requirement.

Section 482.94(c) requires transplant centers to maintain up-to-date and accurate patient management records for each patient who receives an evaluation for placement on a center's waiting list and who is admitted for organ transplantation.

Section 482.94(c)(1) states that for each patient who receives an evaluation for placement on a center's waiting list, the center must document in the patient's record that the patient has been informed of his or her transplant status, including notification of the patient's placement on the center's waiting list, the center's decision not to place the patient on its waiting list, or the center's inability to make a determination regarding the patient's placement on its waiting list because further clinical testing or documentation is needed.

Section 482.94(c)(2) states that if a patient on the center's waiting list is removed for any reason other than death or transplantation, the center must document in the patient's record that the patient was notified no later than 10 days after the date the patient was removed from the center's waiting list.

Section 482.94(c)(4) states that in the case of patients admitted for organ transplants, transplant centers must maintain written records of multidisciplinary patient care planning during the transplant period and multidisciplinary discharge planning for post-transplant care.

All transplant centers must follow OPTN requirements regarding notification of patients and maintenance of their waiting lists. If a patient on the waiting list is removed from the waiting list for any reason other than death or transplantation, § 482.94(c)(2) requires the transplant center to document in the patient's record that the patient was notified not later than 10 days after the date the patient was removed from the waiting list. The OPTN already requires this notification, and documentation of the patient's record would be usual and customary business practice. Since we expect that all transplant centers are already complying with this requirement, there should be no economic impact on transplant centers from this requirement of the final rule. Thus, we believe that transplant centers already comply with the requirements in § 482.94(c), with the exception of the requirement for notification of dialysis facilities. Therefore, there is no economic impact on transplant centers from these requirements.

Sections 482.94(c)(1) and (2) require kidney transplant centers, in the case of dialysis patients, to notify the patients' usual dialysis facility. Since this is not an OPTN requirement, we do not believe that all transplant centers currently notify dialysis facilities about this information. When a kidney transplant center must notify a patient within 10 days about a change in status, the transplant center could choose to inform the dialysis facility at the same time it notifies the patient. If it did, we believe the burden of complying with this requirement would be minimal. However, the transplant center also could choose to notify the dialysis facilities periodically about other changes in status.

For the purpose of estimating the economic impact, we will assume that rather than notifying dialysis facilities on a flow basis for each patient, transplant centers will update dialysis centers periodically about the status of all patients. Thus, for the purposes of determining the burden for this requirement, we will assume quarterly notifications by transplant centers to dialysis facilities.

According to the OPTN, as of December 31, 2005, there were 64,848 individuals awaiting kidney transplants. Currently, there are 4,649 dialysis facilities in the United States. Since the number of patients at these facilities varies greatly, the following analysis will use the average number of dialysis patients at a facility. There are currently approximately 243 Medicare-approved kidney transplant centers. Therefore, each transplant center has patients on its kidney transplant waiting list from an average of 19 (4,649 dialysis facilities divided by 243 Medicare-approved kidney transplant centers = 19.13) dialysis centers. Since there are 64,848 patients waiting for kidney transplants and 4,649 dialysis facilities, each transplant center has an average of 14 kidney waiting list patients at each dialysis facility (64,848 patients divided by 4,649 dialysis facilities = 13.9). For each of the 243 kidney transplant centers, there are about 267 patients (64,848 patients divided by 243 transplant centers = 266.86 or 14 patients per dialysis facility × 19 dialysis facilities = 266). Thus, on average, each transplant center will have to determine the status of about 267 patients and notify an average of 19 dialysis facilities about the status of these patients 4 times per year.

Based upon our past experience, we believe that this notification will require the involvement of the transplant coordinator and appropriate support/clerical staff. We anticipate that transplant centers will utilize modern technology to minimize the burden of satisfying this requirement.

TOTAL ANNUAL BURDEN HOURS AND TOTAL ANNUAL COST ESTIMATE TO NOTIFY DIALYSIS FACILITIES OF THEIR PATIENTS' WAITING LIST STATUS

Position	Hourly wage	Burden hours per event	Cost estimate per event	Total annual hours required (for 4 events)	Total annual cost estimate for 4 events)
Transplant coordinator	$43.87	2.00	$87.74	8.0	$350.96
Secretary	21.81	.50	10.90	2.0	43.62

TOTAL ANNUAL BURDEN HOURS AND TOTAL ANNUAL COST ESTIMATE TO NOTIFY DIALYSIS FACILITIES OF THEIR PATIENTS' WAITING LIST STATUS—Continued

Position	Hourly wage	Burden hours per event	Cost estimate per event	Total annual hours required (for 4 events)	Total annual cost estimate for 4 events)
Total	.....	2.50	98.64	10.00	394.58

All salary information is from the salary.com Web site at *http://hrsalarycenter.salary.com.*

Thus, we anticipate that each quarterly notification will cost about $98.64. With the transplant centers conducting these notifications on a quarterly basis (that is, 4 notifications per year for each kidney center), the total annual economic impact to each kidney transplant center would be $394.58. Since there are currently about 243 Medicare-approved kidney transplant centers, the total economic impact from this requirement will be $95,882.94 annually (243 transplant centers × $394.58 = $95,882.94).

Section 482.94(d) states that a transplant center must make social services, furnished by qualified social workers, available to transplant patients, living donors, and their families. A qualified social worker is an individual who meets licensing requirements in the State in which he or she practices and (1) has completed a course of study with specialization in clinical practice and holds a masters degree from a graduate school of social work accredited by the Council on Social Work Education, or, (2) is working as a social worker in a transplant center as of the effective date of this final rule and has served for at least 2 years as a social worker, 1 year of which was in a transplantation program, and has established a consultative relationship with a social worker who is qualified under § 482.94(d)(1).

Current policies for heart, liver, and lung transplants require facility commitment at all levels, including social service resources. We believe nearly all transplant centers already have a qualified social worker to provide social services. Further, we have been careful to retain an exception for bachelor's-prepared social workers so that transplant centers that employ these social workers do not have to replace them with master's-prepared social workers, if they were employed as social workers in the transplant center as of the effective date of this final rule and served for at least 2 years as a social worker, 1 year of which was in a transplantation program, and has established a consultative relationship with a social worker who is qualified under § 482.94(d)(1). Thus, satisfying this requirement would constitute a minimal economic impact for most, if not all, centers.

Section 482.94(e) states that transplant centers must make nutritional assessments and diet counseling services, furnished by a qualified dietician, available to all transplant patients and living donors. A qualified dietician is an individual who meets practice requirements in the State in which he or she practices, and is a registered dietician with the Commission on Dietetic Registration.

Some commenters said that this requirement was too expensive and burdensome. We disagree. Kidney transplant centers are required by ESRD CfCs at § 405.2171(c) to ensure patients receive nutritional services from a qualified dietician. Thus, all kidney centers currently should be providing these services to transplant patients and living donors. We expect that most extra-renal transplant centers provide nutritional services to transplant patients, because these patients have very specific nutritional needs. Some liver, lung, and intestine centers that transplant organs from living donors may need to obtain a dietician's services for their living donors if they do not already provide these services. However, since the number of living liver, lung, and intestine donors in 2004 totaled fewer than 400, we believe liver, lung, and intestine centers can obtain nutritional services for their living donors from dieticians already employed by the hospitals in which the centers are located at little cost to the center. Thus, we expect the economic impact to be minimal.

Section 482.96 Condition of Participation: Quality Assessment and Performance Improvement (QAPI)

Section 482.96 requires transplant centers to develop, implement, and maintain a written, comprehensive, data-driven QAPI program designed to monitor and evaluate performance of all transplantation services, including services provided under contract or arrangement.

Section 482.96(a) states that the transplant center's QAPI program must use objective measures to evaluate the center's performance with regard to transplantation activities and outcomes. Outcomes may include, but are not limited to, patient and donor selection criteria, accuracy of the waiting list in accordance with the OPTN waiting list requirements, accuracy of donor and recipient matching, patient and donor management, techniques for organ recovery, consent practices, patient education, patient satisfaction, and patient rights. The transplant center must take actions that result in performance improvements and track performance to ensure that improvements are sustained.

Section 482.96(b) requires transplant centers to establish and implement written policies to address and document adverse events that occur during any phase of an organ transplantation case. These policies must address, at a minimum, the process for identification, reporting, analysis, and prevention of adverse events. When an adverse event is identified, the transplant center must conduct a thorough analysis of and document any adverse event. The center must then use this analysis to effect changes in its policies and practices in order to prevent repeat incidents.

In the proposed rule, we estimated that only a minority of centers did not already have a data-driven QAPI program. For those centers that would need to develop a QAPI program that would satisfy this requirement, we estimated that a center would likely utilize an experienced individual from its hospital QAPI staff. We used the salary of a registered nurse (RN) to estimate the economic impact, since many QAPI coordinators are RNs. We noted that the 2002 mean annual income of an RN was $42,730 and requested comments addressing whether transplant centers would be able to utilize individuals from the hospital's existing QAPI staff to develop and implement a QAPI program specific to the transplant center or whether transplant centers would need to hire additional staff in order to comply with this proposed requirement. We did not make a specific estimate of the economic burden; however, we estimated the PRA burden to be 8 hours

on a one-time basis to comply with this requirement.

Comment: Some commenters disagreed with the resources we believed would be required to satisfy this requirement. One commenter stated that a large center would require one FTE to comply with this requirement. Another commenter indicated that it took 160 staff hours to develop and establish the QAPI program at their hospital and 1.25 FTEs to maintain the program. This commenter indicated that 8 hours would be only a ''start'' in complying with this requirement. Others noted that the establishment, implementation, and maintenance of such a QAPI program would be much more complex and would require more resources.

Other commenters disagreed with our use of the 2002 mean annual RN salary of $42,730. One commenter noted that a budget of $42,000 would not cover their projected expenses to satisfy this requirement. Another commenter also noted that this was insufficient. They noted the nursing shortage and that most of the clinical coordinators who would be doing this work were generally both highly experienced and trained, and held either a bachelor's or master's degree. One commenter explicitly said that the average annual national RN salary was not the appropriate salary to use in estimating the burden associated with the QAPI requirement.

Another commenter cautioned us about assuming that the hospital's QAPI program would satisfy this requirement. The commenter stated that although a hospital QAPI program may be able to support a single transplant center, the scope and complexity of multiple transplant centers would require more resources.

Response: We acknowledge that we underestimated the economic impact of the QAPI requirement in the proposed rule. It clearly will take more than 8 hours to develop and implement the policies necessary to comply with this section. We also agree that the use of the 2002 mean annual national RN salary is inadequate. However, while we agree that a hospital QAPI program may be inadequate to fully support its transplant center, particularly if a hospital has multiple transplant centers, we believe that the hospital's QAPI program would be a substantial resource for the staff responsible for the transplant center's QAPI program.

We believe that many centers have already established and implemented a QAPI program that satisfies this final rule's QAPI requirement. However, some of the centers may need to review and revise their programs. We believe this will constitute only a minimal economic impact to those centers.

Some centers may need to develop and implement a QAPI program. Beginning in 2003, hospitals are required to have hospital-wide QAPI programs that involve all hospital departments. (See 42 CFR 482.20.) Therefore, we believe that no more than 20 percent of the 504 currently Medicare-approved centers (101 centers) will need either to develop and implement a QAPI program or substantially revise an existing program. We also believe that no more than 40 percent of the centers (202 centers) will need to perform moderate revisions to their programs so that they will satisfy the QAPI requirements in this final rule. However, since each center is located in a hospital, we believe that centers will have substantial resources to draw upon in developing their QAPI programs.

Based on our past experience, we believe it is likely that centers will utilize an experienced staff person, possibly an experienced RN with some knowledge of the transplant program. An individual with this experience would likely be paid approximately the same as a transplant nurse coordinator or about $91,456 annually. We have considerable experience providing guidance to OPOs in developing comprehensive QAPI programs, which has provided us with knowledge of how many staff resources are needed to implement or modify a data-driven QAPI program. We believe it will require 1 FTE for each one of the 101 centers that will need either to develop a QAPI program or perform substantial revision to an existing QAPI program. We believe it will require half of an FTE for each one of the 202 centers that will need to perform at least moderate revisions to their programs. The cost to the 101 centers that need 1 FTE would be $9,237,056 ($91,456 × 101 = $9,237,056), and the cost to the 202 centers that need a half FTE would be $9,237,056 ($91,456 divided by 2 = $45,728 and $45,728 × 202 centers = $9,237,056). The total economic impact of this requirement on the transplant centers would be $18,474,112 ($9,237,056 + $9,237,056 = $18,474,112).

This section also requires the centers to maintain their QAPI programs. We believe that having and maintaining a QAPI program should be considered standard practice by the transplant centers. Once the center's QAPI program is developed and implemented, we believe that maintaining it would have a minimal economic impact on the transplant centers.

Section 482.98 Condition of Participation: Human Resources

Section 482.98 states that transplant centers must ensure that all individuals who provide services and/or supervise services at the center, including individuals furnishing services under contract or arrangement, are qualified to provide or supervise such services. Section 482.98(a) requires each transplant center to be under the general supervision of a qualified transplant surgeon or qualified physician-director. This director need not serve full time and may also serve as the center's primary transplant surgeon or transplant physician. Section 482.98(b) requires transplant centers to identify to the OPTN a primary transplant surgeon and a transplant physician with appropriate training and experience to provide transplantation services, who are immediately available to provide transplantation services when an organ is offered for transplantation.

Any economic impact associated with these requirements should be minimal. The current regulations for kidney transplant centers already require renal transplant centers to be supervised by a qualified transplantation surgeon or qualified physician-director, and we expect most extra-renal transplant centers have a director who would be considered qualified under this final rule. The OPTN requires transplant centers to have transplant surgeons and physicians with specific qualifications, training, and experience, and we believe that in most transplant centers, the primary transplant surgeon and transplant physician are immediately available to provide transplantation services when an organ is offered for a patient.

Section 482.98(c) requires transplant centers to have a clinical transplant coordinator who is either a registered nurse or other licensed clinician who has experience and knowledge of transplantation and living donation issues. Based on our experience with transplant centers, we believe that all or nearly all centers already have a clinical transplant coordinator on staff to coordinate all patient care and management activities. Therefore, we do not believe that this requirement will constitute any additional burden for transplant centers.

Section 482.98(d) states that transplant centers that perform living donor transplantation must identify either an independent living donor advocate or an independent living donor advocate team to ensure the protection of the rights of living donors and prospective living donors. This

individual(s) must not be involved in transplantation activities on a routine basis.

Due to the potential risks living donors face, we believe it is crucial that living donors have an independent living donor advocate or advocate team. In addition, due to their growing numbers, there is an urgent need to provide this type of service for these living donors. According to the 2005 OPTN/SRTR Annual Report, in 2003, there were a total of 6,820 living donors. In 2004, there were a total of 7,002 living donors, of which 6,645 were living kidney donors, 323 were living liver donors, 28 were living lung donors, and 6 were living intestine donors.

In determining an economic impact for this requirement, it is important to note that the number of living donors at a particular transplant center varies greatly. In order to estimate the economic impact, we have determined the annual average number of living donors per center, based on the annual number of living kidney and living liver donors. Since there are so few living lung and intestine donors, we have not estimated the impact of this requirement on lung or intestine transplant centers.

There are currently about 243 Medicare-approved kidney transplant programs. However, 31 of those centers perform only pediatric kidney transplants. Based on our review of data from the SRTR, pediatric kidney centers transplant very few kidneys from living donors. However, nearly all of the 212 adult kidney transplant centers perform living kidney transplants. There are currently 90 Medicare-approved liver transplant centers. However, in 2005 only about 36 percent or about 32 of those centers performed living liver transplants. We expect that at least half of the kidney and liver centers that perform living donor transplants already have a donor advocate or donor advocate team that fulfills the requirements of this final rule. Thus, we will determine an estimate of the economic impact for this requirement based on 106 kidney transplant centers (half the number of currently Medicare-approved kidney transplant centers) and 16 liver transplant centers (half the number of currently Medicare-approved liver transplant centers that perform living transplants).

Although some centers may choose to develop an independent living donor advocate team, we believe that most centers will choose to have an independent living donor advocate. Most centers will probably choose either an RN or a social worker to fill this position. We believe that the total annual compensation for this position would be approximately $81,124, which is the median annual total compensation for a renal dialysis staff nurse. Due to the number of living kidney donors, we believe that on average each center will need to have 1 FTE for the independent living donor advocate position. Thus, the total annual economic impact to kidney transplant centers would be $8,599,144 ($81,124 × 106 transplant centers = $8,599,144). However, there are far fewer living liver transplants performed per transplant center. Although each center will vary in the number of transplants performed, we estimate that on average each center will need about half FTE for an independent living donor advocate. Thus, the total annual economic impact to the liver transplant centers will be $648,992 ($81,124 × .5 = $40,562 × 16 centers = $648,992). Thus, the total economic impact for this requirement is $9,248,136 ($8,599.144 + $648,992 = $9,248,136).

Section 482.98(e) states that transplant centers must identify a multidisciplinary transplant team and describe the responsibilities of each member of the team. The team must be composed of individuals with the appropriate qualifications, training, and experience in the relevant areas of medicine, nursing, nutrition, social services, transplant coordination, and pharmacology.

Current NCDs for heart, liver, and lung transplant centers require them to have multi-disciplinary transplant teams, and current CfCs for kidney transplant centers require them to have both social workers and dieticians. We believe that all transplant centers have identified their multidisciplinary transplant teams and described the responsibilities of each member of that team. Thus, we do not anticipate that this requirement will have any economic impact on centers.

Section 482.98(f) states that each transplant center must demonstrate availability of expertise in internal medicine, surgery, anesthesiology, immunology, infectious disease control, pathology, radiology, blood banking, and patient education as related to the provision of transplantation services. Current NCDs for heart, liver, and lung transplant centers have similar requirements. Since every transplant center is part of a larger hospital, we expect that all transplant centers already have access to expertise in all of these areas. Therefore, this requirement will result in no additional economic impact.

Section 482.100 Condition of Participation: Organ Procurement

Section 482.100 requires a transplant center to ensure that the hospital in which it operates has a written agreement for the receipt of organs with an OPO designated by the Secretary that identifies specific responsibilities for the hospital and for the OPO with respect to organ recovery and organ allocation.

Therefore, we expect that all centers have some type of written agreement or contract with an OPO. However, these agreements may not satisfy the requirements of this section. Thus, we believe that approximately 50 percent of the 504 centers or 252 centers would need to revise the agreements between themselves and their designated OPOs for the receipt of organs that identify specific responsibilities for the hospital and for the OPO with respect to organ recovery and organ allocation.

TOTAL ANNUAL BURDEN HOURS AND TOTAL ANNUAL COST ESTIMATE TO DEVELOP AN AGREEMENT BETWEEN A TRANSPLANT CENTER AND AN OPO CONCERNING ORGAN RECOVERY AND ORGAN ALLOCATION

Position	Hourly wage	Total annual hours required	Total annual cost estimate
General Counsel or Attorney	$176.86	4.0	$707.44
Medical Director	116.60	2.0	233.20
Senior Administrator	92.31	2.0	184.62
Transplant Coordinator	43.87	2.0	87.74
Secretary	21.81	1.0	21.81
Totals	.....	11.00	1,234.81

All salary information is from the salary.com Web site at *http://hrsalarycenter.salary.com*

Based on our experience with health care organizations, agreements of this type would require the involvement of the hospital's attorney and an administrator. It would also involve the transplant center's director, transplant coordinator, and appropriate clerical/support staff. We believe that it would require a total of approximately 11 hours to negotiate and draft a mutually acceptable agreement that would be signed by both the transplant center and the OPO.

For each hospital in which one of the 252 transplant centers is located, the total cost estimate to negotiate and draft an organ recovery and organ allocation agreement with its designated OPO is $1,234.81. The total cost estimate is $311,172.12 (252 transplant centers × $1,234.81 = $311,172.12).

Section 482.102 Condition of Participation: Patient and Living Donor Rights

Section 482.102 requires transplant centers to implement written transplant patient informed consent policies that inform each patient about: (1) The evaluation process; (2) the surgical procedure; (3) alternative treatments; (4) potential medical or psychosocial risks; (5) national and transplant center-specific outcomes; (6) organ donor risk factors that could affect the success of the graft or the health of the patient, including, but not limited to, the donor's history, condition or age of the organs used, or the patient's potential risk of contracting the human immunodeficiency virus and other infectious diseases if the disease cannot be detected in an infected donor; (7) his or her right to refuse transplantation; and (8) the fact that if a transplant is not provided in a Medicare-approved transplant center, it could affect the transplant recipient's ability to have his or her immunosuppressive drugs paid under Medicare Part B.

Section 482.102(b) also requires transplant centers to implement written living donor informed consent policies that inform the prospective living donor of all aspects of, and potential outcomes from, living donation. The centers must ensure that the prospective living donor is fully informed about: (1) The fact that communication between the donor and the transplant center will remain confidential; (2) the evaluation process; (3) the surgical procedure, including post-operative treatment; (4) the availability of alternative treatments for the transplant recipient; (5) the potential medical or psychosocial risk to the donor; (6) the national and transplant center-specific outcomes for recipients; and the national and center-specific outcomes for living donors, as data are available; (7) the possibility that future health problems related to the donation may not be covered by the donor's insurance and that the donor's ability to obtain health, disability, or life insurance may be affected; and (8) the donor's right to opt out of donation at any time during the donation process; and (9) the fact that if a transplant is not provided in a Medicare-approved transplant center, it could affect the transplant recipient's ability to have his or her immunosuppressive drugs paid under Medicare Part B.

We believe that all transplant centers currently have policies regarding informed consent. Although we acknowledge that some centers may need to review and revise their informed consent policies to satisfy the requirements for this section, we believe that the economic impact will be minimal.

Section 482.102(c) requires a transplant center to notify patients placed on the center's waiting list of information about the center that could impact the patient's ability to receive a transplant should an organ become available, and what procedures are in place to ensure the availability of a transplant team. Section 482.102(c)(1) specifically requires a transplant center served by a single transplant surgeon or physician to inform patients placed on the center's waiting list of the potential unavailability of the transplant surgeon or physician and to indicate whether or not the center has a mechanism to provide an alternate transplant surgeon or transplant physician.

In the public comments we received to the proposed rule, one commenter pointed out that complying with this requirement would entail the drafting of a letter by an administrator, approval by the surgeon, searching a database to identify appropriate patients, clerical or support resources to prepare and mail the letters, and the expense associated with actually mailing the letters. The commenter pointed out that this would be an extensive and unrealistic use of resources for short-term unavailability issues, such as the absence of the transplant surgeon.

As discussed earlier in this preamble, this provision does not require that transplant centers inform waiting list patients on an ongoing basis about the short-term unavailability of a transplant surgeon, such as, when a transplant surgeon is on vacation. The provision simply requires that at the time a patient is placed on the waiting list, the patient must be informed about circumstances that could impact the patient's ability to receive a transplant and what procedures the transplant center has in place to address these circumstances. Clearly, this requirement is particularly important when a transplant center is served by a single surgeon. We expect that most transplant centers already provide this information to patients when they are placed on the waiting list. Thus, the economic impact for this requirement is minimal.

Section 482.102(c)(2) requires that, at least 30 days before a transplant center's Medicare approval is terminated, either voluntarily or involuntarily, the center must inform patients on its waiting list of this fact and provide assistance to waiting list patients who choose to transfer to the waiting list of another Medicare-approved transplant center without loss of time accrued on the waiting list. The transplant center must also inform Medicare beneficiaries on the center's waiting list that Medicare will no longer pay for transplants performed at the center after the effective date of the center's loss of Medicare approval.

Section 482.102(c)(3) requires that as soon as possible prior to a transplant center's voluntary inactivation, the center must inform patients on its waiting list and, as directed by the Secretary, provide assistance to waiting list patients who choose to transfer to the waiting list of another Medicare-approved transplant center without loss of time accrued on the waiting list as soon as possible.

We expect that transplant centers would inform waiting list patients by mail. We estimate that it would require an administrator approximately 30 minutes to draft a letter. A secretary or other support staff person would copy and mail these letters to the individuals on the center's waiting list. Based on our estimate, the economic impact of performing these tasks would be $100.69 for each center.

TOTAL BURDEN HOURS AND TOTAL COST ESTIMATE FOR NOTIFYING PATIENTS ON A CENTER'S WAITING LIST OF A TRANSPLANT CENTER'S LOSS OF MEDICARE APPROVAL

Position	Hourly wage	Hours required	Total cost estimate
Senior Administrator	$ 92.31	.50	$ 46.16
Secretary	21.81	2.50	54.53
Totals	.....	3.00	100.69

All salary information is from the salary.com Web site at *http://hrsalarycenter.salary.com*

In addition, the transplant center would incur costs for paper, envelopes, and postage. We estimate these costs to total $.55 per mailing. On average, each transplant center has 112 patients, so the total cost of mailing the letter to each waiting list patient would be approximately $61.60 (112 patients × $.55 = $61.60).

As discussed in more detail below under § 488.61, we believe that based upon the requirements contained in this final rule, up to two percent of transplant centers or approximately 10 centers may lose their Medicare approved status annually. If 10 centers annually lost their Medicare approved status, either voluntarily or involuntarily, the total cost estimate would be $1,622.90 ($100.69 salary cost estimate + $61.60 materials/postage cost estimate x 10 transplant centers = $1,622.90).

Section 482.104 Condition of Participation: Additional Requirements for Kidney Transplant Centers

Section 482.104(a) requires kidney transplant centers to directly furnish transplantation and other medical and surgical specialty services required for the care of ESRD patients. The centers must have written policies and procedures for ongoing communications with the dialysis patients' local dialysis facilities. Section 482.104(b) states that the kidney transplant centers must also furnish inpatient dialysis services directly or under arrangement. In addition, Section 482.104(c) states that the centers must cooperate with the ESRD network designated for their geographic area, in fulfilling the terms of the Network's current statement of work.

We believe that these requirements constitute standard practice for transplant centers. Thus, the activities required to comply with this section constitute a minimal economic impact.

Section 488.61 Special Procedures for Approval and Re-Approval of Organ Transplant Centers

Section 488.61(a) requires transplant centers that are not Medicare-approved as of June 28, 2007 to submit a request to CMS for Medicare approval. Section 488.61(b) requires transplant centers, including kidney transplant centers, that are Medicare approved as of June 28, 2007 to submit a request for Medicare approval no later than December 26, 2007. The process for making the request for Medicare approval is the same for both types of transplant centers. (See § 488.61(b)(1).) The request for Medicare approval must be signed by a person authorized to represent the center (for example, a chief executive officer). The request must include the hospital's Medicare provider identification (I.D.) number; the name(s) of the designated primary transplant surgeon and primary transplant physician; and a statement from the OPTN that the center has complied with all data submission requirements.

In the proposed rule, we estimated that each hospital would spend approximately 15 minutes to prepare and submit the request for Medicare approval to CMS. We did note that a hospital may have multiple transplant centers and, therefore, could be submitting more than one request for approval.

We received public comments on the proposed rule that said we had underestimated the time required for a transplant center to apply for Medicare approval. One commenter emphasized that transplant centers regard applying for Medicare approval very seriously. The commenter also indicated that the preparation, approval, and submission of the request for Medicare approval could take days at many large institutions. After further analysis of the tasks and the personnel that would be involved in applying for Medicare approval, we agree with the commenters that 15 minutes significantly underestimates the time required to prepare the request, obtain the required center approval(s), and submit the request for Medicare approval to CMS. However, we disagree with the commenter that said it could take ''days'' to accomplish all of the required tasks. Our analysis of the total cost estimate is discussed in detail below.

We believe that accomplishing all of the tasks necessary for complying with Section 488.61(a) would involve the transplant program's medical director, an administrator, a transplant coordinator, and appropriate support/administrative staff. We estimate that it would take these individuals approximately the same amount of time as it would take the transplant center to notify CMS of a significant change in their program or approximately 2 burden hours.

TOTAL ANNUAL BURDEN HOURS AND TOTAL ANNUAL COST FOR A TRANSPLANT CENTER TO APPLY FOR MEDICARE APPROVAL

Position	Hourly wage	Hours required	Total cost estimate
Medical Director	$116.60	.50	$58.30
Senior Administrator	92.31	.50	46.16
Transplant Coordinator	43.87	.75	32.90
Secretary	$21.81	.25	$5.45
Totals	.....	2.00	142.81

All salary information is from the salary.com Web site at *http://hrsalarycenter.salary.com*

This final rule requires all currently-approved transplant centers that want to continue to provide services to Medicare beneficiaries to apply for initial approval. There are currently approximately 504 Medicare-approved transplant centers. We believe that all 504 transplant centers will submit letters requesting initial approval under the requirements of this final rule. In addition, based on our experience, we believe that approximately 10 new centers a year may apply for Medicare approval. Thus, we anticipate that 514 transplant centers will apply for Medicare in the first year following the effective date of this final rule.

For the first year after the effective date of this final rule, the total cost estimate would be $73,404.34 (514 transplant centers × $142.81 = $73,404.34). For subsequent years, we anticipate that about 10 transplant centers will request initial Medicare approval. For those subsequent years, the total cost estimate would be $1,428.10 (10 transplant centers × $142.81 = $1,428.10).

Section 488.61(d) allows transplant centers that have lost their Medicare approval to seek re-entry into the Medicare program at any time. If a center chooses to seek Medicare approval after losing it, the center must: (1) request initial approval using the procedures at § 488.61(a); (2) be in compliance with §§ 482.72 through 482.104, except for § 482.82 (Re-approval Requirements), at the time of the request for Medicare approval; and (3) submit a report to CMS documenting any changes or corrective action taken by the center as a result of the loss of its Medicare approval status.

A transplant center would utilize resources to prepare and submit a request for approval to CMS pursuant to § 488.61(a) and to prepare and submit a report to CMS documenting any changes or corrective action taken by the center as a result of the loss of its Medicare approval status. After further analysis of the tasks that would be involved and the personnel that would be needed, developing and submitting the requests and the report would involve the transplant program's medical director, an administrator, a transplant coordinator, and appropriate support or administrative staff. We also believe that it will require more time to request re-entry into the Medicare program due to the development of the report documenting any changes or corrective action taken by the center as a result of the loss of its Medicare approval status.

During 2005 and 2006, only six centers voluntarily terminated their Medicare approval. Transplant centers have rarely had their Medicare approval status revoked involuntarily. However, this final rule has outcome requirements, clinical experience requirements, and process requirements that transplant centers must generally meet to obtain initial Medicare approval and to retain their approval. Considering these requirements, we anticipate that more centers may voluntarily terminate their Medicare approval status in order to give themselves time to correct any problems they may have in meeting these requirements. In addition, it may become more common for transplant centers to be involuntarily terminated from the Medicare program. Therefore, we estimate that, in any given year, up to two percent, or approximately 10, of the currently 504 Medicare-approved centers may lose their status annually and later seek to re-enter the program.

Based on the above, we estimate that a transplant center complying with the requirements to apply for initial approval would incur a total cost of $329.50. In any given year, we anticipate that as many as 10 centers may seek to re-enter the Medicare program. For these 10 centers, the total cost estimate would be $ 3,295.00 ($329.50 per center to re-apply × 10 centers = $ 3,295.00).

TOTAL ANNUAL BURDEN HOURS AND TOTAL ANNUAL COST FOR TRANSPLANT CENTERS SEEKING RE-ENTRY INTO THE MEDICARE PROGRAM AFTER LOSS OF MEDICARE APPROVAL

Position	Hourly wage	Hours required	Total cost estimate
Medical Director	$116.60	1.00	$116.60
Senior Administrator	92.31	1.00	92.31
Transplant Coordinator	43.87	2.50	109.68
Secretary	21.81	.50	10.91
Totals	.....	5.00	329.50

All salary information is from the salary.com Web site at *http://hrsalarycenter.salary.com*

Thus, the estimated total economic impact for this section in the first year after this final rule becomes effective is $73,404.34 (514 transplant centers × $142.81 = $73,404.34). For subsequent years, the estimated annual total economic impact is $4,723.10 ($1,428.10 + $3,295.00 = $4,723.10).

Our estimate of the first-year economic impact on transplant centers to meet the requirements in this final rule are as follows:

- $215,928 for notification to CMS of significant changes to the center's transplant program.
- $95,882 annually for kidney transplant centers to notify dialysis facilities' of their patients' waiting list status.
- $311,172 to revise agreements with OPOs.
- $18,474,112 to develop and implement a QAPI program.
- $9,248,136 to provide a living donor advocate in those centers that perform living donor transplantations.
- $1,622 for centers that have lost their Medicare approval status to notify the patients on their waiting list.
- $73,404 in the first year of implementation of this final rule to apply for Medicare approval.

Summary of Direct Cost

The overall first year economic impact of implementing the requirements in this final rule will be approximately $28,420,256, and the first year cost to each of the transplant centers will be an average of about $56,389 per transplant center. This figure includes the total compensation for all of the staff hours that were calculated.

Benefits and Effects of This Final Rule

The primary economic benefit of this final rule lies with its potential to improve Medicare-approved transplant centers' effectiveness and efficiency and thus reduce the number of patient deaths and graft failures for patients who receive transplants at Medicare-approved facilities. We believe that implementing the requirements in this final rule will result in a decrease in patient deaths and graft failures.

However, it is difficult to estimate the percentage of that decrease. For some transplant centers, most of the requirements in this final rule are already standard practice. Other centers will need to make only minor improvements to their current processes and practices. And, some transplant centers will need to make substantial modifications to their processes and practices to be in compliance. In addition, while some requirements will probably have only a minor, if any, effect on patient outcomes, there are certain requirements that we believe have the potential to substantially improve patient outcomes. For example, § 482.72(a) requires transplant centers to submit to the OPTN at least 95 percent of the required data on all transplants it has performed no later than 90 days after the due date established by the OPTN. Since this is already a requirement of the OPTN and the hospitals in which transplant centers are located must already belong to the OPTN, we do not anticipate that this requirement in the final rule will have any effect on patient outcomes. However, other requirements could have a substantial effect. Section 482.96 requires that transplant centers must develop, implement, and maintain a written, comprehensive, data-driven quality assessment and performance improvement (QAPI) program designed to monitor and evaluate performance of all transplantation services. These types of QAPI programs have the potential to substantially improve patient outcomes. Centers that do not have such QAPI programs currently could experience substantial improvements in their patient outcomes. However, since some centers are already complying with the QAPI requirement, as well as the other requirements in the final rule, we do not believe that the increase in improvement for all transplant centers will be substantial. Due to the current diversity in processes and procedures existing in transplant centers, we cannot calculate any percentage of decrease in patient deaths or graft failures to any degree of reasonable certainty. Thus, we will not be able to quantify the social benefits we believe will result from implementation of this final rule.

The social benefits from the implementation of this regulation will result from both the lives saved and the decrease in graft failures. Organ failure is usually fatal within a short period of time. Patients with ESRD are an exception. Some ESRD patients can survive for many years on dialysis and many of those patients can do quite well. However, dialysis is quite demanding and requires a substantial commitment on the part of these patients and their families. Therefore, kidney transplantation offers these patients a substantially increased quality of life. In addition, graft failures for very seriously ill patients often require re-transplantation for the patient to survive for more than a short length of time. And, considering the significant shortage of transplantable organs, it is crucial for transplant centers to operate efficiently and provide the best quality of care to transplant recipients to optimize the use of the transplantable organs that are available.

In addition to a decrease in patient deaths and graft failures, many of the requirements in this regulation should contribute to a higher quality of care for both transplant recipients and living donors. This increase in the quality of care will result in substantial social benefits. For example, the requirements for informed consent, donor management, a living donor advocate or living donor advocate team, and psychosocial evaluations of both potential transplant recipients and living donors should all lead to an improvement in the quality of care received by both transplant recipients and living donors. Based upon the above, we believe that the social benefits from the implementation of this final rule include:

- Increase in years of life gained.
- Improvements in quality of life, particularly for chronic kidney disease patients who can terminate dialysis.
- Resumption of work/volunteerism/productivity for some patients.
- An increase in the number of taxpayers (patients who return to work).
- An increase in family stability due to the life saved and improved health of a family member.
- An increase in access to dialysis as more patients receive kidney transplants.
- An increase in the number of patients who are transplanted due to the reduction in patients who need to be re-transplanted due to graft failures.
- Improved quality of care for both potential and actual transplant recipients and living donors.

Effects on the Medicare Program

In addition to the social benefits discussed above, we can estimate a monetary benefit from a reduction in the number of kidney graft failures, which forces kidney transplant patients to return to dialysis for treatment. Medicare pays for kidney dialysis for the vast majority of dialysis patients in the United States.

In 2003 (the most recent year for which complete data are available), there were 15,722 kidney (deceased or living donor) and kidney-pancreas transplants. Of the approximately 15,722 patients who received these transplants, 1-year graft survival data show that 1288 (less than 10 percent) of kidney grafts failed. We do not have data to show how many of the transplants were performed at Medicare-approved facilities, but since all or nearly all kidney transplant centers are Medicare approved, we will assume that all 2003 kidney and kidney-pancreas transplants were performed at Medicare-approved transplant centers. As stated above, we believe that the improvement in the number of graft failures will be modest. We estimate that the improvement could be from 1 to 3 percent. A 1 to 3 percent decrease in kidney graft failures would result in approximately 13 to 39 fewer graft failures in the first year after implementation of this regulation. Based on the median decrease of 2 percent, we can estimate that there could be as many as 26 fewer kidney graft failures.

The 2003 average per person per year primary payer cost for dialysis patients was $63,723, while the cost for end-stage renal disease patients with a functioning kidney graft was $15,357 (United States Renal Data System (USRDS): 2005 Annual Data Report: Atlas of End-Stage Renal Disease in the United States pages 674 and 680). Therefore, net health care cost savings would be $48,366 annually per patient and the cost savings for 26 patients would be $1,257,516 (26 patients × $48,366 cost savings per patient = $1,257,516).

It is important to note that re-transplantation of a kidney patient who experiences graft failure prevents a patient on the kidney waiting list from receiving a kidney and, thus, ending dialysis treatment. It is also important to note that while fewer graft failures will result in more patients receiving a first transplant (rather than a re-transplant), we estimate that the number of organs available for transplantation will remain the same. Thus, we do not anticipate that Medicare will face increased costs because the number of transplants should remain approximately the same.

We expect that the procedures for approval and re-approval contained in this final rule will have some economic impact on the Medicare program because CMS will need to survey all 504 transplant centers that are currently approved by Medicare if they wish to continue to provide services to Medicare beneficiaries. Furthermore,

under this final rule, all transplant centers must be re-approved every 3 years, and some centers will be surveyed as part of our re-approval process. Thus, this final rule is likely to increase survey costs.

Nevertheless, to the extent possible, we will minimize costs by prioritizing surveys based on transplant centers performance on the outcome requirements and by conducting surveys in the most efficient way possible. For example, all transplant centers located in the same hospital will be surveyed at the same time.

In addition, since Medicare reimbursement rates are either directly or indirectly influenced by a hospital's costs, we may eventually increase Medicare reimbursement to transplant centers to cover some of the costs of their extra responsibilities. Medicare pays hospitals on a cost basis for certain ''organ acquisition costs''. Costs related to the requirement to have a donor advocate or donor advocate team are organ acquisition costs.

Medicare generally reimburses hospitals for organ transplant costs for beneficiaries using diagnosis related groups (DRGs) in all States, except for Maryland. DRG payments are periodically re-weighted in a budget neutral fashion to increase payments for procedures that have costs that are growing at a faster rate than most other procedures. Therefore, it is possible that DRGs for organ transplants will increase and therefore offset some of the hospitals' costs under the various transplant DRGs.

Conclusion

We believe that the requirements in this final rule will ensure that the organ transplants made available to patients are provided in a safe and effective manner. We also believe that this final rule will ensure that living donors receive the guidance and care that they deserve. We estimate that the first year cost of implementing this final rule is $28,420,256. The cost of implementation in subsequent years is estimated to be $9,566,291 annually.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medical devices, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 482

Grant programs-health, Hospitals, Medicare, reporting and recordkeeping requirements.

42 CFR Part 488

Administrative practice and procedure, Health facilities, Medicare, reporting and recordkeeping requirements.

42 CFR Part 498

Administrative practice and procedure, Health Facilities, Health professions, Medicare, reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart U—Conditions for Coverage of Suppliers of End-Stage Renal Disease (ESRD) Services

■ 1. The authority citation for part 405, Subpart U continues to read as follows:

Authority: Secs. 1102, 1138, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1320b–8, 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr), unless otherwise noted.

§ 405.2102 [Amended]

■ 2. Section 405.2102 is amended by—

■ A. Removing the definitions for ''histocompatibility testing'' and ''organ procurement''.

■ B. Amending the definition of ''ESRD facility'' by removing paragraph (a) and by re-designating paragraphs (b) through (e) as paragraphs (a) through (d).

■ C. Amending the definition of ''ESRD service'' by removing paragraph (a) and by re-designating paragraphs (b) and (c) as paragraphs (a) and (b).

■ D. Amending the definition of ''Qualified personnel'' by removing paragraph (g).

§§ 405.2120 through 405.2124 [Removed]

■ 3. Sections 405.2120 through 405.2124 are removed.

§ 405.2130 [Removed]

■ 4. Section 405.2130 is removed.

§§ 405.2170 and 405.2171 [Removed]

■ 5. Section 405.2170 and 405.2171 are removed.

PART 482—CONDITIONS OF PARTICIPATION FOR HOSPITALS

■ 6. The authority citation for part 482 is revised to read as follows:

Authority: Secs. 1102, 1871 and 1881 of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr), unless otherwise noted.

■ 7. Part 482 is amended by revising subpart E to read as follows:

Subpart E—Requirements for Specialty Hospitals

Sec.

482.68 Special requirements for transplant centers.
482.70 Definitions.

General Requirements for Transplant Centers

482.72 Condition of participation: OPTN Membership.
482.74 Condition of participation: Notification to CMS.
482.76 Condition of participation: Pediatric Transplants.

Transplant Center Data Submission, Clinical Experience, and Outcome Requirements

482.80 Condition of participation: Data submission, clinical experience, and outcome requirements for initial approval of transplant centers.
482.82 Condition of participation: Data submission, clinical experience, and outcome requirements for re-approval of transplant centers.

Transplant Center Process Requirements

482.90 Condition of participation: Patient and living donor selection.
482.92 Condition of participation: Organ recovery and receipt.
482.94 Condition of participation: Patient and living donor management.
482.96 Condition of participation: Quality assessment and performance improvement (QAPI).
482.98 Condition of participation: Human resources.
482.100 Condition of participation: Organ procurement.
482.102 Condition of participation: Patient and living donor rights.
482.104 Condition of participation: Additional requirements for kidney transplant centers.

Subpart E—Requirements for Specialty Hospitals

§ 482.68 Special requirements for transplant centers.

A transplant center located within a hospital that has a Medicare provider agreement must meet the conditions of participation specified in § 482.72 through § 482.104 in order to be granted approval from CMS to provide transplant services.

(a) Unless specified otherwise, the conditions of participation at § 482.72 through § 482.104 apply to heart, heart-lung, intestine, kidney, liver, lung, and pancreas centers.

(b) In addition to meeting the conditions of participation specified in § 482.72 through § 482.104, a transplant center must also meet the conditions of participation specified in § 482.1 through § 482.57.

§ 482.70 Definitions.

As used in this subpart, the following definitions apply:

Adverse event means an untoward, undesirable, and usually unanticipated event that causes death or serious injury, or the risk thereof. As applied to transplant centers, examples of adverse events include (but are not limited to) serious medical complications or death caused by living donation; unintentional transplantation of organs of mismatched blood types; transplantation of organs to unintended recipients; and unintended transmission of infectious disease to a recipient.

End-Stage Renal Disease (ESRD) means that stage of renal impairment that appears irreversible and permanent, and requires a regular course of dialysis or kidney transplantation to maintain life.

ESRD Network means all Medicare-approved ESRD facilities in a designated geographic area specified by CMS.

Heart-Lung transplant center means a transplant center that is located in a hospital with an existing Medicare-approved heart transplant center and an existing Medicare-approved lung center that performs combined heart-lung transplants.

Intestine transplant center means a Medicare-approved liver transplant center that performs intestine transplants, combined liver-intestine transplants, or multivisceral transplants.

Network organization means the administrative governing body to the network and liaison to the Federal government.

Pancreas transplant center means a Medicare-approved kidney transplant center that performs pancreas transplants alone or subsequent to a kidney transplant as well as kidney-pancreas transplants.

Transplant center means an organ-specific transplant program (as defined in this rule) within a transplant hospital (for example, a hospital's lung transplant program may also be referred to as the hospital's lung transplant center).

Transplant hospital means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.

Transplant program means a component within a transplant hospital (as defined in this rule) that provides transplantation of a particular type of organ.

General Requirements for Transplant Centers

§ 482.72 Condition of participation: OPTN membership.

A transplant center must be located in a transplant hospital that is a member of and abides by the rules and requirements of the Organ Procurement and Transplantation Network (OPTN) established and operated in accordance with section 372 of the Public Health Service (PHS) Act (42 U.S.C. 274). The term ''rules and requirements of the OPTN'' means those rules and requirements approved by the Secretary pursuant to § 121.4 of this title. No hospital that provides transplantation services shall be deemed to be out of compliance with section 1138(a)(1)(B) of the Act or this section unless the Secretary has given the OPTN formal notice that he or she approves the decision to exclude the transplant hospital from the OPTN and also has notified the transplant hospital in writing.

§ 482.74 Condition of participation: Notification to CMS.

(a) A transplant center must notify CMS immediately of any significant changes related to the center's transplant program or changes that could affect its compliance with the conditions of participation. Instances in which CMS should receive information for follow up, as appropriate, include, but are not limited to:

(1) Change in key staff members of the transplant team, such as a change in the individual the transplant center designated to the OPTN as the center's ''primary transplant surgeon'' or ''primary transplant physician;'

(2) A decrease in the center's number of transplants or survival rates that could result in the center being out of compliance with § 482.82;

(3) Termination of an agreement between the hospital in which the transplant center is located and an OPO for the recovery and receipt of organs as required by section 482.100; and

(4) Inactivation of the transplant center.

(b) Upon receiving notification of significant changes, CMS will follow up with the transplant center as appropriate, including (but not limited to):

(1) Requesting additional information;

(2) Analyzing the information; or

(3) Conducting an on-site review.

§ 482.76 Condition of participation: Pediatric Transplants.

A transplant center that seeks Medicare approval to provide transplantation services to pediatric patients must submit to CMS a request specifically for Medicare approval to perform pediatric transplants using the procedures described at § 488.61 of this chapter.

(a) Except as specified in paragraph (d) of this section, a center requesting Medicare approval to perform pediatric transplants must meet all the conditions of participation at § 482.72 through § 482.74 and § 482.80 through § 482.104 with respect to its pediatric patients.

(b) A center that performs 50 percent or more of its transplants in a 12-month period on adult patients must be approved to perform adult transplants in order to be approved to perform pediatric transplants.

(1) Loss of Medicare approval to perform adult transplants, whether voluntary or involuntary, will result in loss of the center's approval to perform pediatric transplants.

(2) Loss of Medicare approval to perform pediatric transplants, whether voluntary or involuntary, may trigger a review of the center's Medicare approval to perform adult transplants.

(c) A center that performs 50 percent or more of its transplants in a 12-month period on pediatric patients must be approved to perform pediatric transplants in order to be approved to perform adult transplants.

(1) Loss of Medicare approval to perform pediatric transplants, whether voluntary or involuntary, will result in loss of the center's approval to perform adult transplants.

(2) Loss of Medicare approval to perform adult transplants, whether voluntary or involuntary, may trigger a review of the center's Medicare approval to perform pediatric transplants.

(3) A center that performs 50 percent or more of its transplants on pediatric patients in a 12-month period is not required to meet the clinical experience requirements prior to its request for approval as a pediatric transplant center.

(d) Instead of meeting all conditions of participation at § 482.72 through § 482.74 and § 482.80 through § 482.104, a heart transplant center that wishes to provide transplantation services to pediatric heart patients may be approved to perform pediatric heart transplants by meeting the Omnibus Budget Reconciliation Act of 1987 criteria in section 4009(b) (Pub. L. 100–203), as follows:

(1) The center's pediatric transplant program must be operated jointly by the hospital and another facility that is Medicare-approved;

(2) The unified program shares the same transplant surgeons and quality

improvement program (including oversight committee, patient protocol, and patient selection criteria); and

(3) The center demonstrates to the satisfaction of the Secretary that it is able to provide the specialized facilities, services, and personnel that are required by pediatric heart transplant patients.

Transplant Center Data Submission, Clinical Experience, and Outcome Requirements

§ 482.80 Condition of participation: Data submission, clinical experience, and outcome requirements for initial approval of transplant centers.

Except as specified in paragraph (d) of this section, and § 488.61 of this chapter, transplant centers must meet all data submission, clinical experience, and outcome requirements to be granted initial approval by CMS.

(a) *Standard: Data submission.* No later than 90 days after the due date established by the OPTN, a transplant center must submit to the OPTN at least 95 percent of required data on all transplants (deceased and living donor) it has performed. Required data submissions include, but are not limited to, submission of the appropriate OPTN forms for transplant candidate registration, transplant recipient registration and follow-up, and living donor registration and follow-up.

(b) *Standard: Clinical experience.* To be considered for initial approval, an organ-specific transplant center must generally perform 10 transplants over a 12-month period.

(c) *Standard: Outcome requirements.* CMS will review outcomes for all transplants performed at a center, including outcomes for living donor transplants, if applicable. Except for lung transplants, CMS will review adult and pediatric outcomes separately when a center requests Medicare approval to perform both adult and pediatric transplants.

(1) CMS will compare each transplant center's observed number of patient deaths and graft failures 1-year post-transplant to the center's expected number of patient deaths and graft failures 1-year post-transplant using the data contained in the most recent Scientific Registry of Transplant Recipients (SRTR) center-specific report.

(2) The required number of transplants must have been performed during the time frame reported in the most recent SRTR center-specific report.

(3) CMS will not consider a center's patient and graft survival rates to be acceptable if:

(i) A center's observed patient survival rate or observed graft survival rate is lower than its expected patient survival rate or expected graft survival rate; and

(ii) All three of the following thresholds are crossed over:

(A) The one-sided p-value is less than 0.05,

(B) The number of observed events (patient deaths or graft failures) minus the number of expected events is greater than 3, and

(C) The number of observed events divided by the number of expected events is greater than 1.5.

(d) *Exceptions.* (1) A heart-lung transplant center is not required to comply with the clinical experience requirements in paragraph (b) of this section or the outcome requirements in paragraph (c) of this section for heart-lung transplants performed at the center.

(2) An intestine transplant center is not required to comply with the outcome performance requirements in paragraph (c) of this section for intestine, combined liver-intestine or multivisceral transplants performed at the center.

(3) A pancreas transplant center is not required to comply with the clinical experience requirements in paragraph (b) of this section or the outcome requirements in paragraph (c) of this section for pancreas transplants performed at the center.

(4) A center that is requesting initial Medicare approval to perform pediatric transplants is not required to comply with the clinical experience requirements in paragraph (b) of this section prior to its request for approval as a pediatric transplant center.

(5) A kidney transplant center that is not Medicare-approved on the effective date of this rule is required to perform at least 3 transplants over a 12-month period prior to its request for initial approval.

§ 482.82 Condition of participation: Data submission, clinical experience, and outcome requirements for re-approval of transplant centers.

Except as specified in paragraph (d) of this section, and § 488.61 of this chapter, transplant centers must meet all data submission, clinical experience, and outcome requirements in order to be re-approved.

(a) *Standard: Data submission.* No later than 90 days after the due date established by the OPTN, a transplant center must submit to the OPTN at least 95 percent of the required data submissions on all transplants (deceased and living donor) it has performed over the 3-year approval period. Required data submissions include, but are not limited to, submission of the appropriate OPTN forms for transplant candidate registration, transplant recipient registration and follow-up, and living donor registration and follow-up.

(b) *Standard: Clinical experience.* To be considered for re-approval, an organ-specific transplant center must generally perform an average of 10 transplants per year during the re-approval period.

(c) *Standard: Outcome requirements.* CMS will review outcomes for all transplants performed at a center, including outcomes for living donor transplants if applicable. Except for lung transplants, CMS will review adult and pediatric outcomes separately when a center requests Medicare approval to perform both adult and pediatric transplants.

(1) CMS will compare each transplant center's observed number of patient deaths and graft failures 1-year post-transplant to the center's expected number of patient deaths and graft failures 1-year post-transplant using data contained in the most recent SRTR center-specific report.

(2) The required number of transplants must have been performed during the time frame reported in the most recent SRTR center-specific report.

(3) CMS will not consider a center's patient and graft survival rates to be acceptable if:

(i) A center's observed patient survival rate or observed graft survival rate is lower than its expected patient survival rate and graft survival rate; and

(ii) All three of the following thresholds are crossed over:

(A) The one-sided p-value is less than 0.05,

(B) The number of observed events (patient deaths or graft failures) minus the number of expected events is greater than 3, and

(C) The number of observed events divided by the number of expected events is greater than 1.5.

(d) *Exceptions.* (1) A heart-lung transplant center is not required to comply with the clinical experience requirements in paragraph (b) of this section or the outcome requirements in paragraph (c) of this section for heart-lung transplants performed at the center.

(2) An intestine transplant center is not required to comply with the outcome requirements in paragraph (c) of this section for intestine, combined liver-intestine, and multivisceral transplants performed at the center.

(3) A pancreas transplant center is not required to comply with the clinical experience requirements in paragraph (b) of this section or the outcome

requirements in paragraph (c) of this section for pancreas transplants performed at the center.

(4) A center that is approved to perform pediatric transplants is not required to comply with the clinical experience requirements in paragraph (b) of this section to be re-approved.

Transplant Center Process Requirements

§ 482.90 Condition of participation: Patient and living donor selection.

The transplant center must use written patient selection criteria in determining a patient's suitability for placement on the waiting list or a patient's suitability for transplantation. If a center performs living donor transplants, the center also must use written donor selection criteria in determining the suitability of candidates for donation.

(a) *Standard: Patient selection.* Patient selection criteria must ensure fair and non-discriminatory distribution of organs.

(1) Prior to placement on the center's waiting list, a prospective transplant candidate must receive a psychosocial evaluation, if possible.

(2) Before a transplant center places a transplant candidate on its waiting list, the candidate's medical record must contain documentation that the candidate's blood type has been determined.

(3) When a patient is placed on a center's waiting list or is selected to receive a transplant, the center must document in the patient's medical record the patient selection criteria used.

(4) A transplant center must provide a copy of its patient selection criteria to a transplant patient, or a dialysis facility, as requested by a patient or a dialysis facility.

(b) *Standard: Living donor selection.* The living donor selection criteria must be consistent with the general principles of medical ethics. Transplant centers must:

(1) Ensure that a prospective living donor receives a medical and psychosocial evaluation prior to donation,

(2) Document in the living donor's medical records the living donor's suitability for donation, and

(3) Document that the living donor has given informed consent, as required under § 482.102.

§ 482.92 Condition of participation: Organ recovery and receipt.

Transplant centers must have written protocols for validation of donor-recipient blood type and other vital data for the deceased organ recovery, organ receipt, and living donor organ transplantation processes. The transplanting surgeon at the transplant center is responsible for ensuring the medical suitability of donor organs for transplantation into the intended recipient.

(a) *Standard: Organ recovery.* When the identity of an intended transplant recipient is known and the transplant center sends a team to recover the organ(s), the transplant center's recovery team must review and compare the donor data with the recipient blood type and other vital data before organ recovery takes place.

(b) *Standard: Organ receipt.* After an organ arrives at a transplant center, prior to transplantation, the transplanting surgeon and another licensed health care professional must verify that the donor's blood type and other vital data are compatible with transplantation of the intended recipient

(c) *Standard: Living donor transplantation.* If a center performs living donor transplants, the transplanting surgeon and another licensed health care professional at the center must verify that the living donor's blood type and other vital data are compatible with transplantation of the intended recipient immediately before the removal of the donor organ(s) and, if applicable, prior to the removal of the recipient's organ(s).

§ 482.94 Condition of participation: Patient and living donor management.

Transplant centers must have written patient management policies for the transplant and discharge phases of transplantation. If a transplant center performs living donor transplants, the center also must have written donor management policies for the donor evaluation, donation, and discharge phases of living organ donation.

(a) *Standard: Patient and living donor care.* The transplant center's patient and donor management policies must ensure that:

(1) Each transplant patient is under the care of a multidisciplinary patient care team coordinated by a physician throughout the transplant and discharge phases of transplantation; and

(2) If a center performs living donor transplants, each living donor is under the care of a multidisciplinary patient care team coordinated by a physician throughout the donor evaluation, donation, and discharge phases of donation.

(b) *Standard: Waiting list management.* Transplant centers must keep their waiting lists up to date on an ongoing basis, including:

(1) Updating of waiting list patients' clinical information;

(2) Removing patients from the center's waiting list if a patient receives a transplant or dies, or if there is any other reason the patient should no longer be on a center's waiting list; and

(3) Notifying the OPTN no later than 24 hours after a patient's removal from the center's waiting list.

(c) *Standard: Patient records.* Transplant centers must maintain up-to-date and accurate patient management records for each patient who receives an evaluation for placement on a center's waiting list and who is admitted for organ transplantation.

(1) For each patient who receives an evaluation for placement on a center's waiting list, the center must document in the patient's record that the patient (and in the case of a kidney patient, the patient's usual dialysis facility) has been informed of his or her transplant status, including notification of:

(i) The patient's placement on the center's waiting list;

(ii) The center's decision not to place the patient on its waiting list; or

(iii) The center's inability to make a determination regarding the patient's placement on its waiting list because further clinical testing or documentation is needed.

(2) If a patient on the waiting list is removed from the waiting list for any reason other than death or transplantation, the transplant center must document in the patient's record that the patient (and in the case of a kidney patient, the patient's usual dialysis facility) was notified no later than 10 days after the date the patient was removed from the waiting list.

(3) In the case of patients admitted for organ transplants, transplant centers must maintain written records of:

(i) Multidisciplinary patient care planning during the transplant period; and

(ii) Multidisciplinary discharge planning for post-transplant care.

(d) *Standard: Social services.* The transplant center must make social services available, furnished by qualified social workers, to transplant patients, living donors, and their families. A qualified social worker is an individual who meets licensing requirements in the State in which he or she practices; and

(1) Completed a course of study with specialization in clinical practice and holds a master's degree from a graduate school of social work accredited by the Council on Social Work Education; or

(2) Is working as a social worker in a transplant center as of the effective date of this final rule and has served for at

least 2 years as a social worker, 1 year of which was in a transplantation program, and has established a consultative relationship with a social worker who is qualified under (d)(1) of this paragraph.

(e) *Standard: Nutritional services.* Transplant centers must make nutritional assessments and diet counseling services, furnished by a qualified dietitian, available to all transplant patients and living donors. A qualified dietitian is an individual who meets practice requirements in the State in which he or she practices and is a registered dietitian with the Commission on Dietetic Registration.

§ 482.96 Condition of participation: Quality assessment and performance improvement (QAPI).

Transplant centers must develop, implement, and maintain a written, comprehensive, data-driven QAPI program designed to monitor and evaluate performance of all transplantation services, including services provided under contract or arrangement.

(a) *Standard: Components of a QAPI program.* The transplant center's QAPI program must use objective measures to evaluate the center's performance with regard to transplantation activities and outcomes. Outcome measures may include, but are not limited to, patient and donor selection criteria, accuracy of the waiting list in accordance with the OPTN waiting list requirements, accuracy of donor and recipient matching, patient and donor management, techniques for organ recovery, consent practices, patient education, patient satisfaction, and patient rights. The transplant center must take actions that result in performance improvements and track performance to ensure that improvements are sustained.

(b) *Standard: Adverse events.* A transplant center must establish and implement written policies to address and document adverse events that occur during any phase of an organ transplantation case.

(1) The policies must address, at a minimum, the process for the identification, reporting, analysis, and prevention of adverse events.

(2) The transplant center must conduct a thorough analysis of and document any adverse event and must utilize the analysis to effect changes in the transplant center's policies and practices to prevent repeat incidents.

§ 482.98 Condition of participation: Human resources.

The transplant center must ensure that all individuals who provide services and/or supervise services at the center, including individuals furnishing services under contract or arrangement, are qualified to provide or supervise such services.

(a) *Standard: Director of a transplant center.* The transplant center must be under the general supervision of a qualified transplant surgeon or a qualified physician-director. The director of a transplant center need not serve full-time and may also serve as a center's primary transplant surgeon or transplant physician in accordance with § 482.98(b). The director is responsible for planning, organizing, conducting, and directing the transplant center and must devote sufficient time to carry out these responsibilities, which include but are not limited to the following:

(1) Coordinating with the hospital in which the transplant center is located to ensure adequate training of nursing staff and clinical transplant coordinators in the care of transplant patients and living donors.

(2) Ensuring that tissue typing and organ procurement services are available.

(3) Ensuring that transplantation surgery is performed by, or under the direct supervision of, a qualified transplant surgeon in accordance with § 482.98(b).

(b) *Standard: Transplant surgeon and physician.* The transplant center must identify to the OPTN a primary transplant surgeon and a transplant physician with the appropriate training and experience to provide transplantation services, who are immediately available to provide transplantation services when an organ is offered for transplantation.

(1) The transplant surgeon is responsible for providing surgical services related to transplantation.

(2) The transplant physician is responsible for providing and coordinating transplantation care.

(c) *Standard: Clinical transplant coordinator.* The transplant center must have a clinical transplant coordinator to ensure the continuity of care of patients and living donors during the pre-transplant, transplant, and discharge phases of transplantation and the donor evaluation, donation, and discharge phases of donation. The clinical transplant coordinator must be a registered nurse or clinician licensed by the State in which the clinical transplant coordinator practices, who has experience and knowledge of transplantation and living donation issues. The clinical transplant coordinator's responsibilities must include, but are not limited to, the following:

(1) Ensuring the coordination of the clinical aspects of transplant patient and living donor care; and

(2) Acting as a liaison between a kidney transplant center and dialysis facilities, as applicable.

(d) *Standard: Independent living donor advocate or living donor advocate team.* The transplant center that performs living donor transplantation must identify either an independent living donor advocate or an independent living donor advocate team to ensure protection of the rights of living donors and prospective living donors.

(1) The living donor advocate or living donor advocate team must not be involved in transplantation activities on a routine basis.

(2) The independent living donor advocate or living donor advocate team must demonstrate:

(i) Knowledge of living organ donation, transplantation, medical ethics, and informed consent; and

(ii) Understanding of the potential impact of family and other external pressures on the prospective living donor's decision whether to donate and the ability to discuss these issues with the donor.

(3) The independent living donor advocate or living donor advocate team is responsible for:

(i) Representing and advising the donor;

(ii) Protecting and promoting the interests of the donor; and

(iii) Respecting the donor's decision and ensuring that the donor's decision is informed and free from coercion.

(e) *Standard: Transplant team.* The transplant center must identify a multidisciplinary transplant team and describe the responsibilities of each member of the team. The team must be composed of individuals with the appropriate qualifications, training, and experience in the relevant areas of medicine, nursing, nutrition, social services, transplant coordination, and pharmacology.

(f) *Standard: Resource commitment.* The transplant center must demonstrate availability of expertise in internal medicine, surgery, anesthesiology, immunology, infectious disease control, pathology, radiology, blood banking, and patient education as related to the provision of transplantation services.

§ 482.100 Condition of participation: Organ procurement.

The transplant center must ensure that the hospital in which it operates has a written agreement for the receipt of organs with an OPO designated by the Secretary that identifies specific

responsibilities for the hospital and for the OPO with respect to organ recovery and organ allocation.

§ 482.102 Condition of participation: Patient and living donor rights.

In addition to meeting the condition of participation ''Patients rights'' requirements at § 482.13, the transplant center must protect and promote each transplant patient's and living donor's rights.

(a) *Standard: Informed consent for transplant patients.* Transplant centers must implement written transplant patient informed consent policies that inform each patient of:

(1) The evaluation process;

(2) The surgical procedure;

(3) Alternative treatments;

(4) Potential medical or psychosocial risks;

(5) National and transplant center-specific outcomes, from the most recent SRTR center-specific report, including (but not limited to) the transplant center's observed and expected 1-year patient and graft survival, national 1-year patient and graft survival, and notification about all Medicare outcome requirements not being met by the transplant center;

(6) Organ donor risk factors that could affect the success of the graft or the health of the patient, including, but not limited to, the donor's history, condition or age of the organs used, or the patient's potential risk of contracting the human immunodeficiency virus and other infectious diseases if the disease cannot be detected in an infected donor;

(7) His or her right to refuse transplantation; and

(8) The fact that if his or her transplant is not provided in a Medicare-approved transplant center it could affect the transplant recipient's ability to have his or her immunosuppressive drugs paid for under Medicare Part B.

(b) *Standard: Informed consent for living donors.* Transplant centers must implement written living donor informed consent policies that inform the prospective living donor of all aspects of, and potential outcomes from, living donation. Transplant centers must ensure that the prospective living donor is fully informed about the following:

(1) The fact that communication between the donor and the transplant center will remain confidential, in accordance with the requirements at 45 CFR parts 160 and 164.

(2) The evaluation process;

(3) The surgical procedure, including post-operative treatment;

(4) The availability of alternative treatments for the transplant recipient;

(5) The potential medical or psychosocial risks to the donor;

(6) The national and transplant center-specific outcomes for recipients, and the national and center-specific outcomes for living donors, as data are available;

(7) The possibility that future health problems related to the donation may not be covered by the donor's insurance and that the donor's ability to obtain health, disability, or life insurance may be affected;

(8) The donor's right to opt out of donation at any time during the donation process; and

(9) The fact that if a transplant is not provided in a Medicare-approved transplant center it could affect the transplant recipient's ability to have his or her immunosuppressive drugs paid for under Medicare Part B.

(c) *Standard: Notification to patients.* Transplant centers must notify patients placed on the center's waiting list of information about the center that could impact the patient's ability to receive a transplant should an organ become available, and what procedures are in place to ensure the availability of a transplant team.

(1) A transplant center served by a single transplant surgeon or physician must inform patients placed on the center's waiting list of:

(i) The potential unavailability of the transplant surgeon or physician; and

(ii) Whether the center has a mechanism to provide an alternate transplant surgeon or transplant physician.

(2) At least 30 days before a center's Medicare approval is terminated, whether voluntarily or involuntarily, the center must:

(i) Inform patients on the center's waiting list and provide assistance to waiting list patients who choose to transfer to the waiting list of another Medicare-approved transplant center without loss of time accrued on the waiting list; and

(ii) Inform Medicare beneficiaries on the center's waiting list that Medicare will no longer pay for transplants performed at the center after the effective date of the center's termination of approval.

(3) As soon as possible prior to a transplant center's voluntary inactivation, the center must inform patients on the center's waiting list and, as directed by the Secretary, provide assistance to waiting list patients who choose to transfer to the waiting list of another Medicare-approved transplant center without loss of time accrued on the waiting list.

§ 482.104 Condition of participation: Additional requirements for kidney transplant centers.

(a) *Standard: End stage renal disease (ESRD) services.* Kidney transplant centers must directly furnish transplantation and other medical and surgical specialty services required for the care of ESRD patients. A kidney transplant center must have written policies and procedures for ongoing communications with dialysis patients' local dialysis facilities.

(b) *Standard: Dialysis services.* Kidney transplant centers must furnish inpatient dialysis services directly or under arrangement.

(c) *Standard: Participation in network activities.* Kidney transplant centers must cooperate with the ESRD Network designated for their geographic area, in fulfilling the terms of the Network's current statement of work.

PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

Subpart A—General Provisions

■ 8. The authority citation for part 488 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh) unless otherwise noted).

§ 488.6 [Amended]

■ 9. Section 488.6(a) is amended by adding ''transplant centers, except for kidney transplant centers;'' after ''psychiatric hospitals;'' but before ''SNFs.''

Subpart B—Special Requirements

■ 10. Section 488.61 is added to subpart B to read as follows:

§ 488.61 Special procedures for approval and re-approval of organ transplant centers.

For the purposes of this subpart, the survey, certification, and enforcement procedures described at 42 CFR part 488, subpart A apply to transplant centers, including the periodic review of compliance and approval described at § 488.20.

(a) *Initial approval procedures for transplant centers that are not Medicare-approved as of June 28, 2007.* A transplant center, including a kidney transplant center, may submit a request to CMS for Medicare approval at any time.

(1) The request, signed by a person authorized to represent the center (for example, a chief executive officer), must include:

(i) The hospital's Medicare provider I.D. number;

(ii) Name(s) of the designated primary transplant surgeon and primary transplant physician; and,

(iii) A statement from the OPTN that the center has complied with all data submission requirements.

(2) To determine compliance with the clinical experience and outcome requirements at § 482.80(b) and § 482.80(c), CMS will review the data contained in the most recent OPTN Data Report and 1-year patient and graft survival data contained in the most recent Scientific Registry of Transplant Recipient (SRTR) center-specific report.

(3) If CMS determines that a transplant center has not met the data submission, clinical experience, or outcome requirements, CMS may deny the request for approval or may review the center's compliance with the conditions of participation at § 482.72 through § 482.76 and § 482.90 through § 482.104 of this chapter, using the procedures described at 42 CFR part 488, subpart A, to determine whether the center's request will be approved. CMS will notify the transplant center in writing whether it is approved and, if approved, of the effective date of its approval.

(4) CMS will consider mitigating factors, including (but not limited to) the following in considering initial approval of a transplant center that does not meet the data submission, clinical experience, outcome requirements and other conditions of participation:

(i) The extent to which outcome measures are met or exceeded;

(ii) Availability of Medicare-approved transplant centers in the area; and

(iii) Extenuating circumstances (e.g., natural disaster) that may have a temporary effect on meeting the conditions of participation.

(iv) CMS will not approve any program with a condition-level deficiency. However, CMS may approve a program with a standard-level deficiency upon receipt of an acceptable plan of correction.

(5) If CMS determines that a transplant center has met the data submission, clinical experience, and outcome requirements, CMS will review the center's compliance with the conditions of participation contained at § 482.72 through § 482.76 and § 482.90 through § 482.104 of this chapter using the procedures described at 42 CFR part 488, subpart A. If the transplant center is found to be in compliance with all the conditions of participation at § 482.72 through § 482.104, except for § 482.82 of this chapter (Re-approval Requirements), CMS will notify the transplant center in writing of the effective date of its Medicare-approval. CMS will notify the transplant center in writing if it is not Medicare-approved.

(6) A kidney transplant center may submit a request for initial approval after performing at least 3 transplants over a 12-month period.

(7) Transplant centers will be approved for 3 years.

(b) *Initial approval procedures for transplant centers, including kidney transplant centers, that are Medicare approved as of June 28, 2007.*

(1) A transplant center that wants to continue to be Medicare approved must be in compliance with the conditions of participation at §§ 482.72 through 482.104 as of June 28, 2007 and submit a request to CMS for Medicare approval under the conditions of participation no later than December 26, 2007, using the process described in paragraph (a)(1) of the section.

(2) CMS will determine whether to approve the transplant center, using the procedures described in paragraphs (a)(2) through (a)(5) of this section. Until CMS makes a determination whether to approve the transplant center under the conditions of participation at §§ 482.72 through 482.104, the transplant center will continue to be Medicare approved under the end stage renal disease (ESRD) conditions for coverage (CfCs) in part 405, subpart U of this chapter for kidney transplant centers or the pertinent national coverage decisions (NCDs) for extra-renal organ transplant centers, as applicable, and the transplant center will continue to be reimbursed for services provided to Medicare beneficiaries.

(3) Once CMS approves a kidney transplant center under the conditions of participation, the ESRD CfCs no longer apply to the center as of the date of its approval. Once CMS approves an extra-renal organ transplant center under the conditions of participation, the NCDs no longer apply to the center as of the date of its approval.

(4) If a transplant center that is Medicare approved as of June 28, 2007 submits a request for approval under the CoPs at §§ 482.72 through 482.104 of this chapter but CMS does not approve the transplant center, or if the transplant center does not submit its request to CMS for Medicare approval under the CoPs by December 26, 2007, CMS will revoke the transplant center's approval under the conditions for coverage for kidney transplant centers or the national coverage decisions for extra-renal transplant centers, as applicable, and the transplant center will no longer be reimbursed for services provided to Medicare beneficiaries. CMS will notify the transplant center in writing of the effective date of its loss of Medicare approval.

(c) *Re-approval procedures.* Once Medicare-approved, transplant centers, including kidney transplant centers, must be in compliance with all the conditions of participation for transplant centers at § 482.72 through § 482.104 of this chapter, except for § 482.80 (initial approval requirements) throughout the 3-year approval period.

(1) Prior to the end of the 3-year approval period, CMS will review the transplant center's data in making re-approval determinations.

(i) To determine compliance with the data submission requirements at § 482.82(a) of this chapter, CMS will request data submission data from the OPTN for the previous 3 calendar years.

(ii) To determine compliance with the clinical experience and outcome requirements at § 482.82(b) and § 482.82(c) of this chapter, CMS will review the data contained in the most recent OPTN Data Report and 1-year patient and graft survival data contained in the most recent SRTR center-specific reports.

(2) If CMS determines that a transplant center has not met the data submission, clinical experience, or outcome requirements at § 482.82, the transplant center will be reviewed for compliance with § 482.72 through § 482.76 and § 482.90 through § 482.104 of this chapter, using the procedures described at 42 CFR part 488, subpart A.

(3) If CMS determines that a transplant center has met the data submission, clinical experience, and outcome requirements at § 482.82, CMS may choose to review the transplant center for compliance with § 482.72 through § 482.76 and § 482.90 through § 482.104 of this chapter, using the procedures described at 42 CFR part 488, subpart A.

(4) CMS will consider mitigating factors, including (but not limited to) the following in considering re-approval of a transplant center that does not meet the data submission, clinical experience, outcome requirements and other conditions of participation:

(i) The extent to which outcome measures are met or exceeded;

(ii) Availability of Medicare-approved transplant centers in the area; and

(iii) Extenuating circumstances (*e.g.*, natural disaster) that may have a temporary effect on meeting the conditions of participation.

(iv) CMS will not approve any program with a condition-level deficiency. However, CMS may re-approve a program with a standard-level deficiency upon receipt of an acceptable plan of correction.

(5) CMS will notify the transplant center in writing if its approval is being revoked and of the effective date of the revocation.

(d) *Loss of Medicare Approval.* Centers that have lost their Medicare approval may seek re-entry into the Medicare program at any time. A center that has lost its Medicare approval must:

(1) Request initial approval using the procedures described in § 488.61(a);

(2) Be in compliance with §§ 482.72 through 482.104 of this chapter, except for § 482.82 (Re-approval Requirements), at the time of the request for Medicare approval; and

(3) Submit a report to CMS documenting any changes or corrective actions taken by the center as a result of the loss of its Medicare approval status.

(e) Transplant Center Inactivity. A transplant center may remain inactive and retain its Medicare approval for a period not to exceed 12 months during the 3-year approval cycle. A transplant center must notify CMS upon its voluntary inactivation as required by § 482.74(d) of this chapter.

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM AND FOR DETERMINATIONS THAT AFFECT THE PARTICIPATION OF ICFs/MR AND CERTAIN NFs IN THE MEDICAID PROGRAM

■ 11. The authority citation for part 498 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Provisions

§ 498.2 [Amended]

■ 12. In § 498.2, the definition of ''provider'' is amended by adding ''transplant center'' after ''hospital'' the first time it appears.

(Catalog of Federal Domestic Assistance Program No. 13.773 Medicare—Hospital Insurance Program; and No. 13.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 7, 2006.

Leslie V. Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: December 12, 2006.

Michael O. Leavitt

Secretary.

Editorial Note: This document was received at the Office of the Federal Register on March 20, 2007.

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March 30, 2007

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—October Through December 2006; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9039–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—October Through December 2006

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published from October 2006 through December 2006, relating to the Medicare and Medicaid programs. This notice provides information on national coverage determinations (NCDs) affecting specific medical and health care services under Medicare. Additionally, this notice identifies certain devices with investigational device exemption (IDE) numbers approved by the Food and Drug Administration (FDA) that potentially may be covered under Medicare. This notice also includes listings of all approval numbers from the Office of Management and Budget for collections of information in CMS regulations and a list of Medicare-approved carotid stent facilities. Included in this notice is a list of the American College of Cardiology's National Cardiovascular Data registry sites, active CMS coverage-related guidance documents, and special one-time notices regarding national coverage provisions. Also included in this notice is a list of National Oncologic Positron Emissions Tomography Registry sites, a list of Medicare-approved ventricular assist device (destination therapy) facilities, a list of Medicare-approved lung volume reduction surgery facilities, and a list of Medicare-approved bariatric surgery facilities.

Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, and to foster more open and transparent collaboration efforts, we are also including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this 3-month time frame.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. (See Section III of this notice for how to obtain listed material.)

Questions concerning items in Addendum III may be addressed to Timothy Jennings, Office of Strategic Operations and Regulatory Affairs, Centers for Medicare & Medicaid Services, C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–2134.

Questions concerning items in Addendum IV may be addressed to Margaret Teeters, Office of Strategic Operations and Regulatory Affairs, Centers for Medicare & Medicaid Services, C4–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–4678.

Questions concerning Medicare NCDs in Addendum V may be addressed to Patricia Brocato-Simons, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–0261.

Questions concerning FDA-approved Category B IDE numbers listed in Addendum VI may be addressed to John Manlove, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–13–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–6877.

Questions concerning approval numbers for collections of information in Addendum VII may be addressed to Melissa Musotto, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Centers for Medicare & Medicaid Services, C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–6962.

Questions concerning Medicare-approved carotid stent facilities in Addendum VIII may be addressed to Sarah J. McClain, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–2994.

Questions concerning Medicare's recognition of the American College of Cardiology-National Cardiovascular Data Registry sites in Addendum IX may be addressed to JoAnna Baldwin, MS, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–7205.

Questions concerning Medicare's active coverage-related guidance documents in Addendum X may be addressed to Kimberly Long, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–5702.

Questions concerning one-time notices regarding national coverage provisions in Addendum XI may be addressed to Ellie Lund, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–2281.

Questions concerning National Oncologic Positron Emission Tomography Registry sites in Addendum XII may be addressed to Stuart Caplan, RN, MAS, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–8564.

Questions concerning Medicare-approved ventricular assist device (destination therapy) facilities in Addendum XIII may be addressed to JoAnna Baldwin, MS, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–7205.

Questions concerning Medicare-approved lung volume reduction surgery facilities listed in Addendum XIV may be addressed to JoAnna Baldwin, MS, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–7205.

Questions concerning Medicare-approved bariatric surgery facilities listed in Addendum XV may be addressed to Kate Tillman, RN, MA, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services, C1–09–06, 7500 Security Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–9252.

Questions concerning all other information may be addressed to Gwendolyn Johnson, Office of Strategic Operations and Regulatory Affairs, Regulations Development Group, Centers for Medicare & Medicaid Services, C5–14–03, 7500 Security

Boulevard, Baltimore, MD 21244–1850, or you can call (410) 786–6954.

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs. These programs pay for health care and related services for 39 million Medicare beneficiaries and 35 million Medicaid recipients. Administration of the two programs involves (1) furnishing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public and (2) maintaining effective communications with regional offices, State governments, State Medicaid agencies, State survey agencies, various providers of health care, all Medicare contractors that process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act). We also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, and to foster more open and transparent collaboration, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the respective 3-month time frame.

II. How To Use the Addenda

This notice is organized so that a reader may review the subjects of manual issuances, memoranda, substantive and interpretive regulations, NCDs, and FDA-approved IDEs published during the subject quarter to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) published in 1988, and the notice published March 31, 1993 (58 FR 16837). Those desiring information on the Medicare NCD Manual (NCDM, formerly the Medicare Coverage Issues Manual (CIM)) may wish to review the August 21, 1989, publication (54 FR 34555). Those interested in the revised process used in making NCDs under the Medicare program may review the September 26, 2003, publication (68 FR 55634).

To aid the reader, we have organized and divided this current listing into 11 addenda:

- Addendum I lists the publication dates of the most recent quarterly listings of program issuances.
- Addendum II identifies previous **Federal Register** documents that contain a description of all previously published CMS Medicare and Medicaid manuals and memoranda.
- Addendum III lists a unique CMS transmittal number for each instruction in our manuals or Program Memoranda and its subject matter. A transmittal may consist of a single or multiple instruction(s). Often, it is necessary to use information in a transmittal in conjunction with information currently in the manuals.
- Addendum IV lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item, we list the—
- Date published;
- **Federal Register** citation;
- Parts of the Code of Federal Regulations (CFR) that have changed (if applicable);
- Agency file code number; and
- Title of the regulation.
- Addendum V includes completed NCDs, or reconsiderations of completed NCDs, from the quarter covered by this notice. Completed decisions are identified by the section of the NCDM in which the decision appears, the title, the date the publication was issued, and the effective date of the decision.
- Addendum VI includes listings of the FDA-approved IDE categorizations, using the IDE numbers the FDA assigns. The listings are organized according to the categories to which the device numbers are assigned (that is, Category A or Category B), and identified by the IDE number.
- Addendum VII includes listings of all approval numbers from the Office of Management and Budget (OMB) for collections of information in CMS regulations in title 42; title 45, subchapter C; and title 20 of the CFR.
- Addendum VIII includes listings of Medicare-approved carotid stent facilities. All facilities listed meet CMS standards for performing carotid artery stenting for high risk patients.
- Addendum IX includes a list of the American College of Cardiology's National Cardiovascular Data registry sites. We cover implantable cardioverter defibrillators (ICDs) for certain indications, as long as information about the procedures is reported to a central registry.
- Addendum X includes a list of active CMS guidance documents. As required by section 731 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173, enacted on December 8, 2003), we will begin listing the current versions of our guidance documents in each quarterly listings notice.
- Addendum XI includes a list of special one-time notices regarding national coverage provisions. We are publishing a list of issues that require public notification, such as a particular clinical trial or research study that qualifies for Medicare coverage.
- Addendum XII includes a listing of National Oncologic Positron Emission Tomography Registry (NOPR) sites. We cover positron emission tomography (PET) scans for particular oncologic indications when they are performed in a facility that participates in the NOPR.
- Addendum XIII includes a listing of Medicare-approved facitilites that receive coverage for ventricular assist devices used as destination therapy. All facilities were required to meet our standards in order to receive coverage for ventricular assist devices implanted as destination therapy.
- Addendum XIV includes a listing of Medicare-approved facilities that are eligible to receive coverage for lung volume reduction surgery. Until May 17, 2007, facilities that participated in the National Emphysema Treatment Trial are also eligible to receive coverage.
- Addendum XV includes a listing of Medicare-approved facilities that meet minimum standards for facilities modeled in part on professional society statements on competency. All facilities must meet our standards in order to receive coverage for bariatric surgery procedures.

III. How To Obtain Listed Material

A. Manuals

Those wishing to subscribe to program manuals should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses: Superintendent of Documents, Government Printing Office, ATTN: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 512–1800, Fax number

(202) 512–2250 (for credit card orders); or National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell. Additionally, most manuals are available at the following Internet address: *http://cms.hhs.gov/manuals/default.asp.*

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address given above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is also available on 24x microfiche and as an online database through *GPO Access.* The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is *http://www.gpoaccess.gov/fr/index.html*, by using local WAIS client software, or by telnet to swais.gpoaccess.gov, then log in as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then log in as guest (no password required).

C. Rulings

We publish rulings on an infrequent basis. Interested individuals can obtain copies from the nearest CMS Regional Office or review them at the nearest regional depository library. We have, on occasion, published rulings in the **Federal Register**. Rulings, beginning with those released in 1995, are available online, through the CMS Home Page. The Internet address is *http://cms.hhs.gov/rulings.*

D. CMS' Compact Disk-Read Only Memory (CD–ROM)

Our laws, regulations, and manuals are also available on CD–ROM and may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is on the CD–ROM disk:

- Titles XI, XVIII, and XIX of the Act.
- CMS-related regulations.
- CMS manuals and monthly revisions.
- CMS program memoranda.

The titles of the Compilation of the Social Security Laws are current as of January 1, 2005. (Updated titles of the Social Security Laws are available on the Internet at *http://www.ssa.gov/OP_Home/ssact/comp-toc.htm.*) The remaining portions of CD–ROM are updated on a monthly basis.

Because of complaints about the unreadability of the Appendices (Interpretive Guidelines) in the State Operations Manual (SOM), as of March 1995, we deleted these appendices from CD–ROM. We intend to re-visit this issue in the near future and, with the aid of newer technology, we may again be able to include the appendices on CD–ROM.

Any cost report forms incorporated in the manuals are included on the CD–ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

IV. How To Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL.

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most Federal Government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library.

For each CMS publication listed in Addendum III, CMS publication and transmittal numbers are shown. To help FDLs locate the materials, use the CMS publication and transmittal numbers. For example, to find the Medicare Benefit Policy publication titled ''Swing Bed Hospital Updates,'' use CMS-Pub. 100–02, Transmittal No. 58.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: March 16, 2007.

Jacquelyn Y. White,

Director, Office of Strategic Operations and Regulatory Affairs.

Addendum I

This addendum lists the publication dates of the most recent quarterly listings of program issuances.

September 24, 2004 (69 FR 57312)
December 30, 2004 (69 FR 78428)
February 25, 2005 (70 FR 9338)
June 24, 2005 (70 FR 36620)
September 23, 2005 (70 FR 55863)
December 23, 2005 (70 FR 76290)
March 24, 2006 (71 FR 14903)
June 23, 2006 (71 FR 36101)
September 29, 2006 (71 FR 57604)
December 22, 2006 (71 FR 77202)

Addendum II—Description of Manuals, Memoranda, and CMS Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the former CIM (now the NCDM) was published on August 21, 1989, at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992, at 57 FR 47468.

Addendum III.—Medicare and Medicaid Manual Instructions

[October Through December 2006]

Transmittal No.	Manual/Subject/Publication No.
	Medicare General Information (CMS—Pub. 100–01)
41	Update to Medicare Deductible, Coinsurance and Premium Rates for 2007.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[October Through December 2006]

Transmittal No.	Manual/Subject/Publication No.
42	Swing Bed Hospital Updates. Hospital Insurance (Part A) for Inpatient Hospital, Hospice, Home Health and Skilled Nursing Facility Services—A Brief Description. Determining Payment for Services Furnished After Termination of Provider Agreement. Hospital Defined. Hospital Providers of Extended Care Services.
	Medicare Benefit Policy CMS—Pub. 100–02)
56	This Transmittal is rescinded and replaced by Transmittal 59.
57	Clarification/Update to Chapter 8, Pub. 100–02. Requirements—General. Medicare Skilled Nursing Facility Prospective Payment System Overview. Three-Day Prior Hospitalization. Administrative Level of Care Presumption. Daily Skilled Services Defined. Respiratory Therapy.
58	Swing Bed Hospital Updates. Hospital Providers of Extended Care Services.
59	Inpatient Psychiatric Facility Prospective Payment System. Inpatient Psychiatric Facility Services. Background. Statutory Requirements. Affected Medicare Providers. Admission Requirements. Medical Records Requirements. Development of Assessment/Diagnostic Data. Psychiatric Evaluation. Certification and Recertification Requirements. Certification. Recertification. Active Treatment. Principles for Evaluating a Period of Active Treatment. Services Supervised and Evaluated by a Physician. Treatment Plan. Individualized Treatment or Diagnostic Plan. Services Expected to Improve the Condition or for Purpose of Diagnosis. Recording Progress. Discharge Planning and Discharge Summary. Personnel Requirements. Director of Inpatient Psychiatric Services; Medical Staff. Nursing Services. Psychological Services. Social Services. Therapeutic Activities. Benefit Application.
60	Outpatient Therapy Cap Clarifications. Coverage of Outpatient Rehabilitation Therapy Services (Physical Therapy, Occupational Therapy, and Speech-Language Pathology Services) Under Medical Insurance. Plans of Care for Outpatient Physical Therapy, Occupational Therapy, or Speech-Language Pathology Services. Documentation Requirements for Therapy Services.
61	Implementation of Changes in End-Stage Renal Disease Payment for Calendar Year 2007 New End-Stage Renal Disease Composite Payment Rates.
62	Private Contracting—Definition of Physician/Practitioner.
63	Outpatient Therapy Cap Exceptions Process for Calendar Year (CY) 2007. Coverage of Outpatient Rehabilitation Therapy Services (Physical Therapy, Occupational Therapy, and Speech-Language Pathology Services) Under Medical Insurance. Reasonable and Necessary Outpatient Rehabilitation Therapy Services. Documentation Requirements for Therapy Services. Practice of Physical Therapy, Occupational Therapy, and Speech-Language Pathology.
	Medicare National Coverage Determinations (CMS—Pub. 100–03]
61	Cavernous Nerves Electrical Stimulation With Penile Plethysmography.
62	Infrared Therapy Devices.
63	Cardiac Output Monitoring by Thoracic Electrical Bioimpedance.
	Medicare Claims Processing (CMS Pub. 100–04)
1072	Inpatient Prospective Payment System Outlier Reconciliation Technical Corrections. Cost-to-Charge Ratios.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[October Through December 2006]

Transmittal No.	Manual/Subject/Publication No.
	Statewide Average Cost-to-Charge Ratios.
	Reconciliation.
	Procedure for Fiscal Intermediaries to Perform and Record Outlier Reconciliation Adjustments.
1073	Indian Health Service Hospital Payment Rates for Calendar Year 2006.
1074	Calendar Year 2007 Participation Enrollment and Medicare Participating Physician and Suppliers Directory Procedures.
1075	2007 Healthcare Common Procedure Coding Systems Annual Update Reminder.
1076	Competitive Acquisition Program—Instructions on Special CAP Appeals Requirements and Delivery of Dispute Resolution Services.
	The Competitive Acquisition Program for Drugs and Instructions on Special CAP Appeals Requirements and Delivery of Dispute Resolution Services.
	Dispute Resolution Services for Vendors.
	Dispute Resolution Services for Physicians.
	Dispute Resolution Services for Beneficiaries.
1077	This Transmittal is rescinded and replaced by Transmittal 1081.
1078	Updating the Medicare Secondary Payer Manual for Consistency on Instructing Part A Contactors on Handling MSP Claims with Condition Code (cc) 08.
	Form Locators 21/30.
1079	Changes to the Process for Recovering Medicare Payments for Home Health.
	Prospective Payment System Claims Failing to Report Prior Hospitalizations.
1080	This Transmittal is rescinded and replaced by Transmittal 1091.
1081	Electronic Data Interchange Media Changes.
	Media.
1082	Annual Update of Healthcare Common Procedure Coding System Codes Used for Home Health Consolidated Billing Enforcement.
1083	Release of a Separate File Containing the Payment Cap for the Technical Component of Imaging Procedures for Disclosure.
1084	Line Item Billing Requirement for End-Stage Renal Disease Claims Amount of Payment.
	Calculation of Case Mix Adjusted Composite Rate.
	Laboratory Services Included in the Composite Rate.
	Drugs and Biologicals Included in the Composite Rate.
	Required Information for In-Facility Claims Paid Under the Composite Rate.
	Intermittent Peritoneal Dialysis in the Facility.
	Training and Retraining.
	Coding Adequacy of Hemodialysis.
	Lab Services.
	Drugs Furnished in Dialysis Facilities.
	Billing Procedures for Drugs for Facilities.
	Payment Amount for Epoetin Alfa.
	Vaccines Furnished to End-Stage Renal Disease Patients.
	Method Selection for Home Dialysis Payment.
	Required Billing Information for Method I Claims.
	Intermittent Peritoneal Dialysis at Home for Method I Claims Submitted to the Intermediary.
	Calculating Payment for Intermittent Peritoneal Dialysis for Method I Claims Submitted to the Intermediary.
	Calculating Payment for for Continuous Ambulatory Peritoneal Dialysis and Continuous Cycling Peritoneal Dialysis Under the Composite Rate.
1085	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
1086	Annual Type of Service Update.
1087	Remittance Advice Remark Code and Claim Adjustment Reason Code Update.
1088	Instructions for the Coordination of Medicare Secondary Payer Claims for the Competitive Acquisition Program.
	Competitive Acquisition Program Required Modifiers.
	Medicare Secondary Payer Situations Under Competitive Acquisition Program.
1089	Claim Status Category Code and Claim Status Code Update.
1090	Medicare Summary Notice Format Changes for Jurisdiction 3 A/B MAC Transition.
	Title Section of the Medicare Summary Notice.
	Appeals Section.
1091	The Supplemental Security Income/Medicare Beneficiary Data for Fiscal Year 2005 for Inpatient Prospective Payment System Hospitals.
1092	File Descriptions and Instructions for Retrieving the 2007 Fee Schedules and Healthcare Common Procedure Coding System Through CMS? Mainframe Telecommunication System.
1093	Changes to the Laboratory National Coverage Determination Edit Software for January 2007.
1094	Update to the Hospice Payment Rates, Hospice Cap, Hospice Wage Index and the Hospice Pricer for FY 2007.
1095	Processing All Diagnosis Codes Reported on Claims Submitted to Carriers.
1096	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
1097	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
1098	Common Working File Duplicate Claim Edit for the Technical Component of Radiology and Pathology Laboratory Services Provided to Hospital Patients.
	Hospital and Skilled Nursing Facility Patients.
	Technical Component of Physician Pathology Services to Hospital Patients.
1099	New Edits Established to Enforce Proper Transfer Coding and Payment in Inpatient Rehabilitation Facility Prospective Payment System Claims.
1100	Jurisdiction for Ambulance Supplier Claims.
1101	Inpatient Psychiatric Facility Prospective Payment System.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[October Through December 2006]

Transmittal No.	Manual/Subject/Publication No.
	Background.
	Statutory Requirements.
	Affected Medicare Providers.
	Federal Per Diem Base Rate.
	Standardization Factor.
	Budget Neutrality.
	Budget Neutrality Components.
	Annual Update.
	Calculating the Federal Payment Rate.
	Patient-Level Adjustments.
	Diagnosis-Related Groups Adjustments.
	Application of Code First.
	Comorbidity Adjustments.
	Age Adjustments.
	Variable Per Diem Adjustments.
	Facility-Level Adjustments.
	Wage Index.
	Rural Location Adjustment.
	Teaching Status Adjustment.
	Full-Time Equivalent Resident Cap.
	Reconciliation of Teaching Adjustment on Cost Report.
	Emergency Department Adjustment.
	Source of Admission for Inpatient Psychiatric Facility Prospective Payment System Claims for Payment of Emergency Department Adjustment.
	Cost-of-Living Adjustment for Alaska and Hawaii.
	Other Payment Policies.
	Interrupted Stays.
	Outlier Policy.
	How to Calculate Outlier Payments.
	Determining the Cost-to-Charge Ratio.
	Electroconvulsive Therapy Payment.
	Stop Loss Provision (Transition Period Only).
	Transition (Phase-In Implementation).
	Implementation Date for Provider.
	Definition of New Inpatient Psychiatric Facility Providers Versus Tax Equity & Fiscal Responsibility Act Providers.
	New Providers Defined.
	Claims Processing Requirements Under Inpatient Psychiatric Facility Prospective Payment System.
	General Rules.
	Billing Period.
	Patient Status Coding.
	Reporting Electroconvulsive Therapy Treatments.
	Outpatient Services Treated as Inpatient Services.
	Patient is a Member of a Medicare Advantage Organization for Only a Portion of a Billing Period.
	Billing for Interrupted Stay.
	Grace Days.
	Billing Stays Prior to and Discharge After Prospective Payment System Implementation Date.
	Billing Ancillary Services Under Inpatient Psychiatric Facility Prospective Payment System.
	Covered Costs Not Included in Inpatient Psychiatric Facility Prospective Payment System Amount.
	Same Day Transfer Claims.
	Remittance Advice—Reserved.
	Medicare Summary Notices and Explanation of Medicare Benefits.
	Benefit Application and Limits—190 Days.
	Beneficiary Liability.
	Periodic Interim Payments.
	Intermediary Benefit Payment Report.
	Monitoring Implementation of Inpatient Psychiatric Facility Prospective Payment System Through Pulse.
	Inpatient Psychiatric Facility Prospective Payment System Edits.
	Inpatient Psychiatric Facility Prospective Payment System PRICER Software Inputs/Outputs to PRICER.
1102	Ambulance Inflation Factor for CY 2007.
1103	Reporting and Payment of No-Cost Devices Furnished by Outpatient Prospective Payment System Hospitals.
	Use of Healthcare Common Procedure Coding System Modifier—FB.
	Billing for Devices Replaced Without Cost to an Outpatient Prospective Payment System Hospital or Beneficiary or for Which the Hospital Receives a Credit and Payment for Outpatient Prospective Payment System Services Required to Replace the Device.
	Reporting and Charge Requirements When a Device is Replaced Without Cost to the Hospital.
	Reporting and Charge Requirements When the Hospital Receives Credit for the Replaced Device Against the Cost of a More Expensive Replacement Device.
	Medicare Payment Adjustment.
1104	Uniform Billing (UB–04) Implementation.
	Completing and Processing the CMS 1450 Data Set.
	Uniform Bill (UB)—Form CMS–1450 for Billing (UB–92).

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[October Through December 2006]

Transmittal No.	Manual/Subject/Publication No.
	General Instructions for Completion of Form CMS–1450 for Billing (UB–92).
	Uniform Billing With Form CMS–1450.
	Disposition of Copies of Completed Forms.
	General Instructions for Completion of Form CMS–1450 (UB–04).
1105	Swing Bed Hospital Updates.
1106	Outpatient Therapy Cap Clarifications.
	The Financial Limitation.
	Non-physician Services.
	General Information Section.
	Servicios Que No Fueron Prestados Por Doctores.
	Cuidado Preventivo.
	Secciýn De Informaciýn General.
1107	Notification and Testing of an Integrated Outpatient Code Editor for the July 2007 Release.
	Outpatient Code Editor.
	Integrated Outpatient Code Editor (July 2007 and Later).
	Outpatient Prospective Payment System Outpatient Code Editor (Prior to July 1, 2007).
	Patient Status Code and Reason for Patient Visit for the Hospital Outpatient Prospective Payment System.
	Non-Outpatient Prospective Payment System Outpatient Code Editor (Rejected Items and Processing Requirements) (Prior to July 1, 2007).
1108	Reporting of Taxonomy Codes to Identify Provider Subparts on Institutional Claims.
1109	Skilled Nursing Facility Consolidated Billing Common Working File Edit Bypass Instructons for Hospital Emergency Room Services Spanning Multiple Service Dates.
1110	Excluding Sanctioned Provider Claims From the Coordination of Benefits Agreement Crossover Process.
	Consolidated Claims Crossover Process.
	Coordination of Medicare With Medigap and Other Complementary Health Insurance Policies.
1111	Clarification on Billing for Cryosurgery of the Prostate Gland.
	Special Rules for Critical Access Hospital Outpatient Billing.
	Optional Method for Outpatient Services: Cost-Based Facility Services Plus 115 Percent Fee Schedule for Professional Services.
1112	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
1113	Implementation of an Ultrasound Screening for Abdominal Aortic Aneurysms.
	Definitions.
	Coverage.
	Payment.
	Deductible and Coinsurance.
	Healthcare Common Procedure Coding System Code.
	Advanced Beneficiary Notice.
1114	This Transmittal is rescinded and replaced by Transmittal 1133.
1115	New Waived Tests.
1116	Revised American National Standards Institute X12N 837 Institutional Health Care Claim Companion Document.
1117	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction.
1118	Reasonable Charge Update for 2007 for Splints, Casts, Dialysis Supplies, Dialysis Equipment, and Certain Intraocular Lenses.
1119	Installation of the January Inpatient Psychiatric Facility Prospective Payment System Pricer Software Containing Customer Information Control System Formatting (Off-Cycle Release).
1120	Additional Provider Education for Upcoming Changes in Payment for Oxygen Equipment and Capped Rentals for Durable Medical Equipment Based on the Deficit Reduction Act of 2005.
1121	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
1122	*2007 Annual Update for Clinical Laboratory Fee Schedule and Laboratory Services Subject to Reasonable Charge Payment*
1123	Instructions for Downloading the Medicare Zip Code File.
1124	Quarterly Update to Correct Coding Initiative (CCI) Edits, Version 13.0, Effective January 1, 2007.
1125	Fee Schedule Update for 2007 for Durable Medical Equipment, Prosthetics, Orthotics and Supplies.
1126	Announcement of Medicare Rural Health Clinics and Federally Qualified Health Centers Payment Rate Increases.
1127	Infrared Therapy Devices.
	Coding Guidance for Certain Physical Medicine CPT Codes—All Claims.
1128	January 2007 Non-Outpatient Prospective Payment System Outpatient Code Editor Specifications Version 22.1.
1129	January 2007 Quarterly Average Sales Price Medicare Part B Drug Pricing File, Effective January 1, 2007, and Revisions to April 2006, July 2006, and October 2006 Quarterly ASP Medicare Part B Drug Pricing Files.
1130	January 2007 Outpatient Prospective Payment System Outpatient Code Editor Specifications Version 8.0.
1131	Legislative Change to the Update Factor for the 2007 Medicare Physician Fee Schedule and Extension of the Participating Enrollment Period.
1132	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
1133	Reporting of Taxonomy Codes to Identify Provider Subparts on Institutional Claims.
1134	Update of Healthcare Common Procedure Coding System Codes and Payments for Ambulatory Surgical Centers and File Names, Descriptions and Instructions for Retrieving the 2007 ASC HCPCS Additions, Deletions and Master Listing.
1135	Correction of Instructions for Calculating IRF Compliance Percentage Threshold.
	Verification Process To Be Used To Determine If the Inpatient Rehabilitation Facility Met the Classification Criteria.
1136	Revisions to Procedure to Establish Good Cause and Qualified Independent Contractor Jurisdictions.
	General Procedure to Establish Good Cause.
	Appeals Rights for Dismissals.
	Vacating a Dismissal.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[October Through December 2006]

Transmittal No.	Manual/Subject/Publication No.
	QIC Jurisdictions.
1137	Inpatient Rehabilitation Facility Teaching Status Adjustment.
	Full Time Equivalent Resident Cap.
1138	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
1139	January 2007 Update of the Hospital Outpatient Prospective Payment System: Summary of Payment Policy Changes and OPPS PRICER Logic Changes and Instruction for Updating the Outpatient Provider Specific File.
	Reporting and Charging Requirements When a Device Is Replaced Without Cost to the Hospital.
	Reporting and Charging Requirements When the Hospital Receives Credit for the Replaced Device Against the Cost of a More Expensive Replacement Device.
	Clinic and Emergency Visits.
	Critical Care Services.
	Billing for IMRT Planning and Delivery.
	Additional Billing Instructions for IMRT Planning.
	Billing for Multi-Source Photon (Cobalt 60-Based) Stereotactic Radiosurgery Planning and Delivery.
	Billing for Linear Accelerator (Robotic Image-Guided and Non-Robotic Image-Guided) SRS Planning and Delivery.
	Coding and Payment for Drug Administration.
1140	Medicare Payment for Preadministration-Related Services Associated With IVIG Administration.
1141	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
1142	Durable Medical Equipment Regional Carrier Claim Modifiers for Upgrades.
	Durable Medical Equipment Regional Carriers?Billing Procedures Related to Advanced Beneficiary Notice Upgrades.
	Providing Upgrades of Durable Medical Equipment, Prosthetics, Orthotics & Supplies Without Any Extra Charge.
1143	Emergency Update to the 2007 Medicare Physician Fee Schedule Database.
1144	Elimination of CMS–1491 and CMS–1490U Forms.
	Claim Forms.
	Coding Instructions for Form CMS–1491.
1145	Outpatient Therapy Cap Exceptions Process for Calendar Year (CY) 2007.
	The Financial Limitation.
	Group Therapy Services (Code 97150).
	Therapy Students.
1146	Payment by Durable Medical Equipment Medicare Administrative Contractors and Durable Medical Equipment Regional Carriers for the Administration of Part D Vaccines.
	Medicare Secondary Payer (CMS—Pub. 100–05)
56	Updating the Medicare Secondary Payer (MSP) Manual for Consistency on Instructing Part A Contactors on Handling MSP Claims With Condition Code 08.
	Further Development Is Required.
	Limits on Development.
57	Instructions for the Coordination of Medicare Secondary Payer Claims for the Competitive Acquisition Program.
	Medicare Secondary Payer Situations Under Competitive Acquisition Program.
	Medicare Financial Management (CMS—Pub. 100–06)
108	Notice of New Interest Rate for Medicare Overpayments and Underpayments—1st Qtr. FY 2007.
109	Claims Accounts Receivable—Clarification to CR 3963.
	Intermediary Claims Accounts Receivable.
110	Waiving Reporting Requirements on the CMS–2592 Report in Fiscal Year 2007 Due to Funding Constraints.
111	Status Codes for Financial Reporting of Debts Once the MMA Section 935 Appeal Process Has Been Completed.
112	Chapter 7, Internal Control Requirements Update.
	Control Activities.
	Risk Assessment.
	Risk Analysis Chart.
	Internal Control Objectives.
	Fiscal Year 2007 Medicare Control Objectives.
	Testing Methods.
	Documentation and Working Papers.
	Certification Package for Internal Controls Requirements.
	OMB Circular A–123 and Internal Control Over Financial Reporting.
	Certification Statement.
	Certification Package for Internal Controls—Report of Material Weaknesses.
	Certification Package for Internal Controls—Report of Reportable Conditions.
	Definitions of Reportable Conditions and Material Weaknesses.
	Material Weaknesses Identified During the Reporting Period.
	Corrective Action Plans.
	Submission, Review, and Approval of Corrective Action Plans.
	CMS Finding Numbers.
	Initial CAP Report.
	Quarterly CAP Report.
	Enter Data into the Initial or Quarterly CAP Report.
	List of FY 2007 Medicare Control Objectives.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[October Through December 2006]

Transmittal No.	Manual/Subject/Publication No.
	Medicare State Operations Manual (CMS—Pub. 100–07)
21	Revised Appendix & Appendix PP—New Tag F334.
22	Revisions to Appendix P and PP.
	Medicare Program Integrity (CMS—Pub. 100–08)
165	Durable Medical Equipment Medicare Administrative Contractors Adoption or Rejection of.
	Local Coverage Determinations Recommended by Durable Medical Equipment Program.
	Safeguard Contractors.
	Local Coverage Determinations.
166	This Transmittal is rescinded and replaced by Transmittal 168.
167	New Durable Medical Equipment Prosthetic, Orthotics & Supplies Certificates of Medical Necessity and DME Information Forms for Claims Processing.
	Documentation Specifications for Areas Selected for Prepayment or Postpayment Medical Review.
	Home Use of Durable Medical Equipment.
	Rules Concerning Prescriptions (Orders).
	Physician Orders.
	Verbal Orders.
	Written Orders.
	Written Orders Prior to Delivery.
	Requirement of New Orders.
	Certificates of Medical Necessity and Durable Medical Equipment Information Forms.
	Completing a Certificates of Medical Necessity or Durable Medical Equipment Information Forms.
	Cover Letters for Certificates of Medical Necessity.
	Acceptability of Faxed Orders and Facsimile or Electronic Certificates of Medical Necessity and Durable Medical Equipment Information Forms.
	Durable Medical Equipment Medicare Administrative Contractors and Durable Medical Equipment Program Safeguard Contractor?s Authority to Initiate an Overpayment or Civil Monetary Penalty When Invalid Certificates of Medical Necessity Are Identified.
	Nurse Practitioner or Clinical Nurse Specialist Rules Concerning Orders and Certificates of Medical Necessity.
	Physician Assistant Rules Concerning Orders and Certificates of Medical Necessity.
	Documentation in the Patient's Medical Record.
	Supplier Documentation.
	Evidence of Medical Necessity.
	Evidence of Medical Necessity for the Oxygen Certificates of Medical Necessity.
	Evidence of Medical Necessity: Wheelchair and Power Operated Vehicle Claims.
	Period of Medical Necessity—Home Dialysis Equipment.
	Safeguards in Making Monthly Payments.
	Guidance on Safeguards in Making Monthly Payments.
	Pick-up Slips.
	Incurred Expenses for DME and Orthotic and Prosthetic Devices.
	Patient Equipment Payments Exceed Deductible and Coinsurance on Assigned Claims.
	Definitions of Customized Durable Medical Equipment.
	Advance Determination of Medicare Coverage of Customized Durable Medical Equipment.
	Items Eligible for Advance Determination of Medicare Coverage.
	Instructions for Submitting Advance Determination of Medicare Coverage Requests.
	Instructions for Processing Advance Determination of Medicare Coverage Requests.
	Affirmative Advance Determination of Medicare Coverage Decisions.
	Negative Advance Determination of Medicare Coverage Decisions.
	Durable Medical Equipment Program Safeguard Contractor Tracking.
168	Durable Medical Equipment Prosthetic, Orthotics & Supplies Transcutaneous Electrical.
	Nerve Stimulators Certificate of Medical Necessity for Purchases: Form CMS–848.
	Certificates of Medical Necessity and Durable Medical Equipment Information Forms.
169	Update the MCS System to Validate National Provider Identifiers in Place of Unique Physician Identification Numbers.
170	This Transmittal is rescinded and replaced by Transmittal 174.
171	Outpatient Therapy Cap Clarifications.
	Exception From the Uniform Dollar Limitation.
	Prepay Complex Review Workload and Cost (Activity Code 21221).
172	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
173	Update to Chapter 10—Medicare Provider/Supplier Enrollment.
	Medicare Contractor Duties.
	Timeframes for Initial Applications.
	General Timeliness Principles.
	Pre-Screening Process.
	Returning the Application.
	Basic Information (Section 1 of the CMS–855).
	Tax Identification Numbers and Legal Business Names.
	Licenses and Certifications.
	Correspondence Address.
	Section 2 of the CMS–855A.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[October Through December 2006]

Transmittal No.	Manual/Subject/Publication No.
	Section 2 of the CMS–855I.
	Adverse Legal Actions/Convictions.
	Practice Location Information.
	Owning and Managing Organizations.
	Types of Business Organizations.
	Owning and Managing Individuals.
	Chain Organizations.
	Special Requirements for Home Health Agencies.
	Contact Person.
	Delegated Officials.
	Processing CMS–855R Applications.
	National Provider Identifier.
	Verification of Data.
	Requesting and Receiving Clarifying Information.
	Special Verification Procedures for CMS–855A Applications.
	Special Procedures for Processing Complete CMS–855 Applications Submitted by Enrolled Providers.
	Denials.
	General Procedures.
	Changes of Information and Complete CMS–855 Applications.
	Voluntary Terminations.
	Electronic Funds Transfers.
	Revalidation.
	Provider-Based.
	Participation (Par) Agreements and the Acceptance of Assignment.
	Opt-Out.
	Manufacturers of Replacement Parts/Supplies for Prosthetic Implants or Implantable.
	Durable Medical Equipment Surgically Inserted at an ASC.
	Enrolling Indian Health Service Facilities as Durable Medical Equipment, Prosthetics, Orthotics and Supplies Suppliers.
	Model Correspondence Language.
	Provider Enrollment Chain & Ownership System—General Information.
	Provider Enrollment Chain & Ownership System Communication and Coordination.
	Provider Enrollment Inquiries.
174	Transition of Medical Review Educational Activities.
	Introduction.
	Types of Claims for Which Contractors Are Responsible.
	Goal of Medical Review Program.
	Medical Review Manager.
	Annual Medical Review Strategy.
	Data Analysis and Information Gathering.
	Problem Identification & Prioritization.
	Intervention Planning.
	Program Management.
	Budget and Workload Management.
	Staffing and Workforce Management.
	Contractor Medical Director.
	Maintaining the Confidentiality of Medical Review Records.
	Provider Tracking System.
	Evaluating the Effectiveness of Corrective Actions.
	Verifying Potential Error and Setting Priorities.
	Determining Whether a Problem is Widespread of Provider-Specific Administrative Relief from Medical Review in the Presence of Disaster Articles.
	Overview of Prepayment and Postpayment Review for Medical Review Purposes.
	Additional Documentation Requests During Prepayment or Postpayment Medical Review.
	Denials Notices.
	Internal Medical Review Guidelines.
	Types of Prepayment and Postpayment Review.
	Spreading Workload Evenly.
	Prepayment Edits.
	Categories of Medical Review Edits.
	CMS-Mandated Edits.
	Re-Adjudication of Claims.
	Review of Data.
	Provider Notification and Feedback.
	Fraud.
	Track Interventions.
	Implementation.
	Vignettes.
	Procedural Requirements.
	Joint Operating Agreement.
	Education.
	Definition.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[October Through December 2006]

Transmittal No.	Manual/Subject/Publication No.
	The Quarterly Strategy Analysis.
	Executive Summary.
	Problem Specific Activities.
	Problem Specific Activity Definitions.
	Narrative.
	Medical Review.
	Medical Review Overview.
	Reporting Medical Review Workload and Cost Information and Documentation in CAFM II.
	CAFM II Reporting for Medical Review Activities.
	Data Analysis Cost (Activity Code 21007).
	Medical Review Program Management Costs (Activity Code 21207).
	Medicare Integrity Program Comprehensive Error Rate Testing Support.
	Provider Education Regarding LCDs.
175	Division of Provider and Supplier Enrollment Issued Revocations.
	Program Safeguard Contractor Identified Revocations.
	CMS Satellite Office or Regional Office Identified Revocations.
176	Various Benefit Integrity Revisions to Chapter 4.
	Introduction.
	The Medicare Fraud Program.
	Examples of Medicare Fraud.
	Program Safeguard Contractor Benefit Integrity Unit.
	Organizational Requirements.
	Liability of Program Safeguard Contractor Benefit Integrity Unit Employees.
	Anti-Fraud Training.
	Training for Law Enforcement Organizations.
	Maintain Controlled Filing System and Documentation.
	Benefit Integrity Security Requirements.
	Durable Medical Equipment Fraud Functions.
	Medical Review for Benefit Integrity Purposes.
	Requests for Information From Outside Organizations.
	Sharing Fraud Referrals Between the Office of Inspector General and the Department of Justice.
	Program Safeguard Contractor and Medicare Contractor Coordination With Other Program Safeguard Contractors and Medicare Contractors.
	Program Safeguard Contractor Coordination With Other Entities.
	Beneficiary, Provider, Outreach Activities.
	The ARGUS System.
	Complaint Screening.
	Filing Complaints.
	Investigations.
	Conducting Investigations.
	Closing Investigations.
	Disposition of Cases.
	Reversed Denials by Administrative Law Judges on Open Cases.
	Incentive Reward Program General Information.
	Information Eligible for Reward.
	Persons Eligible to Receive a Reward.
	Excluded Individuals.
	Program Safeguard Contractor Responsibilities.
	Guidelines for Processing Incoming Complaints.
	Guidelines for Incentive Reward Program Complaint Tracking.
	Overpayment Recovery.
	Eligibility Notification.
	Incentive Reward Payment.
	Reward Payment Audit Trail.
	CMS Incentive Reward Winframe Database.
	Updating the Incentive Reward Database.
	Fraud Alerts.
	Types of Fraud Alerts.
	Alert Specifications.
	Editorial Requirements.
	Coordination.
	Distribution of Alerts.
	Fraud Investigation Database Entries.
	Background.
	Information Not Captured in the Fraud Investigation Database.
	Entering Office of the Inspector General Immediate Advisements Into the Fraud Investigation Database.
	Investigation, Case, and Suspension Entries.
	Initial Entry Requirements for Investigations.
	Initial Entry Requirements for Cases.
	Initial Entry Requirements for Payment Suspension.
	Update Requirements for Investigations.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[October Through December 2006]

Transmittal No.	Manual/Subject/Publication No.
	Update Requirements for Cases.
	OIG Non-Response to or Declination of Case Referral.
	Closing Investigations.
	Closing Cases.
	Duplicate Investigations, Cases, or Suspensions.
	Deleting Investigations, Cases, or Suspensions.
	Access.
	The Fraud Investigation Database User?s Group.
	Designated Program Safeguard Contractor Benefit Integrity Unit Staff and the Fraud Investigation Database.
	The Fraud Investigation Database Mailbox.
	Harkin Grantee Tracking Instructions.
	System Access to Metaframe and Data Collection.
	Data Dissemination/Aggregate Report.
	Administrative Relief from Benefit Integrity Unit Review in the Presence of a Disaster.
	Provider Contacts by the Program Safeguard Contractor Benefit Integrity Unit.
	AC, MAC, and PSC Coordination on Voluntary Refunds.
	Referral of Cases to the Office of the Inspector General/Office of Investigations.
	Immediate Advisements to the OIG/OI.
	Program Safeguard Contractor BI Unit Actions When Cases Are Referred to and Accepted by the OIG/OI.
	Suspension.
	Denial of Payments for Cases Referred to and Accepted by OIG/OI.
	Recoupment of Overpayments.
	OIG/OI Case Summary and Referral.
	Continue to Monitor Provider and Document Case File.
	Take Administrative Action on Cases Referred to and Refused by OIG/OI.
	Refer to Other Law Enforcement Agencies.
	Referral to State Agencies or Other Organization.
	Referral to Quality Improvement Organizations.
	Administrative Sanctions.
	The Program Safeguard Contractor?s Affiliated Contractor?s and Medicare.
	Administrative Contractor?s Role.
	Authority to Exclude Practitioners, Providers, and Suppliers of Services.
	Identification of Potential Exclusion Cases.
	Development of Potential Exclusion Cases.
	Contents of Sanction Recommendation.
	Denial of Payment to an Excluded Party.
	Denial of Payment to Employer of Excluded Physician.
	Denial of Payment to Beneficiaries and Others.
	Reinstatements.
	Monthly Notification of Sanction Actions.
	Purpose.
	Administrative Actions.
	Referral Process to CMS.
	Referrals to OIG.
	CMS Generic Civil Monetary Penalties Case Contents.
	Beneficiary Right to Itemized Statement.
	Medicare Limiting Charge Violations.
	Monitor Compliance.
	Resumption of Payment to a Provider—Continued Surveillance After Detection of Fraud.
	Discounts, Rebates, and Other Reductions in Price.
	Marketing to Medicare Beneficiaries.
	Cost-Based Payment (Intermediary and Medicare Administrative Contractor Processing of Part A Claims): Necessary Factors for Protected Discounts.
	Charge-Based Payment (Intermediary and Medicare Administrative Contractor Processing of Part B Claims): Necessary Factors for Protected Discounts.
	Hospital Incentives.
	Breaches of Assignment Agreement by Physician or Other Supplier.
	Participation Agreement and Limiting Charge Violations.
	Supplier Proof of Delivery Documentation Requirements.
	Proof of Delivery and Delivery Methods.
	Annual Deceased-Beneficiary Postpayment Review.
	Joint Operating Agreement.
	Vulnerability Report.
177	Update the VMS System to Validate National Provider Identifiers in Place of Unique.
	Physician Identification Numbers.
178	Medically Unlikely Edits.
179	Revised Medical Review Timeliness and Reopening Requirements for Medical Review.
	Location of Postpayment Review.
	Handling Late Documentation.
	Completing Complex Reviews.
	Additional Documentation Requests During Prepayment of Postpayment Review.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[October Through December 2006]

Transmittal No.	Manual/Subject/Publication No.
	Re-openings of claims Denied Due to Failure to Submit Necessary Medical Documentation (remittance advice code N102 or 56900).
180	Sources of Data for Program Safeguard Contractors.
181	Outpatient Therapy Cap Exceptions Process for Calendar Year 2007.
	Medicare Contractor Beneficiaryand Provider Communications (CMS—Pub. 100–09)
00	None.
	Medicare Managed Care (CMS— Pub. 100–16)
00	None
	Medicare Business Partners Systems Security (CMS—Pub. 100–17)
00	None
	Demonstrations (CMS—Pub. 100–19)
50	Laboratory Competitive Bidding Demonstration (Second Phase of Implementation).
51	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction.
	One Time Notification (CMS Pub. 100–20)
241	Update to the Medicare Part B 835 Flat File.
242	National Coverage Determination for Infusion Pump Exception Guidance Pub.100–04, Chapter 1, Part 4, Section 280.14.
243	Reporting the National Provider Identifier on Physician Claims for Diagnostic Services Purchased Outside of the Local Carriers Jurisdiction.
244	New Contractor Numbers for Part A for the States of Montana, North Dakota, South Dakota, Utah, and Wyoming in Jurisdiction 3 Part AB Medicare Administrative Services Workload.
245	Department of Veterans Affairs Medicare-equivalent Remittance Advice Project: Continued Use of Professional Legacy Provider Numbers After National Provider Identifiers Are Fully Implemented.
246	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
247	Returning Paper Claims Received From Clearinghouses.
248	Optical Character Recognition Interface in the Fiscal Intermediary Standard System.
249	Claims Submitted With Only a National Provider Identifier During the Stage 2 NPI Transition Period.
250	PECOS to FISS Interface Via Extract File.
251	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction.
252	Additional Codes for Physician Voluntary Reporting Program.
253	Home Health Prospective Payment System (HH PPS) Update for Calendar Year 2007.
254	Provision of Data for the Care Management for High Cost Beneficiaries Demonstration from Selected Fiscal Intermediaries, Carriers, and Durable Medical Equipment Medicare Administrative Contractors.
255	Provider Migration.
256	Payment Allowances for the Influenza Virus Vaccine (CPT 90655, 90656, 90657, and 90658) and the Pneumococcal Vaccine (CPT 90732) When Payment is Based on 95 Percent of the Average Wholesale Price.
257	Issued to a specific audience, nor posted to Internet/Intranet due to Confidentiality of Instruction.
258	Payment Amounts and Policies in the 2007 Medicare Physician Fee Schedule and the Telehealth Originating Site Facility Fee Payment Amount.

ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER OCTOBER THROUGH DECEMBER 2006

Publication date	FR Vol. 71 page number	CFR parts affected	File code	Title of regulation
October 3, 2006	58415		CMS–1535–CN CMS–8030–CN2	Medicare Program; Hospice Wage Index for Fiscal Year 2007; Medicare Part B Monthly Actuarial Rates, Premium Rates, and Annual Deductible for Calendar Year 2007; Corrections.
October 3, 2006	58398		CMS–2243–N	Medicaid Program; Fiscal Year Disproportionate Share Hospital Allotments and Disproportionate Share Hospital Institutions for Mental Disease Limits.
October 3, 2006	58286	409, 410, 412, 413, 414, 424, 485, 489, and 505.	CMS–1488–CN	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2007 Rates; Correction.
October 11, 2006	59886		CMS–1488–N	Medicare Program; Hospital Inpatient Prospective Payment Systems and Fiscal Year 2007 Rates: Final Fiscal Year 2007 Wage Indices and Payment Rates After Application of Revised Occupational Mix Adjustment to Wage Index.

ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER OCTOBER THROUGH DECEMBER 2006—Continued

Publication date	FR Vol. 71 page number	CFR parts affected	File code	Title of regulation
October 16, 2006	60663	433	CMS–2231–F	Medicaid Program; State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals: Federal Fiscal Year 2006 and Fiscal Year 2007.
October 18, 2006	61445	423	CMS–4119–P	Medicare Program; Medicare Part D Data.
October 27, 2006	63023		CMS–1381–N	Medicare Program; Meeting of the Practicing Physicians Advisory Council.
October 27, 2006	63021		CMS–3174–N	Medicare Program; Meeting of the Medicare Coverage Advisory Committee—December 13, 2006.
October 27, 2006	63019		CMS–4126–PN	Medicare and Medicaid Programs; Reapproval of Deeming Authority of the Accreditation Association for Ambulatory Health Care, Inc. for Medicare Advantage Health Maintenance Organizations and Local Preferred Provider Organizations.
October 27, 2006	62957	483	CMS–3191–P	Medicare and Medicaid Programs; Fire Safety Requirements for Long Term Care Facilities, Automatic Sprinkler Systems.
November 9, 2006	65884	414 and 484	CMS–1304–F	Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2007 and Deficit Reduction Act of 2005 Changes to Medicare Payment for Oxygen Equipment and Capped Rental Durable Medical Equipment.
November 24, 2006	67960	410, 416, 419, 421, 485, and 488.	CMS–1506–FC CMS–4125–F	Medicare Program; Hospital Outpatient Prospective Payment System and CY 2007 Payment Rates; CY 2007 Update to the Ambulatory Surgical Center Covered Procedure List; Medicare Administrative Contractors; and Reporting Hospital Quality Data for FY 2008 Inpatient Prospective Payment System Annual Payment Update Program—HCAHPS Survey, SCIP, and Mortality.
November 24, 2006	67876		CMS–1383–N	Medicare Program; Listening Session on a Plan for Medicare Hospital Value-Based Purchasing—January 17, 2007.
November 24, 2006	67875		CMS–4128–N	Medicare Program; Decisions Affecting Medicare Advantage Plans Deemed by Joint Commission for the Accreditation of Health Care Organizartions.
November 24, 2006	67875		CMS–1326–N	Medicare Program; Rechartering of the Advisory Panel on Ambulatory Payment Classification Groups.
November 24, 2006	67873		CMS–1305–N	Medicare Program; Request for Nominations to the Advisory Panel on Ambulatory Payment Classification Groups.
November 27, 2006	68708	405, 412, 422, and 489	CMS–4105–F	Medicare Program; Notification of Hospital Discharge Appeal Rights.
November 27, 2006	68519	401	CMS–6032–P	Medicare Program; Use of Repayment Plans.
November 27, 2006	68672	482	CMS–3122–F	Medicare and Medicaid Programs; Hospital Conditions of Participation: Requirements for istory and Physical Examinations; Authentication of Verbal Orders; Securing Medications; and Postanesthesia Evaluations.
December 1, 2006	69624	405, 410, 411, 414, 415, and 424.	CMS–1321–FC CMS–1317–F	Medicare Programs; Revisions to 411, Payment Policies, Five-Year Review of Work Relative Value Units, Changes to the Practice Expense Methodology Under the Physician Fee Schedule, and Other Changes to Payment Under Part B; Revisions to the Payment Policies of Ambulance Services Under the Fee Schedule for Ambulance Services; and Ambulance Inflation Factor Update for CY 2007.
December 8, 2006	71378	482	CMS–3018–F	Medicare and Medicaid Programs; Hospital Conditions of Participation: Patient's Rights.
December 8, 2006	71244	460, 462, 466, 473, and 476.	CMS–1201–F	Medicare and Medicaid Programs; Programs of All-Inclusive Care for and the Elderly (PACE); Program Revisions.

ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER OCTOBER THROUGH DECEMBER 2006—Continued

Publication date	FR Vol. 71 page number	CFR parts affected	File code	Title of regulation
December 8, 2006	71062	405, 410, 411, 414, 415, and 424.	CMS–1321–CN	Medicare Program; Revisions to Payment Policies, Five-Year Review of Work Relative and 424 Value Units, and Changes to the Practice Expense Methodology Under the Physician Fee Schedule, and Other Changes to Payment Under Part B; Corrections.
December 13, 2006	75014	26 CFR Part 54, 29 CFR Part 2590, 45 CFR Part 146.	CMS–4081–F	Nondiscrimination and Wellness Programs in Health Coverage in the Part Group Market.
December 22, 2006	77202	.....	CMS–9038–N	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—July Through September 2006.
December 22, 2006	77174	447	CMS–2238–P	Medicaid Program; Prescription Drugs.
December 22, 2006	77031	.....	CMS–1382–N	Medicare Program; Town Hall Meeting on the Fiscal Year 2008 Applications for New Medical Services and Technologies and Informational Workshop on Payment for New Technologies Under the Inpatient Prospective Payment System (IPPS) and the Outpatient Prospective Payment System (OPPS), Processes for Diagnoses-Related Group (DRG) Assignment; and Requesting New International Classification of Diseases, 9th Revisions, Clinical Modification (ICD–9–CM) Codes Under the IPPS—February 22, 2007.
December 22, 2006	77029	.....	CMS–7002–N	Medicare Program; Meeting of the Advisory Panel on Medicare Education, January 24, 2007.
December 22, 2006	77028	.....	CMS–1327–N	Medicare Program; First Biannual Meeting of the Advisory Panel on Ambulatory Payment Classification Groups—March 7, 8, and 9, 2007.

Addendum V—National Coverage Determinations

[October Through December 2006]

A national coverage determination (NCD) is a determination by the Secretary with respect to whether or not a particular item or service is covered nationally under Title XVIII of the Social Security Act, but does not include a determination of what code, if any, is assigned to a particular item or service covered under this title, or determination with respect to the amount of payment made for a particular item or service so covered. We include below all of the NCDs that were issued during the quarter covered by this notice. The entries below include information concerning completed decisions as well as sections on program and decision memoranda, which also announce pending decisions or, in some cases, explain why it was not appropriate to issue an NCD. We identify completed decisions by the section of the NCDM in which the decision appears, the title, the date the publication was issued, and the effective date of the decision. Information on completed decisions as well as pending decisions has also been posted on the CMS Web site at *http://cms.hhs.gov/coverage*.

NATIONAL COVERAGE DETERMINATIONS

[October Through December 2006]

Title	NCDM section	TN No.	Issue date	Effective date
Cardiac Output Monitoring by Thoracic Electrical Bioimpedance ...	20.16	R63NCD ...	12/15/06	11/24/06
Infrared Therapy Devices	270.6	R62NCD ...	12/15/06	10/24/06
Cavernous Nerves Electrical Stimulation Penile Plethysmography	160.26	R61NCD ...	11/24/06	08/24/06
Changes to the Laboratory National Coverage Determination Edit Software for January 2007.	190.12, 190.14–190.17, 190.22, 190.27, 190.33–190.34.	R1093CP ..	10/27/06	01/01/07

Addendum VI—FDA-Approved Category B IDEs

[October Through December 2006]

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c) devices fall into one of three classes. To assist CMS under this categorization process, the FDA assigns one of two categories to each FDA-approved IDE. Category A refers to experimental IDEs, and Category B refers to non-experimental IDEs. To obtain more information about the classes or categories, please refer to the **Federal Register** notice published on April 21, 1997 (62 FR 19328).

The following list includes all Category B IDEs approved by FDA during the fourth quarter, October through December 2006.

IDE	Category
G050169	B

IDE	Category
G050256	B
G060033	B
G060045	B
G060052	B
G060058	B
G060067	B
G060083	B
G060090	B
G060121	B
G060141	B
G060149	B
G060159	B
G060169	B
G060178	B
G060179	B
G060180	B
G060181	B
G060182	B
G060185	B
G060186	B
G060187	B
G060189	B
G060191	B
G060192	B
G060194	B
G060196	B
G060199	B
G060204	B
G060205	B
G060210	B
G060211	B
G060212	B
G060216	B
G060220	B
G060221	B
G060222	B
G060225	B
G060227	B
G060229	B
G060230	B
G060231	B
G060233	B
G060235	B
G060236	B
G060238	B
G060239	B
G060240	B
G060241	B
G060244	B
G060246	B
G060247	B
G060248	B
G060249	B
G060252	B
G060253	B

Addendum VII—Approval Numbers for Collections of Information

Below we list all approval numbers for collections of information in the referenced sections of CMS regulations in Title 42; Title 45, Subchapter C; and Title 20 of the Code of Federal Regulations, which have been approved by the Office of Management and Budget:

OMB Control No.	Approved CFR Sections in Title 42, Title 45, and Numbers Title 20 (Note: Sections in Title 45 are preceded by "45 CFR," and sections in Title 20 are preceded by "20 CFR")
0938–0008	Part 424, Subpart C
0938–0022	413.20, 413.24, 413.106
0938–0023	424.103
0938–0025	406.28, 407.27
0938–0027	486.100–486.110
0938–0033	405.807
0938–0034	405.821
0938–0035	407.40
0938–0037	413.20, 413.24
.	
0938–0041	408.6, 408.202
0938–0042	410.40, 424.124
0938–0045	405.711
0938–0046	405.2133
0938–0050	413.20, 413.24
0938–0062	431.151, 435.151, 435.1009, 440.220, 440.250, 442.1, 442.10–442.16, 442.30, 442.40, 442.42, 442.100–442.119, 483.400–483.480, 488.332, 488.400, 498.3–498.5
0938–0065	485.701–485.729
0938–0074	491.1–491.11
0938–0080	406.7, 406.13
0938–0086	420.200–420.206, 455.100–455.106
0938–0101	430.30
0938–0102	413.20, 413.24
0938–0107	413.20, 413.24
0938–0146	431.800–431.865
0938–0147	431.800–431.865
0938–0151	493.1–493.2001
0938–0155	405.2470
0938–0193	430.10–430.20, 440.167
0938–0202	413.17, 413.20
0938–0214	411.25, 489.2, 489.20
0938–0236	413.20, 413.24
0938–0242	416.44, 418.100, 482.41, 483.270, 483.470
0938–0245	407.10, 407.11
0938–0251	406.7
0938–0266	416.1–416.150
0938–0267	485.56, 485.58, 485.60, 485.64, 485.66
0938–0269	412.116, 412.632, 413.64, 413.350, 484.245
0938–0270	405.376
0938–0272	440.180, 441.300–441.305
0938–0273	485.701–485.729
0938–0279	424.5
0938–0287	447.31
0938–0296	413.170, 413.184
0938–0301	413.20, 413.24, 415.60
0938–0302	418.22, 418.24, 418.28, 418.56, 418.58, 418.70, 418.74, 418.83, 418.96, 418.100
0938–0313	489.11, 489.20

OMB Control No.	Approved CFR Sections in Title 42, Title 45, and Numbers Title 20 (Note: Sections in Title 45 are preceded by "45 CFR," and sections in Title 20 are preceded by "20 CFR")
0938–0328	482.12, 482.13, 482.21, 482.22, 482.27, 482.30, 482.41, 482.43, 482.45, 482.53, 482.56, 482.57, 482.60, 482.61, 482.62, 482.66, 485.618, 485.631
0938–0334	491.9, 491.10
0938–0338	486.104, 486.106, 486.110
0938–0354	441.50
0938–0355	442.30, 488.26
0938–0358	488.26
0938–0359	412.40–412.52
0938–0360	488.60
0938–0365	484.10, 484.12, 484.14, 484.16, 484.18, , 484.36, 484.48, 484.52
0938–0372	414.330
0938–0378	482.60–482.62
0938–0379	442.30, 488.26
0938–0382	442.30, 488.26
0938–0386	405.2100–405.2171
0938–0391	488.18, 488.26, 488.28
0938–0426	480.104, 480.105, 480.116, 480.134
0938–0429	447.53
0938–0443	478.18, 478.34, 478.36, 478.42
0938–0444	1004.40, 1004.50, 1004.60, 1004.70
0938–0445	412.44, 412.46, 431.630, 476.71, 476.74, 476.78
0938–0447	405.2133
0938–0448	405.2133, 45 CFR 5, 5b; 20 CFR Parts 401, 422E
0938–04494–	40.180, 441.300– 441.310
0938–0454	424.20
0938–0456	412.105
0938–0463	413.20, 413.24, 413.106
0938–0467	431.17, 431.306, 435.910, 435.920, 435.940–435.960
0938–0469	417.126, 422.502, 422.516
0938–0470	417.143, 422.6
0938–0477	412.92
0938–0484	424.123
0938–0501	406.15
0938–0502	433.138
0938–0512	486.304, 486.306, 486.307
0938–0526	475.102, 475.103, 475.104, 475.105, 475.106
0938–0534	410.38, 424.5
0938–0544	493.1–493.2001
0938–0564	411.32
0938–0565	411.20–411.206
0938–0566	411.404, 411.406, 411.408
0938–0573	412.256
0938–0578	447.534
0938–0581	493.1–493.2001
0938–0599	493.1–493.2001
0938–0600	405.371, 405.378, 413.20
0938–0610	417.436, 417.801, 422.128, 430.12, 431.20, 431.107, 483.10, 484.10, 489.102
0938–0612	493.801, 493.803, 493.1232, 493.1233, 493.1234, 493.1235, 493.1236, 493.1239, 493.1241, 493.1242, 493.1249, 493.1251, 493,1252, 493.1253, 493.1254, 493.1255, 493.1256, 493.1261, 493.1262, 493.1263, 493.1269, 493.1273, 493.1274, 493.1278, 493.1283, 493.1289, 493.1291, 493.1299
0938–0618	433.68, 433.74, 447.272
0938–0653	493.1771, 493.1773, 493.1777
0938–0657	405.2110, 405.2112
0938–0658	405.2110, 405.2112
0938–0667	482.12, 488.18, 489.20, 489.24
0938–0686	493.551–493.557
0938–0688	486.301–486.325
0938–0691	412.106
0938–0692	466.78, 489.20, 489.27
0938–0701	422.152
0938–0702	45 CFR 146.111, 146.115, 146.117, 146.150, 146.152, 146.160, 146.180
0938–0703	45 CFR 148.120, 148.122, 148.124, 148.126, 148.128
0938–0714	411.370–411.389
0938–0717	424.57
0938–0721	410.33
0938–0723	421.300–421.316
0938–0730	405.410, 405.430, 405.435, 405.440, 405.445, 405.455, 410.61, 415.110, 424.24
0938–0732	417.126, 417.470
0938–0734	45 CFR 5b
0938–0739	413.337, 413.343, 424.32, 483.20
0938–0749	424.57
0938–0753	422.000–422.700
0938–0754	441.151, 441.152

OMB Control No.	Approved CFR Sections in Title 42, Title 45, and Numbers Title 20 (Note: Sections in Title 45 are preceded by "45 CFR," and sections in Title 20 are preceded by "20 CFR")
0938–0758	413.20, 413.24
0938–0760	484.55, 484.205, 484.245, 484.250
0938–0761	484.11, 484.20
0938–0763	422.250, 422.252, 422.254, 422.256, 422.258, 422.262, 422.264, 422.266, 422.270, 422.300, 422.304, 422.306, 422.308, 422.310, 422.312, 422.314, 422.316, 422.318, 422.320, 422.322, 422.324, 423.251, 423.258, 423.265, 423.272, 423.286, 423.293, 423.301, 423.308, 423.315, 423.322, 423.329, 423.336, 423.343, 423.346, 423.350
0938–0770	410.2
0938–0778	422.111, 422.564
0938–0779	417.126, 417.470, 422.64, 422.210
0938–0781	411.404, 484.10
0938–0786	438.352, 438.360, 438.362, 438.364
0938–0790	460.12–460.210
0938–0792	491.8, 491.11
0938–0796	422.64
0938–0798	413.24, 413.65, 419.42
0938–0802	419.43
0938–0818	410.–141–410.146, 414.63
0938–0829	422.568
0938–0832	Parts 489 and 491
0938–0833	483.350–483.376
0938–0841	431.636, 457.50, 457.60, 457.70, 457.340, 457.350, 457.431, 457.440, 457.525, 457.560, 457.570, 457.740, 457.750, 457.810, 457.940, 457.945, 457.965, 457.985, 457.1005, 457.1015, 457.1180
0938–0842	412.23, 412.604, 412.606, 412.608, 412.610, 412.614, 412.618, 412.626, 413.64
0938–0846	411.352–411.361
0938–0857	Part 419
0938–0860	Part 419
0938–0866	45 CFR Part 162
0938–0872	413.337, 483.20,
0938–0873	422.152
0938–0874	45 CFR Parts 160 and 162
0938–0878	Part 422 Subparts F and G
0938–0887	45 CFR 148.316, 148.318, 148.320
0938–0897	412.22, 412.533
0938–0907	412.230, 412.304, 413.65
0938–0910	422.620, 422.624, 422.626
0938–0911	426.400, 426.500
0938–0915	421.120, 421.122
0938–0916	483.16
0938–0920	438.6, 438.8, 438.10, 438.12, 438.50, 438.56, 438.102, 438.114, 438.202, 438.206, 438.207, 438.240, 438.242, 438.402, 438.404, 438.406, 438.408, 438.410, 438.414, 438.416, 438.604, 438.710, 438.722, 438.724, 438.810
0938–0921	414.804
0938–0931	45 CFR 142.408, 162.408, and 162.406
0938–0933	438.50
0938–0935	422 Subparts F and K
0938–0936	423
0938–0939	405.502
0938–0944	422.250, 422.252, 422.254, 422.256, 422.258, 422.262, 422.264, 422.266, 422.270, 422.300, 422.304, 422.306, 422.308, 422.310, 422.312, 422.314, 422.316, 422.318, 422.320, 422.322, 422.324, 423.251, 423.258, 423.265, 423.272, 423.279, 423.286, 423.293, 423.301, 423.308, 423.315, 423.322, 423.329, 423.336, 423.343, 423.346, 423.350
0938–0950	405.910
0938–0951	423.48
0938–0953	405.1200 and 405.1202
0938–0954	414.906, 414.908, 414.910, 414.914, 414.916
0938–0957	Part 423 Subpart R
0938–0964	403.460, 411.47
0938–0975	423.562(a)
0938–0976	423.568
0938–0977	Part 423 Subpart R
0938–0978	423.464
0938–0982	422.310, 423.301, 423.322, 423.875, 423.888
0938–0990	423.56
0938–0992	423.505, 423.514

Addendum VIII—Medicare-Approved Carotid Stent Facilities

[October Through December 2006]

On March 17, 2005, we issued our decision memorandum on carotid artery stenting. We determined that carotid artery stenting with embolic protection is reasonable and necessary only if performed in facilities that have been determined to be competent in performing the evaluation, procedure, and follow-up necessary to ensure optimal patient outcomes. We have created a list of minimum standards for facilities modeled in part on professional society statements on competency. All facilities must at least meet our standards in order to receive coverage for carotid artery stenting for high risk patients.

Approved Carotid Artery Stenting Facilities—October, November, and December 2006

Effective Date 10/06/06

Aurora BayCare Medical Center, 2845 Greenbrier Road, P.O. Box 8900, Green Bay, WI 54308–8900, Medicare Provider #520193.
Baptist Hospital West, 10820 Parkside Drive, Knoxville, TN 37934, Medicare Provider #440226.
St. Agnes Hospital, 430 E. Division Street, P.O. Box 385, Fond du Lac, WI 54936–0385, Medicare Provider #520088.

Effective Date 10/12/06

Kenmore Mercy Hospital, 2950 Elmwood Avenue, Kenmore, NY 14217, Medicare Provider #330102.

Effective Date 10/13/06

Albert Einstein Medical Center, 5401 Old York Road, Philadelphia, PA 19141, Medicare Provider #390142.
Community Regional Medical Center, P.O. Box 1232, Fresno, CA 93715–1232, Medicare Provider #050060.

Effective Date 10/20/06

Excela Health System, Westmoreland Regional Hospital, 532 West Pittsburgh Street, Greenburg, PA 15601, Medicare Provider #390145.
Mainland Medical Center, 6801 Emmett F. Lowry Expressway, Texas City, TX 77591, Medicare Provider #450530.

Effective Date 10/27/06

Alliance Hospital, LTD, 515 North Adams, Odessa, TX 79761, Medicare Provider #450868.
NCH Healthcare Systems, Inc., 350 Seventh Street N, Naples, FL 34102, Medicare Provider #190018.
Southeast Georgia Health System, Brunswick Campus, 2415 Parkwood Drive, Brunswick, GA 31520, Medicare Provider #110025.

Effective Date 11/06/06

BroMenn Healthcare, P.O. Box 2850, Bloomington, IL 61702–2850, Medicare Provider #140127.
Exeter Hospital, 5 Alumni Drive, Exeter, NH 03833, Medicare Provider #300023.
South Miami Hospital, 6200 SW 73 Street, Miami, FL 33143, Medicare Provider #100154.

Effective Date 11/13/06

Merle West Medical Center, 2865 Daggett Avenue, Klamath Falls, OR 97601, Medicare Provider #380050.
Seton Corporation, d.b.a. Baptist Hospital, 2000 Church Street, Nashville, TN 37236, Medicare Provider #440133.

Effective Date 11/16/06

Caldwell Memorial Hospital, Inc., 321 Mulberry Street, SW., Lenoir, NC 28645, Medicare Provider #340041.
Methodist Hospitals, 600 Grant Street, Gary, IN 46402, Medicare Provider #150002.
Phoenixville Hospital, 140 Nutt Road, Phoenixville, PA 19460, Medicare Provider #390127.
Physicians Regional Medical Center, 6101 Pine Ridge Road, Naples, FL 34119, Medicare Provider #100286.
Sandhills Regional Medical Center, 1000 West Hamlet Avenue, Hamlet, NC 28345, Medicare Provider #340106.
St. Anne Mercy Hospital, 3404 W. Sylvania Avenue, Toledo, OH 43623, Medicare Provider #360262.
St. Elizabeth Health Center, 1044 Belmont Avenue, Youngstown, OH 44501–1790, Medicare Provider #360064.
The University of Texas Medical Branch, 301 University Boulevard, Galveston, TX 77555–0518, Medicare Provider #450018.

Effective Date 11/24/06

Clara Maass Medical Center, 1 Clara Maass Drive, Belleville, NJ 07109, Medicare Provider #310090.
Columbus Regional Hospital, 2400 East 17th Street, Columbus, IN 47201, Medicare Provider #150112.
St. Joseph Hospital, 2605 Harlem Road, Cheektowaga, NY 14225–4097, Medicare Provider #330091.

Effective Date 12/01/06

Carolinas Hospital System, 805 Pamplico Highway, P.O. Box 100550, Florence, SC 29501–0550, Medicare Provider #420091.
Chambersburg Hospital, 112 North Seventh Street, P.O. Box 6005, Chambersburg, PA 17201–6005, Medicare Provider #390151.
Chandler Regional Hospital, 475 South Dobson Road, Chandler, AZ 85224, Medicare Provider #030036.
Kingwood Medical Center, 22999 U.S. Highway 59, Kingwood, TX 77339, Medicare Provider #450775.
McLeod Regional Medical Center, 555 East Cheves Street, P.O. Box 100551, Florence, SC 29501–0551, Medicare Provider #420051.

Effective Date 12/11/06

Bloomington Hospital, P.O. Box 1149, Bloomington, IN 47402, Medicare Provider #150051.
Somerset Medical Center, 110 Rehill Avenue, Somerville, NJ 08876–2598, Medicare Provider #310048.
The Medical Center of Southeast Texas, 2555 Jimmy Johnson Boulevard, Port Arthur, TX 77640, Medicare Provider #450518.

Effective Date 12/21/06

Bon Secours Maryview Medical Center, 3636 High Street, Portsmouth, VA 23707, Medicare Provider #290017.
Evangelical Community Hospital, One Hospital Drive, Lewisburg, PA 17837, Medicare Provider #390013.
Montgomery General Hospital, 18101 Prince Philip Drive, Olney, MD 20832, Medicare Provider #210018.
Washington County Hospital, 251 East Antietam Street, Hagerstown, MD 21740, Medicare Provider #210001.

Addendum IX—American College of Cardiology's National Cardiovascular Data Registry Sites

[October Through December 2006]

In order to obtain reimbursement, Medicare national coverage policy requires that providers implanting ICDs for primary prevention clinical indications (that is, patients without a history of cardiac arrest or spontaneous arrhythmia) report data on each primary prevention ICD procedure. This policy became effective January 27, 2005. Details of the clinical indications that are covered by Medicare and their respective data reporting requirements are available in the Medicare National Coverage Determination (NCD) Manual, which is on the Centers for Medicare & Medicaid Services (CMS) Web site at *http://www.cms.hhs.gov/Manuals/IOM/itemdetail.asp?filterType=none&filterByDID=99&sortByDID=1&sortOrder=ascending&itemID=CMS014961.*

A provider can use either of two mechanisms to satisfy the data reporting requirement. Patients may be enrolled either in an Investigational Device Exemption trial studying ICDs as identified by the FDA or in the American College of Cardiology's National Cardiovascular Data Registry (ACC–NCDR) ICD registry. Therefore, in order for a beneficiary to receive a Medicare-covered ICD implantation for primary prevention, the beneficiary must receive the scan in a facility that participates in the ACC–NCDR ICD registry.

We maintain a list of facilities that have been enrolled in this registry. Addendum IX includes the facilities that have been designated in the quarter covered by this notice.

Facility name	Address	City	State	Zip
Abbott Northwestern Hospital	800 East 28th Street (internal zip 33210)	Minneapolis	MN	55407
Abilene Regional Medical Center	6250 Highway 83/84	Abilene	TX	97606
Abington Memorial Hospital	1200 York Road	Abington	PA	19446
Advance Cath Imaging, L.P.	609 Medical Center Drive	Decatur	TX	76234
Adventist Medical Center	10123 SE Market Street	Portland	OR	97216
Advocate Christ Medical Center	4440 West 95th Street #127NOB	Oak Lawn	IL	60453
Advocate Good Shepherd Hospital	450 W. Highway 22	Barrington	IL	60010
Advocate Illinois Masonic Medical Center	836 W. Wellington Avenue	Chicago	IL	60657
Advocate Lutheran General Hospital	1775 Dempster Street	Park Ridge	IL	60068
Advocate South Suburban Hospital	17800 S. Kedzie Avenue	Hazel Crest	IL	60429
Aiken Regional Medical Center	302 University Parkway	Aiken	SC	29802
Akron City Hospital	525 East Market Street	Akron	OH	44309–2090
Akron General Medical Center	400 Wabash Avenue	Akron	OH	44307
Alaska Regional Hospital	2801 Debarr Road	Anchorage	AK	99508
Albany Medical Center Dept of Med Div of Cardiology.	43 New Scotland Aveune	Albany	NY	12208
Albert Einstein Medical Center	5501 Old York Road	Philadelphia	PA	19141
Alegent Health Bergan Mercy Medical Center	7500 Mercy Road	Omaha	NE	68124
Alegent Health Immanuel Medical Center	6828 N. 72 Street, Suite 3000N	Omaha	NE	68122–1709
Alegent Health-Mercy Hospital	6901 N. 72 Street	Omaha	NE	68122
Alexian Brothers Medical Center	800 Biesterfield Road	Elk Grove Village	IL	60007–3311
Allegheny General Hospital	320 East North Avenue	Pittsburgh	PA	15212
Allen Memorial Hospital	1825 Logan Avenue	Waterloo	IN	50703
Alliance Hospital	515 North Adams	Odessa	TX	79761
Alpena Regional Medical Center	1501 W. Chisholm Street	Alpena	MI	49707
Alta Bates Medical Center	2450 Ashby Avenue	Berkeley	CA	94705
Alta Bates Summit Medical Center	2450 Ashby Avenue	Berkeley	CA	94705
Alton Memorial Hospital	1 Memorial Drive	Alton	IL	62067
Altoona Hospital	620 Howard Avenue	Altoona	PA	16601
Altru Health System	1200 South Columbia Road	Grand Forks	ND	58206–6002
Alvarado Hospital Medical Center/SDRI	6655 Alvarado Road	San Diego	CA	92124
Anaheim Memorial Medical Center	1111 W. La Palma	Anaheim	CA	92801
AnMed Health	800 Fant Street	Anderson	SC	29621
Anne Arundel Medical Center	2001 Medical Parkway	Annapolis	MD	21401
Appleton Medical Center	1818 N. Meade Street/MOB–S/2nd Floor	Appleton	WI	54911
Arizona Heart Hospital	1930 East Thomas Road	Phoenix	AZ	85016
Arkansas Heart Hospital	1701 S. Shackelford Road	Little Rock	AR	72202
Arlington Memorial Hospital	800 W. Randol Mill Road	Arlington	TX	76012–2504
Arnold Palmer Hospital	1414 Kuhl Avenue	Orlando	FL	32806
Arnot-Ogden Medical Center	Arnot Heath Heart & Vascular Institute	Elmira	NY	14905–1629
Aspirus Wausau Hospital	333 Pine Ridge Boulevard	Wausau	WI	54401
Athens Regional Medical Center	1199 Prince Avenue	Athens	GA	30606
Atlanta Medical Center	303 Parkway Drive NE	Atlanta	GA	30312
Atlanticare Regional Medical Center	2500 English Creek Avenue	Egg Habour Township	NJ	08234
Audrain Medical Center	620 East Monroe	Mexico	MO	65265
Aultman Hospital	2600 Sixth Street S.W.	Canton	OH	44710
Aurora Bay Care Medical Center	2845 Greenbrier Road	Green Bay	WI	54308
Aurora Sinai Medical Center	2900 West Oklahoma Avenue	Milwaukee	WI	53215
Aventura Hospital and Medical Center	20900 Biscayne Boulevard	Aventura	FL	33180
Avera Heart Hospital of South Dakota	4500 West 69th Street	Sioux Falls	SD	57108
Avera Sacred Heart Hospital	501 Summit Street	Yankton	SD	57078
Bakersfield Heart Hospital	3001 Sillect Avenue	Bakersfield	CA	93308
Bakersfield Memorial Hospital	420 34th Street—PO 1888	Bakersfield	CA	93303–1888
Ball Memorial Hospital	2401 University Avenue	Muncie	IN	47303
Banner Baywood Heart Hospital	6750 E. Baywood Avenue	Mesa	AZ	85206
Banner Desert Medical Center	Banner Desert Medical Center, Quality Management—1400 S. Dobson Road.	Mesa	AZ	85202
Banner Estrella Medical Center	9201 W. Thomas Road	Phoenix	AZ	85037
Banner Good Samaritan Medical Center	1111 East McDowell Road	Phoenix	AZ	85006–2612
Banner Thunderbird Med Center	5555 W. Thunderbird Road	Glendale	AZ	85306
Baptist Health Medical Center	9601 Interstate 630 Exit 7	Little Rock	AR	72205
Baptist Health Medical Center	3333 Springhill Drive	North Little Rock	AR	72117
Baptist Health System	215 E Quincy, Suite 200	San Antonio	TX	78215
Baptist Hospital	1000 W. Moreno Street	Pensacola	FL	32501
Baptist Hospital	2000 Church Street	Nashville	TN	37236
Baptist Hospital East	4000 Kresge Way	Louisville	KY	40207
Baptist Hospital of East Tennessee	137 Blount Avenue	Knoxville	TN	37920
Baptist Hospital of Miami	8900 North Kendall Drive	Miami	FL	33176
Baptist Hospital West	10820 Parkside Drive	Knoxville	TN	37934
Baptist Medical Center	2105 East South Boulevard	Montgomery	AL	36116
Baptist Medical Center	800 Prudential Drive	Jacksonville	FL	32207
Baptist Medical Center	111 Dallas Street	San Antonio	TX	78205
Baptist Medical Center	Alabama Heart Institute—Montclair	800 Birmingham Montclair Road.	AL	35213–1908

Facility name	Address	City	State	Zip
Baptist Memorial Hospital	6019 Walnut Grove Road	Memphis	TN	38120
Baptist Memorial Hospital Golden Triangle	2520 5th Street North P.O. Box 1307	Columbus	MS	39703
Baptist Memorial Hospital North Mississippi	2301 South Lamar Boulevard	Oxford	MS	38655
Baptist Memorial Hospital—Desoto	7601 Southcrest Parkway	Southaven	MS	38671
Baptist St. Anthony's Health Systems	1600 Wallace Boulevard	Amarillo	TX	79106
Barberton Citizens Hospital	155 5th Street NE	Barberton	OH	44203
Barnes Jewish Hospital/Washington University	Barnes Jewish Hospital, Cardiovascular Procedure C—600 S. Taylor Avenue, Mailstop 90–59–315.	Saint Louis	MO	63110–9930
Barstow Community Hospital	555 South Seventh Street	Barstow	CA	92311
Bartow Regional Medical Center	PO Box 1050	Bartow	FL	33831–1050
Bassett Healthcare- (Mary Imogene Bassett Hospital).	One Atwell Road	Cooperstown	NY	13326
Baton Rouge General Medical Center	3600 Florida Boulevard	Baton Rouge	LA	70806
Battle Creek Health System	300 North Avenue	Battle Creek	MI	49016
Baxter Regional Medical Center Attn: A/P	624 Hospital Drive	Mountain Home	AR	72653
Bay Medical Center	615 North Bonita Avenue	Panama City	FL	32401
Bay Regional Medical Center	1900 Columbus Avenue	Bay City	MI	48708
Bayfront Medical Center	701 Sixth Street South	St. Petersburg	FL	33701
Bayhealth Medical Center (KGH)	640 S. State Street	Dover	DE	19901
Baylor All Saints Medical Center	1400 Eighth Avenue	Fort Worth	TX	76104
Baylor Jack and Jane Hamilton Heart and Vascular Hospital.	621 North Hall Street	Dallas	TX	75226
Baylor Medical Center at Garland	2300 Marie Curie Drive	Garland	TX	75042
Baylor Medical Center at Irving	1901 North MacArthur Boulevard	Irving	TX	75061
Baylor Regional Medical Center at Grapevine	1650 West College Street	Grapevine	TX	76051
Baylor Regional Medical Center at Plano	4700 Alliance Boulevard	Plano	TX	75093
Bayshore Medical Center	4000 Spencer Highway	Pasadena	TX	77504
Baystate Medical Center	759 Chestnut Street, S4553	Springfield	MA	01199
Bellevue Hospital Center	462 First Avenue	New York	NY	10016
Bellevue Hospital Center	462 First Avenue	New York	NY	10016
Bellin Memorial Hospital	744 S Webster Avenue—Cardiac Data Center, 5th Floor.	Green Bay	WI	54301
Benefis Healthcare	1101 26th Street S	Great Falls	MT	59405–5161
Bert Fish Medical Center	401 Palmetto Street	New Smyrna Beach	FL	32168
Beth Israel Deaconess Medical Center	185 Pilgrim Road	Boston	MA	02215
Bethesda Memorial Hospital	2815 S. Seacrest Boulevard	Boynton Beach	FL	33435
Bethesda North Hospitals	375 Dixmyth Avenue	Cincinnati	OH	45220–2489
Beverly Hospital	85 Herrick Street	Beverly	MA	01915
Bexar County Hospital District dba University Heal.	4502 Medical Drive Stop 34–1 Room G–0128	San Antonio	TX	78229
Billings Clinic	2800 10th Avenue North	Billings	MT	59101
Binghampton General Hospital—United Health Services Hospital, Inc.	20–42 Mitchell Avenue	Binghampton	NY	13903
Blake Medical Center	2020 59th Street W	Bradenton	FL	34209
Blanchard Valley Regional Health Center	145 W. Wallace Street	Findlay	OH	45840–1299
Blessing Hospital	11th and Broadway	Quincy	IL	62301
Bloomington Hospital	601 W. Second Street	Bloomington	IN	47403
Blue Ridge HealthCare	2201 South Sterling Street	Morganton	NC	28655
Boca Raton Community Hospital	800 Meadows Road	Boca Raton	FL	33486
Bon Secours DePaul Medical Center	150 Kingsley Lane	Norfolk	VA	23505
Bon Secours Maryview Medical Center	3636 High Street	Portsmouth	VA	23707
Bon Secours-Memorial Regional Medical Center.	8260 Atlee Road	Mechanicsville	VA	23116
Bon Secours-St. Marys Hospital	5801 Bremo Road	Richmond	VA	23226
Boone Hospital Center	1600 E Broadway	Columbia	MO	65201–5897
Borgess Medical Center	1521 Gull Road	Kalamazoo	MI	49048
Boston Medical Center	One Boston Medical Place	Boston	MA	02118
Boston University Medical Center	One Boston Medical Place	Boston	MA	02118
Boswell Memorial Hospital	10401 West Thunderbird	Sun City	AZ	85351
Botsford Hospital	28050 Grand River Avenue	Farmington Hills	MI	48336
Boulder Community Hospital	1100 Balsam Avenue	Boulder	CO	80304
Braddock Campus	900 Braddock Drive	Cumberland	MD	21502
Brandon Regional Hospital	119 Oakfield Drive	Brandon	FL	33511
Brandywine Hospital	201 Reeceville Road	Coatesville	PA	19320
Bridgeport Hospital	267 Grant Street	Bridgeport	CT	06610
Brigham & Womens Hospital	75 Francis Street	Boston	MA	02115
BroMenn Hospital	P.O. Box 2850	Bloomington	IL	61702–2850
Bronson Methodist Hospital	601 John Street	Kalamazoo	MI	49007–5348
Brookdale Hospital & Medical Center	1 Brookdale Plaza	Brooklyn	NY	11212
Brooklyn Hospital Center	121 Dekalb Avenue	Brooklyn	NY	11201
Brooksville Regional Hospital	17240 Cortez Boulevard	Brooksville	FL	34601
Brookwood Medical Center	2010 Brookwood Medical Center	Birmingham	AL	35209
Brotman Medical Center	3828 Delmas Terrace	Culver City	CA	90231–2459

Facility name	Address	City	State	Zip
Broward General Medical Center	1600 S. Andrews Avenue	Ft. Lauderdale	FL	33316
Bryan LGH Medical Center	1600 South 48th Street	Lincoln	NE	68526
Bryn Mawr Hospital	100 Lancaster Avenue	Wynnewood	PA	19096
Buffalo General HospitalAaron Hlth. Sci. Lib. 4D.	100 High Street	Buffalo	NY	14203
Cabell Huntington Hospital	1340 Hal Greer Boulevard	Huntington	WV	25701
California Pacific Medical Center	2330 Clay Street, Room 103	San Francisco	CA	94115
CAMC Teays Valley Hospital	1400 Hospital Drive	Hurricane	WI	25526
Camden-Clark Memorial Hospital	800 Garfield Avenue	Parkersburg	WV	26101
Candler Hospital, Inc	5353 Reynolds Street	Savannah	GA	31405
Cape Canaveral Hospital	701 West Cocoa Beach Causeway	Cocoa Beach	FL	32931
Cape Cod Hospital	8 Park Street	Hyannis	MA	02601
Cape Fear Valley Health System	303 Wagoner Drive	Fayetteville	NC	28303–4646
Capital Regional Medical Center	barbara.scott3@hcahealthcare.com	Tallahassee	FL	32308
Capital Regional Medical Center	1125 Madison Street (PO BOX 1128)	Jefferson City	MO	65102–1128
Cardiovascular Center of Puerto Rico	PO Box 366528	San Juan	PR	00936–6528
Carilion Roanoke Memorial Hosp	Att: Cardiac Cath Lab—PO Box 13367	Roanoke	VA	24033–3367
Caritas Norwood Hospital	800 Washington Street	Norwood	MA	02062
Caritas St. Elizabeths Medical Center	736 Cambridge Street	Boston	MA	02135
Carle Foundation Hospital	611 W. Park Street	Urbana	IL	61801
Carolina Pines Regional Medical Center	1304 W. Bobo Newsome Highway	Hartsville	SC	29069
Carolinas Hospital System	805 Pamplico Highway	Florence	SC	29505
Carolinas Medical Center	P.O. Box 32861	Charlotte	NC	28232
Carolinas Medical Center-Mercy	2001 Vail Avenue	Charlotte	NC	28207
Carondelet Heart Institute at St. Joseph HC	1000 Carondelet Drive	Kansas City	MO	64114
Carraway Methodist Medical Center	1600 Carraway Boulevard	Birmingham	AL	35234
Carroll Hospital Center	200 Memorial Avenue	Westminster	MD	21157
Carson Tahoe Regional Medical Center	775 Fleischmann Way	Carson	NV	89703
Castleview Hospital	300 North Hospital Drive	Price	UT	84501
Catholic Medical Center	100 McGregor Street	Manchester	NH	03102–3770
Cedars-Sinai Health Systems	8631 West Third Street, Suite 415 E.	Los Angeles	CA	90048
Centennial Medical Center	2300 Patterson Street	Nashville	TN	37203
Centennial Medical Center	12505 Lebanon Road	Frisco	TX	75035
Centinela Hospital Medical Center	555 E. Hardy Street	Inglewood	CA	90301
Central Baptist Hospital	1800 Nicholasville Road, Suite 401	Lexington	KY	40503
Central DuPage Hospital	25 N. Winfield Road	Winfield	IL	60190
Central Florida Regional Hospital	1401 W. Seminole Boulevard	Sandford	FL	32771
Central Maine Medical Center	300 Main Street	Lewiston	ME	04240
Central Minnesota Heart Ctr at St. Cloud Hospital.	1406 Sixth Avenue North	St. Cloud	MN	56303
Central Mississippi Medical Center	1850 Chadwick Drive	Jackson	MS	39204
CGH Medical Ceneter	100 East Le Fevre Road	Sterling	IL	61081
Chandler Regional Hospital	475 S. Dobson Road	Chandler	AZ	85224–5695
Charleston Area Medical Center	501 Morris Street	Charleston	WV	25301
Charlotte Regional Medical Center	809 East Marion Avenue	Punta Gorda	FL	33950
Chattanooga-Hamilton County Hospital Authority/ER.	975 E. Third Street	Chattanooga	TN	37403
Chesapeake General Hospital	736 Battlefield Boulevard	North Chesapeake	VA	23320
Cheshire Medical Center	580 Court Street	Keene	NH	3431
Chester County Hospital	701 East Marshall Street	West Chester	PA	19380
Chester River Hospital Center	100 Brown Street	Chestertown	MD	21620
Cheyenne Regional Medical Center	214 E. 23rd Street	Cheyenne	WY	82001
Christiana Care Health System	4755 Ogletown-Stanton Road	Newark	DE	19718
Christus Hospital-St. Mary	3600 Gates Boulevard	Port Arthur	TX	77642
Christus Saint Elizabeth Hospital	2830 Calder Street	Beaumont	TX	77702
Christus Spohn Hospital Corpus Christi—Shoreline.	600 Elizabeth Street	Corpus Christi	TX	78404
Christus St. Michael Health Systen	2600 St. Michael Drive	Texarkana	TX	75501
Christus St. Patrick Hospital	524 South Ryan Street	Lake Charles	LA	70602–3401
Christus-Schumpert Highland Hospital	One St. Mary Place	Shreveport	LA	71101
Christus-St. Frances Cabrini Hospital	3330 Masonic Drive	Alexandria	LA	71301
Citrus Memorial Health System	502 W. Highland Boulevard	Inverness	FL	34452
CJW Medical Center	7101 Jahnke Road	Richmond	VA	23225–4044
Clarian Health Partners-Methodist Hospital Campus.	1701 N. Senate Boulevard—Room A1082	Indianapolis	IN	46202
Clark Memorial Hospital	1220 Missouri Avenue	Jeffersonville	IN	47130
Clear Lake Regional Medical Center	500 Medical Center Boulevard	Webster	TX	77598
Cleveland Clinic Foundation	9500 Euclid Avenue	Cleveland	OH	44195
Cleveland Clinic Hospital	3100 Weston Road	Weston	FL	33331
Coliseum Medical Centers	350 Hospital Drive	Macon	GA	31217
College Station Medical Center	1604 Rock Prairie Road	College Station	TX	77845
Columbia Independence Health Center	17203 East 23rd Street	Indenpendence	MO	64057
Columbia North Hills Hospital	4401 Booth Calloway Road	North Richland Hills	TX	76180
Columbia Regional Hospital	1 Hospital Drive	Columbia	MO	65212

Facility name	Address	City	State	Zip
Columbia St. Mary's Hospital Milwaukee	4425 North Port Washington Road	Milwaukee	WI	53212
Columbia St. Mary's Hospital Ozaukee	13111 North Port Washington Road	Mequon	WI	53097
Columbus Regional Hospital	2400 17th Street	Columbus	IN	47201
Comanche County Memorial Hospital	3401 W. Gore Boulevard	Lawton	OK	73505
Community Health Partners	3700 Kolbe Road	Lorain	OH	44053
Community Hospital	901 Mac Arthur Boulevard	Munster	IN	46321
Community Hospital	2615 E. High Street	Springfield	OH	45505
Community Hospital and Wellness Center	433 West High Street	Bryan	OH	43506
Community Hospital East	Cardiovascular Services—1500 North Ritter Avenue.	Indianapolis	IN	46219
Community Hospital of the Monterey Peninsula	PO Box HH	Monterey	CA	93942–1085
Community Hospital South	1500 N. Ritter Avenue	Indianapolis	IN	46219–3027
Community Medical Center	2827 Fort Missoula Road	Missoula	MT	59804
Community Medical Center	99 Highway 37 West	Toms River	NJ	08775
Community Medical Center	1800 Mulberry Street	Scranton	PA	18510
Community Medical Center-Clovis	2755 Herndon Avenue	Clovis	CA	93611
Community Memorial Hospital	147 N. Brent	Ventura	CA	93003
Community Memorial Hospital	W180 N8085 Town Hall Road	Menomonee Falls	WI	53052
Concord Hospital	250 Pleasant Street	Concord	NH	03301
Condell Medical Center	801 S. Milwaukee Avenue	Libertyville	IL	60048
Conroe Regional Medical Center	504 Medical Center Boulevard	Conroe	TX	77304
Convenant Heart Institute	3615 19th Street	Lubbock	TX	79410
Conway Regional Medical Center	2302 College Avenue	Conway	AR	72032–6226
Cookeville Regional Medical Center	142 W. 5th Street	Cookeville	TN	38501–1760
Cooley Dickinson Hospital	30 Locust Street	North Hampton	MA	01060
Cooper University Hospital	One Cooper Plaza	Camden	NJ	08103
Coral Gables Hospital	3100 Douglas Road	Coral Gables	FL	33134
Coral Springs Medical Center	3000 Coral Hills Drive	Coral Springs	FL	33065
Corpus Chrisiti Medical Center	7101 SPID	Corpus Christi	TX	78412
Covenant Healthcare	1447 N. Harrison	Saginaw	MI	48602
Cox Medical Center South	3801 S. National Avenue	Springfield	MO	65807
Craven Regional Medical Center	2000 Neuse Boulevard	New Bern	NC	28561
Creighton University Medical Center	601 N. 30th Street	Omaha	NE	68131
Crittenton Hospital Medical Center	1101 W. University Drive	Rochester	MI	48307–1831
Crouse Hospital	736 Irving Avenue	Syracuse	NY	13210
Crozer Chester Medical Center	1 Medical Center Boulevard	Chester	PA	19013–3995
CVPH Medical Center	75 Beekman Street	Plattsburgh	NY	12901
Dakota Clinic	3000 32nd Avenue SW	Fargo	ND	58104
Dameron Hospital	525 W. Acacia Street	Stockton	CA	95203
Danbury Hospital	24 Hospital Avenue	Danbury	CT	06810–6099
Davis Hospital	1600 West Antelope Drive	Layton	UT	84041
Dayton Heart Hospital	707 S. Edwin C. Moses Boulevard	Dayton	OH	45408
DCH Regional Medical Center	809 University Boulevard	E Tuscaloosa	AL	35401–2029
Deaconess Hospital	600 Mary Street	Evansville	IN	47747
Deaconess Hospital	311 Straight Street	Cincinnati	OH	45219
Deaconess Hospital	5501 N. Portland Avenue	Oklahoma City	OK	73112
Deaconess Medical Center	W. 800 Fifth Avenue	Spokane	WA	99204
Deborah Heart & Lung Center	200 Trenton Road	Browns Mills	NJ	8015
Decatur General Hospital	1201 7th Street, S.E.	Decatur	AL	35601
Degraff Memorial Hospital	445 Tremont Street	North Tanawanda	NY	14120
Dekalb Regional Medical Center	200 Medical Center Drive	Fort Payne	AL	35968
Del Sol Medical Center	10301 Gateway West	El Paso	TX	79925
Delray Medical Center	5352 Linton Boulevard	Delray Beach	FL	33484
Denton Regional Medical Center	3535 South I–35E	Denton	TX	76205
Denver Health Medical Center	777 Bannock Street	Denver	CO	80204
DePaul Health Center	12303 DePaul Drive	Bridgeton	MO	63044
Des Peres Hospital	2345 Dougherty Ferry Road	St. Louis	MO	63122
Desert Regional Medical Center	1150 N. Indian Canyon	Palm Springs	CA	92262
Desert Valley Hospital	16850 Bear Valley Road	Victorville	CA	92392
Dixie Regional Medical Center	1380 E. Medical Drive	St. George	UT	84790
Doctors Hospital	5000 University Drive	Miami	FL	33146
Doctors Hospital	5100 West Broad Street	Columbus	OH	43228
Doctors Hospital	9440 Poppy Drive	Dallas	TX	75218
Doctors Hospital at Renaissance	5501 S. McColl	Edinburg	TX	78539
Doctors Hospital-Augusta	3651 Wheeler Drive	Augusta	GA	30909
Doctors Hospital of Laredo	10700 McPherson Road	laredo	TX	78045
Doctors Hospital of Sarasota	5731 Bee Ridge Road	Sarasota	FL	34233
Doctors Hospital of Stark	400 Austin Avenue	Massillon	OH	44646
Doctors Medical Center	2000 Vale Road	San Pablo	CA	94806
Dominican Santa Cruz Hospital	1555 Soquel Drive	Santa Cruz	CA	95065
Downey Regional Medical	11500 Brookshire Avenue	Downey	CA	90241
Doylestown Hospital	595 West State Street	Doylestown	PA	18901
DuBois Regional Medical Center	PO Box 447	DuBois	PA	15801–1440
Duke Health Raleigh Hospital	DUMC Box 3973 (3400 Wake Forest Road)	Raleigh	NC	27609

Facility name	Address	City	State	Zip
Duke University Hospital	Erwin Road DUMC 3943	Durham	NC	27710
Dunn Memorial Hospital	1600 23rd Street	Bedford	ID	47421
Durham Regional Hospital	(3643 N Roxboro Rd) DUMC Box 3973	Durham	NC	27710
East Alalbama Medical Center	2000 Pepperell Parkway	Opelika	AL	36804
East Georgia Regional Medical Center	1499 Fair Rd (PO Box 1048)	Statesboro	GA	30459
East Jefferson General Hospital	4200 Houma Boulevard	Metairie	LA	70006
East Ohio Regional Hospital	90 N. 4th Street	Martins Ferry	OH	43935
East Texas Medical Center	1000 S. Beckham Avenue	Tyler	TX	75711
Eastern Idaho RMC	3100 Channing Way	Idaho Falls	ID	83404
Eastern Maine Medical Center	489 State Street	Bangor	ME	04401
Easton Hospital (Northampton Hospital Corp)	250 South 21st Street	Easton	PA	18042
Edward Hospital	120 Spalding Drive #205	Naperville	IL	60540
Eisenhower Medical Center	39000 Bob Hope Drive	Rancho Mirage	CA	92270
El Camino Hospital	2500 Grant Road	Mountain View	CA	94040
Eliza Coffee Memorial Hospital	205 Marengo Street	Florence	AL	35630
Elkhart General Hospital	600 East Boulevard—3 South Suites	Elkhart	IN	46514–2499
Elliot Hospital	1 Elliot Way	Manchester	NH	03103
Ellis Hospital	1101 Nott Street	Schenectady	NY	12308
Elmhurst Memorial Hospital Marquardt Memorial Library.	200 Berteau Avenue	Elmhurst	IL	60126
EMH Regional Medical Center	630 East River Street	Elyria	OH	44035
Emory Crawford Long Hospital	550 Peachtree Street	Atlanta	GA	30308
Emory Dunwoody Medical Center	4575 North Shallowford Road	Atlanta	GA	30338
Emory Eastside Medical Center	1700 Medical Way (PO Box 587)	Snellville	GA	30078
Emory University Hospital	1364 Clifton Road, NE C408	Atlanta	GA	30322
Encino-Tarzana Regional Medical Center	18321 Clark Street	Tarzana	CA	91356–3501
Englewood Hospital & Medical Center	350 Engle Street	Englewood	NJ	7631
Enloe Medical Center	1600 Esplanade	Chico	CA	95926
Erie County Medical Center	462 Grider Street	Buffalo	NY	14215
Evanston Hospital	2650 Ridge Avenue	Evanston	IL	60626
Excela Health Westmoreland Hospital	532 West Pittsburgh Street	Greensburg	PA	15601
Exempla Good Samaritan Medical Center	200 Exempla Circle	Lafayette	CO	80026
Exempla Lutheran Medical Center	8300 W. 38th Avenue	Wheat Ridge	CO	80033
Exempla Saint Joseph Hospital	2420 W. 26th Avenue, Buidling D, Suite 140	Denver	CO	80211
Exeter Hospital	Exeter Hospital Cardiac Cath Lab 5 Alumni Drive.	Exeter	NH	03833
F.E. Lajam, MD PC	140–04 58th Road	Flushing	NY	11355
Fairfield Cardiac Cath Labs	3000 Mack Road, Suite 200	Fairfield	OH	45014
Fairfield Medical Center	401 North Ewing Street	Lancaster	OH	43130
Fairview General Hospital	18101 Lorain Avenue-Invasive Cardiology	Cleveland	OH	44111
Fairview Park Hospital	200 Industrial Boulevard	Dublin	GA	31021
Fairview Southdale Hospital	6401 France Avenue South	Edina	MN	55435
Faith Regional Health Services	2700 W. Norfolk Avenue	Norfolk	NE	68701
Fawcett Memorial Hospital	21298 Olean Boulevard	Port Charlotte	FL	33949–4960
FHN Memorial Hospital	1045 W. Stephenson Street	Freeport	IL	61032
FirstHealth Moore Regional Hospital	155 Memorial Drive	Pinehurst	NC	28374
Flagler Hospital	400 Health Park Boulevard	St. Augustine	FL	32086
Fletcher Allen Health Care	111 Colchester Avenue	Burlington	VT	5401
Florida Hospital	220 Winter Park Street	Orlando	FL	32803
Florida Hospital Zephyrhills	7050 Gall Boulevard	Zephyrhills	FL	33541
Florida Hospital Ormond Memorial	875 Sterthaus Avenue	Ormond Beach	FL	32174
Florida Hospital Waterman Inc	1000 Waterman Way	Tavares	FL	32778
Florida Medical Center	5000 W. Oakland Park Boulevard	Fort Lauderdale	FL	33313–1585
Flowers Hospital	4370 West Main Street	Dothan	AL	36305
Floyd Medical Center	304 Turner McCall Boulevard	Rome	GA	30162
Floyd Memorial Hospital	1850 State Street	New Albany	IN	47150
Forrest General Hospital	6051 Highway 49 South	Hattiesburg	MS	39404–6389
Forsyth Medical Center	3333 Silas Creek Parkway	Winston-Salem	NC	27103
Fort Sanders Regional Med Center	1901 Clinch Avenue	Knoxville	TN	37916–2307
Fort Walton Beach Medical Center	1000 Mar Walt Drive	Fort Walton Beach	FL	32547
Forum Health-Northside Medical Center	500 Gypsy Lane	Youngstown	OH	44501–0240
Fountain Valley Regional Hosp	17100 Euclid Street	Fountain Valley	CA	92708–4004
Frankford Hospital	Red Lion & Knights Road	Philadelphia	PA	19114
Frankfort Regional Medical Center	299 Kings Daughter Drive	Frankfort	KY	40601
Franklin Square Hospital	9000 Franklin Square Drive	Baltimore	MD	21237
Freeman Hospital	Clinical Data Services 1102 West 32nd Street	Joplin	MO	64804
Freeport Health Network	1045 W. Stephenson Street	Freeport	IL	61032
Fremont Area Medical Center	450 East 23rd Street	Fremont	NE	68025
French Hospital Medical Center	1911 Johnson Avenue	San Luis Obispo	CA	93401
Fresno Community Hospital and Medical Center.	110 N. Valeria Street #103	Fresno	CA	93710
Fresno Heart Hospital	15 East Audubon Drive	Fresno	CA	93720
Froedtert Hospital	9200 W. Wisconsin Avenue	Milwaukee	WI	53226
Frye Regional Medical Center	420 N. Center Street	Hickory	NC	28601

Facility name	Address	City	State	Zip
Gadsden Regional Medical Center	1007 Goodyear Avenue	Gadsden	AL	35903
Galichia Heart Hospital	2610 N. Woodlawn Street	Wichita	KS	67220
Garden City Hospital	6245 Inkster Road	Garden City	MI	48135
Garden Grove Hospital	12601 Garden Grove Boulevard	Garden Grove	CA	92843
Gaston Memorial Hospital	2525 Court Drive	Gastonia	NC	28054
Gateway Medical CenterGateway Health System.	1771 Madison Street	Clarksville	TN	37043
Gateway Regional Medical Center	2100 Madison Avenue	Granite City	IL	62040
Geisinger Medical Center	100 North Academy Avenue	Danville	PA	17822–2160
Geisinger Wyoming Valley Medical Center	100 North Academy Avenue	Danville	PA	17822–2160
Genesis Medical Center	1236 East Rusholme Street—Suite 190	Davenport	IA	52803–2459
Genesis Medical Center	801 Illini Drive	Silvis	IL	61282
Genesys Regional Medical Center	One Genesys Parkway	Grand Blanc	MI	48439
Georgetown University Hospital	3800 Reservoir Road NW	Washington	DC	20007
Gerald Champion Regional Medical	2669 North Scenic Drive	Alamogordo	NM	88310
Glenbrook Hospital	2100 Pfingsten Road	Glenview	IL	60026
Glendale Adventist Medical Center	1509 Wilson Terrace	Glendale	CA	91206
Glendale Memorial Hospital and Health Center	1420 S. Central Avenue	Glendale	CA	91204–2594
Glens Falls Hospital	100 Park Street	Glens Falls	NY	12801
Glenwood Regional Medical Center	503 McMillian Road	West Monroe	LA	71291
Good Samaritan Heart Center	520 South 7th Street	Vincennes	IN	47591
Good Samaritan Hosp & Health Center	2222 Philadelphia Drive	Dayton	OH	45406
Good Samaritan Hospital	1225 Wilshire Boulevard	Los Angeles	CA	90017
Good Samaritan Hospital	2425 Samaritan Drive	San Jose	CA	95124
Good Samaritan Hospital	605 N. 12th Street	Mount Vernon	IL	62864
Good Samaritan Hospital	3815 Highland Avenue	Downers Grove	IL	60515
Good Samaritan Hospital	10 East 31st Street, PO Box 1990	Kearney	NE	68848
Good Samaritan Hospital	255 Lafayette Avenue	Suffern	NY	10901
Good Samaritan Hospital	375 Dixmyth Avenue	Cincinnati	OH	45220–2489
Good Samaritan Hospital Cardiology	1000 Montauk Highway	West Islip	NY	11795
Good Samaritan Hospital of Maryland	5601 Loch Raven Boulevard	Baltimore	MD	21239
Good Samaritan Regional Medical Center	3600 NW Samaritan Drive	Corvallis	OR	97330
Good Shepherd Medical Center	700 E. Marshall	Longview	TX	75601
Governor Juan F. Luis Hospital & Medical Center.	4007 Estate Diamond Ruby	Christiansted	VT	00820
Graduate Hospital	1800 Lombard Street	Philadelphia	PA	19146
Grady Memorial Hospital	561 West Central Avenue	Delaware	OH	43015–1489
Grand View Hospital	700 Lawn Avenue	Sellersville	PA	18960
Grandview Medical Center	405 Grand Avenue	Dayton	OH	45405
Grant Medical Center	111 S. Grant Avenue	Columbus	OH	43215
Gratiot Medical Center	300 East Warwick Drive	Alma	MI	48801
Great Plains Regional Medical Center	Box 2339	Elk City	OK	73648
Greater Baltimore Medical Center	6701 N. Charles Street	Baltimore	MD	21204
Greenville Memorial Hospital	701 Grove Road	Greenville	SC	29605
Greenwich Hospital	5 Perryridge Road	Greenwich	CT	06830
Gulf Coast Medical Center	449 W. 23rd Street	Panama City	FL	32406–5309
Gulf Coast Medical Center	1400 Highway 59	Wharton	TX	77488
Gundersen Lutheran Medical Center, Inc.	1910 South Avenue	LaCrosse	WI	54601
Gwinnett Hospital System	1000 Medical Center Boulevard	Lawrenceville	GA	30045
Hackensack University Medical Center	30 Prospect Avenue	Hackensack	NJ	07601
Hackley HospitalGeneral Fund	1700 Clinton Street	Muskegon	MI	49443
Hahnemann University Hospital	230 N. Broad Street	Philadelphia	PA	19102
Halifax Medical Center	303 N. Clyde Morris Boulevard	Daytona Beach	FL	32114–2732
Halifax Regional Hospital	2204 Wilborn Avenue	South Boston	VA	24592
Hamilton Medical Center	1200 Memorial Drive	Dalton	GA	30720
Hamot Medical Center	201 State Street	Erie	PA	16550
Hannibal Regional Hospital	6000 Hospital Drive	Hannibal	MO	63401
Harbor Hospital Center	3001 S. Hanover Street	Baltimore	MD	21225
Hardin Memorial Hospital	913 N. Dixie Avenue	Elizabethtown	KY	42701–2599
Harlingen Medical Center	5501 South Expressway 77	Harlingen	TX	78550
Harper University Hospital	3990 John R. Street	Detroit	MI	48201
Harris County hospitals	1504 Taub Loop	Houston	TX	77030
Harris Methodist Fort Worth	1301 Pennsylvania Avenue	Fort Worth	TX	76104
Harris Methodist HEB	1600 Hospital Parkway	Bedford	TX	76022
Harrison Medical Center	2520 Cherry Avenue	Bremerton	WA	98310
Hartford Hospital	80 Seymour Street	Hartford	CT	06102
Harton Regional Medical Center	1801 N. Jackson Street	Tullahoma	TN	37388
Havasu Regional Medical Center	101 Civic Center Lane	Lake Havasu City	AZ	86403
Hawaii Medical Center East, LLC	2230 Liliha Street	Honolulu	HI	96817
Hays Medical Center	2220 Canterbury	Hays	KS	67601
Hazard ARH Regional Medical Center	100 Medical Center Drive	Hazard	KY	41701
Heart and Lung Clinic	900 East Broadway Box 5510	Bismarck	ND	58502
Heart Center of Indiana	8333 Nabb Road, Suite 330	Indianapolis	IN	46290
Heart Hospital of Austin	3801 N. Lamar Boulevard	Austin	TX	78756

Facility name	Address	City	State	Zip
Heart Hospital of Lafayette	1105 Kaliste Saloom Road	Lafayette	LA	70508
Heart Hospital of New Mexico	504 Elm Street NE	Albuqerque	NM	87102
Heart of Florida Regional Medical Center	40100 Highway 27	Davenport	FL	33837
Heart of Lancaster Regional Medical Center	250 College Avenue	Lancaster	PA	17604
Heartland Regional Medical Center	3333 W. Deyoung Street	Marion	IL	62959
Heartland Regional Medical Center	The Heart Center—Cardiac Cath Lab—5325 Faraon Street.	Saint Joseph	MO	64506–3373
Helen Ellis Memorial	1395 South Pinella Avenue	Tarpon Springs	FL	34689
Helen Keller Hospital	1300 South Montgomery Avenue	Sheffield	AL	35660
Hendrick Medical Center	1900 Pine Street	Abilene	TX	79601
Hennepin County Medical Center	701 Park Avenue	Minneapolis	MN	55415–1829
Henrico Doctors Hospital	1602 Skipwith Drive	Richmond	VA	23229
Henry Ford Hospital	2799 West Grand Boulevard	Detroit	MI	48202
Henry Mayo Newhall Memorial Hospital	23845 McBean Parkway	Valencia	CA	91355
Henry Medical Center, Inc.	1133 Eagles Landing Parkway	Stockbridge	GA	30281
Hialeah Hospital	651 E. 25th	Hialeah	FL	33013
High Point Regional Hospital	High Point Regional Hospital	High Point	NC	27261
Highland Park Hospital	718 Glenview Avenue	Highland Park	IL	60035
Highlands Regional Medical	3600 S. Highlands Avenue	Sebring	FL	33870
Highlands Regional Medical Center	5000 US 321	Prestonsburg	KY	41653
Hillcrest Baptist Medical Center	3000 Herring Avenue	Waco	TX	76708
Hillcrest Hospital	6780 Mayfield Road	Mayfield Heights	OH	44124
Hillcrest Medical Center	1120 South Utica	Tulsa	OK	74104
Hilton Head Regional Medical Center	25 Hospital Center Boulevard	Hilton Head	SC	29925
Hinsdale Hospital	120 N. Oak Street	Hinsdale	IL	60521
Hoag Memorial Hospital Presbyterian	One Hoag Drive	Newport Beach	CA	92658
Hollywood Medical Center	3600 Washington Street	Hollywood	FL	33021
Holmes Regional Medical Center	1355 South Hickory Street, Suite 203	Melbourne	FL	32901
Holy Cross Hospital	4725 N. Federal Highway	Ft. Lauderdale	FL	33308
Holy Cross Hospital	2701 W. 68th Street	Chicago	IL	60629
Holy Cross HospitalMedical Library	1500 Forest Glen Road	Silver Spring	MD	20910
Holy Spirit Health System Center Administration.	503 N. 21st Street—Heart	Camp Hill	PA	17011—2204
Hospital Auxilio Mutuo	PO Box 1227	San Juan	PR	00919
Hospital of St. Raphael	Section of Cardiology Pvt 207, 1450 Chapel Street.	New Haven	CT	06511
Hospital of the University of Pennsylvania	9011 E. Gates 3400 Spruce Street	Philadelphia	PA	19104
Houston Northwest Medical Center Accounts Payable.	710 FM 1960 West Road	Houston	TX	77090
Howard County General Hospital	5755 Cedar Lane	Columbia	MD	21044
Howard Regional Health System	3500 South Lafountain Street	Kokomo	IN	46904–9011
Howard University Hospital	2041 Georgia Avenue	Washington	DC	20060
Huguley Memorial Medical Center	11801 S. Freeway	Ft. Worth	TX	76115
Huntington Hospital	100 W. California Boulevard	Pasadena	CA	91109
Huntington Hospital	270 Park Avenue	Huntington	NY	11743
Huntsville Hospital	101 Sivley Road	Huntsville	AL	35801
Hutchinson Hospital	1701 E. 23rd Avenue	Hutchinson	KS	67502
Iberia Medical Center	2315 East Main Street	New Iberia	LA	70560
Immanuel-St. Joseph's Hospital	1025 Marsh Street	Mankato	MN	56002
Imperial Point Medical Center	6401 N. Federal Highway	Ft. Lauderdale	FL	33308
Indian River Memorial Hospital	1000 36th Street	Vero Beach	FL	32960
Indiana Regional Medical Center Cardiology Department.	835 Hospital Road	Indiana	PA	15701
Ingalls Hospital	1 Ingalls Dr	Harvey	IL	60426
Ingham Regional Medical Center	401 W. Greenlawn Avenue	Lansing	MI	48910
Inland Valley Medical Center	36485 Inland Valley	Wildomar	CA	92595
Inova Alexandria Hospital	4320 Seminary Road	Alexandria	VA	22304
Inova Fairfax Hospital	Inova Heart and Vascular Center, 3300 Gallows Road.	Falls Church	VA	22042–3300
Integris Baptist Medical Center	3300 NW Expressway, 100–4282	Oklahoma City	OK	73112
Integris Health	600 S. Monroe Street	Enid	OK	73701
Integris Southwest Medical Center	4401 S. Western Avenue	Oklahoma City	OK	73109
Iowa Lutheran Hospital	1200 Pleasant Street	Des Moines	IA	50309
Iowa Methodist Medical Center	1200 Pleasant Street, Suite 300A	Des Moines	IA	50309
Iredell Memorial Hospital	557 Brookdale Drive	Statesville	NC	28687
Iroquois Memorial Hospital	200 Fairman Avenue	Watseka	IL	60970
Irvine Regional Hospital & Medical Center	16200 Sand Canyon Avenue	Irvine	CA	92618–3701
Jackson Hospital and Clinic	1725 Pine Street	Montgomery	AL	36106
Jackson Madison General Hospital	708 West Forrest Avenue	Jackson	TN	38301
Jackson Memorial Hospital	1611 N.W. 12th Avenue	Miami	FL	33136
Jane Phillips Memorial Medical Center	3500 Frank Phillips Boulevard	Bartlesville	OK	74006
Jeff Anderson Regional Medical Center	2124 14th Street	Meridian	MS	39301
Jefferson Memorial Hospital	PO Box 350	Crystal City	MO	63019
Jefferson Regional Medical Center	565 Coal Valley Road	Pittsburgh	PA	15236–0119

Facility name	Address	City	State	Zip
Jennie Edmundson Memorial Hospital	933 E. Pierce Street	Council Bluffs	IA	51503
Jersey City Medical Center	355 Grand Street	Jersey City	NJ	07307
Jersey Shore University Medical Center	1945 State Route 33	Neptune	NJ	07753
Jewish Hospital	200 Abraham Flexner Way	Louisville	KY	40202
JFK Medical Center	5631 Glencrest Boulevard	Tampa	FL	33625–1008
John C Lincoln hospital—Deer Valley	19829 N. 27th Avenue	Phoenix	AZ	85027–4002
John C Lincoln Hospital—North Mountain	250 E. Dunlap Avenue	Phoenix	AZ	85020–2871
John F. Kennedy Memorial Hospital	47–111 Monroe Street	Indio	CA	92201
John Muir—Concord	2540 East Street	Concord	CA	94520
John Muir—Walnut Creek	1601 Ygnacio Valley Road	Walnut Creek	CA	94550
Johns Hopkins Bayview Medical Center	4940 Eastern Avenue	Baltimore	MD	21224
Johns Hopkins Hospital	600 North Wolfe Street	Baltimore	MD	21287
Johnson City Medical Center Hosp	400 N. State of Franklin	Johnson City	TN	37604
Jordon Valley Hospital	3580 W. 9000 S.	West Jordan	UT	84088
Kadlec Medical Center	888 Swift Boulevard	Richland	WA	99352
Kaiser Foundation Hospital	1526 Edgemont Street	Los Angeles	CA	90027
Kaiser Foundation Hospital	6600 Bruceville Road	Sacramento	CA	95823
Kaiser Permanente	4647 Zion Avenue	San Diego	CA	92120
Kaiser Permanente—Moanalua Med Ctr	3288 Moanalua Road	Honolulu	HI	96819
Kaiser Permanente Medical Center Health Sciences Li.	9400 E. Rosecrans Avenue	Bellflower	CA	90706
Kaleida Health Buffalo General Foundation	726 Exchange Street	Buffalo	NY	14210
Kansas Heart Hospital	3601 N. Webb Road	Wichita	KS	67226
Kansas Heart Hospital	3601 N. Webb Road	Wichita	KS	67226
Kansas University Hospital Authority	3901 Rainbow Boulevard	Kansas City	KS	66160
Kapi'olani Medical Center Pali Momi	98–1079 Moanalua Road	Aiea	HI	96701
Katherine Shaw Bethea Hospital	403 E First Street	Dixon	IL	61021
Kaweah Delta Hospital District	400 West Mineral King	Visalia	CA	93291
Kenmore Mercy Hospital	2950 Elmwood Avenue	Kenmore	NY	14217
Kenner Regional Medical Center	180 West Esplanade Avenue	Kenner	LA	70065
Kennestone Hospital	677 Church Street	Marietta	GA	30066
Kershaw County Medical Center	1315 Roberts Street	Camden	SC	29020
Kettering Medical Center	35235 Southern Boulevard	Kettering	OH	45429
Kingman Regional Medical Center	3269 Stockton Hill Road	Kingman	AZ	86401
Kings Daughters Medical Center	2201 Lexington Avenue	Ashland	KY	41101
Kingwood Medical Center	22999 Highway 59 N	Kingwood	TX	7339
Kootenai Medical Center	2003 Lincoln Way	Coeur d'Alene	ID	83814
Kuakini Medical Center	347 North Kuakini Street	Honolulu	HI	96817
Labette County Medical center	1920 S. US Highway 59, PO Box 956	Parson	KS	67357
Lafayette General Medical Center	1214 Coolidge	Lafayette	LA	70505
LaGrange Memorial Hospital	120 North Oak Street	Hinsdale	IL	60521
Lahey Clinic	41 Mall Road	Burlington	MA	01805
Lake Charles Memorial Hospital	1701 Oak Park Boulevard	Lake Charles	LA	70601
Lake Cumberland Regional Hospital	305 Langdon Street	Somerset	KY	42503
Lake Hospital System	36000 Euclid Avenue	Willoughby	OH	44094
Lake Norman Regional Medical Center	171 Fairview Road	Mooresville	NC	28117
Lake Regional Health System	54 Hospital Drive	Osage Beach	MO	65065
Lakeland Hospital	1234 Napier Avenue	Saint Joseph	MI	49085–2112
Lakeland Regional Medical	1324 Lakeland Hills Boulevard	Lakeland	FL	33805–4500
Lakeside Hospital	6901 N. 72nd Street, Suite 3300	Omaha	NE	68122
Lakeview Regional Medical Center	95 East Fairway Drive	Covington	LA	70433–7500
Lakewood Hospital	14519 Detroit Avenue	Lakewood	OH	44107
Lakewood Regional Medical Center	3700 E. South Street	Lakewood	CA	90712
Lancaster Community Hospital	43830 North 10th Street	West Lancaster	CA	93534
Lancaster General Hospital	555 North Duke Street	Lancaster	PA	17604–3555
Lancaster Reg Med Center	250 College Avenue	Lancaster	PA	17604
Landmark Medical Center	115 Cass Avenue	Woonsocket	RI	02895
Lankenau Hospital	100 Lancaster Avenue—Lankenau Hospital	Wynnewood	PA	19096
Laredo Medical Center	1720 Bustamante Street	Laredo	TX	78044
Largo Medical Center	201 14th Street SW	Largo	FL	33770
Las Colinas Medical Center	Las Colinas Medical Center	Irving	TX	75039
Las Palmas Medical Center	1801 N. Oregon Street	El Paso	TX	79902
Lawrence & Memorial Hospital	365 Montauk Avenue	New London	CT	06375
Lawrence Hospital	55 Palmer Avenue	Broxville	NY	10708–3491
LDS Hospital	Eighth Avenue and C Street	Salt Lake City	UT	84143
Lee Memorial Health System— Cape Coral Hospital.	276 Cleveland Avenue	Fort Myers	FL	33901
Lee Memorial Health System-Health Park Med Center.	276 Cleveland Avenue	Fort Myers	FL	33901
Leesburg Regional Medical Center	600 E. Dixie Avenue	Leesburg	FL	34748
Legacy Emanuel Hospital	1919 NW Lovejoy Street	Portland	OR	97209
Legacy Good Samaritan	1919 NW Lovejoy Street	Portland	OR	97209
Lehigh Regional Medical Center	1500 Lee Boulevard	Lehigh Acres	FL	33963
Lehigh Valley Hospital	1200 S. Cedar Crest Boulevard	Allentown	PA	18105

Facility name	Address	City	State	Zip
Lehigh Valley Hospital/Muhlenberg	2545 Schoenersville Road	Bethlehem	PA	18017
Lenox Hill Heart and Vascular Institute of New York.	100 East 77th Street	New York	NY	10021
Lewis Gale Medical Center	1900 Electric Road	Salem	VA	24153
Liberty Hospital	2525 Glenn Hendren Drive	Liberty	MO	64068
Lima Memorial Hospital	1001 Bellefontaine Avenue	Lima	OH	45804
Lincoln County Medical Center	1000 E. Cherry Street	Troy	MO	63379
Little Company of Mary Hospital	4101 Torrance Boulevard	Torrance	CA	90503
Little Company of Mary Hospital	2800 W. 95th Street	Evergreen Park	IL	60805
Logan General Hospital, LLC	20 Hospital Drive	Logan	WV	25601
Loma Linda University Medical Center	11234 Anderson Street	Loma Linda	CA	92354
Long Beach Memorial Medical Center	2801 Atlantic Avenue	Long Beach	CA	90806
Long Island College Hospital	339 Hicks Street	Brooklyn	NY	11201
Long Island Jewish Medical Center	270–05 76th Avenue	New Hyde Park	NY	11040
Longmont United Hospital	Eighth Avenue and C Street	Longmont	CO	80501
Longview Regional Medical Center	PO Box 14000	Longview	TX	75607
Los Robles Hospital & Medical Center	215 W. Janss Raod	Thousand Oaks	CA	91360–1899
Louisiana Heart Hospital	64030 Louisiana Highway 434	Lacombe	LA	70445
Lourdes Hospital	1530 Lone Oak Road	Paducah	KY	42003
Lovelace Medical Center	5400 Gibson Boulevard SE	Albuquerque	NM	87108
Lowell General Hospital	295 Varnum Avenue	Lowell	MA	01854
Lower Bucks Hospital	501 Bath Road	Bristol	PA	19007
Lower Keys Medical Center	5900 College Road	Key West	FL	33040
LSUHSC-Cath Lab	1501 Kings Highway	Shreveport	LA	71130
Lubbock Heart Hospital	4810 N. Loop 289	Lubbock	TX	79416
Luther Hospital	1221 Whipple Street	Eau Claire	WI	54703
Lutheran Hospital of Indiana	7950 W. Jefferson Boulevard	Ft. Wayne	IN	46804
Lynchburg General Hospital	1901 Tate Springs Road	Lynchburg	VA	24501–1167
MacNeal Hospital	3249 S. Oak Park Avenue	Berwyn	IL	60402
Magnolia Regional Health Center	611 Alcorn Drive	Corinth	MS	38834
Maimonides Medical Center Division of Cardiology.	4802 10th Avenue	Brooklyn	NY	11219
Maine Medical Center	22 Bramhall Street	Portland	ME	04102
Manatee Memorial Hospital	206 2nd Street East	Bradenton	FL	34208
Marquette General Health System	420 West Magnetic Street	Marquette	MI	49855
Marian Medical Center	1400 East Church Street	Santa Maria	CA	93454
Maricopa Medical Center	2601 East Roosevelt Street	Phoenix	AZ	85008
Marin General Hospital	250 Bon Air Road	Greenbrae	CA	94904
Marion General Hospital	441 N. Wabash Avenue	Marion	IN	46952
Marion General Hospital	1000 McKinley Park Drive	Marion	OH	43302–6397
Marquette General Hospital System	580 W. College Avenue	Marquette	MI	49855
Marshall University School of Medicine	420 West Magnetic Street	Huntington	WV	25701
Martha Jefferson Hospital	459 Locust Avenue	Charlottesville	VA	22902
Martin Memorial Medical Center	300 SE Hospital Avenue	Stuart	FL	34994
Mary Black Hospital	1700 Skylyn Drive	Spartanburg	SC	29307
Mary Greeley Medical Center	1111 Duff Avenue	Ames	IA	50010
Mary Hitchcock Memorial Hospital	One Medical Center Drive	Lebanon	NH	03756
Mary Rutan Hospital	205 Palmer Avenue	Bellefontaine	OH	43311
Mary Washington Hospital	1001 Sam Perry Boulevard	Fredericksburg	VA	22401
Marymount Medical	310 East 9th Street	London	KY	40741
Massachusetts General Hospital	55 Fruit Street	Boston	MA	02114
Maury Regional Hospital	1224 Trotwood Avenue	Columbia	TN	38401
Mayo Clinic Arizona	5777 E. Mayo Boulevard	Phoenix	AZ	85054
Mayo Clinic- St. Mary's Hospital	200 First Street, SW	Rochester	MN	55905
Mcalester Regional Health Center	1 Clark Bass Boulevard	McAlester	OK	74501
McAllen Medical Center	301 W. Expressway 83	McAllen	TX	78503
MCG Health Inc.	1120 15th Street, BA–4407	Augusta	GA	30912
McKay-Dee Hospital Center	4401 Harrison Boulevard	Ogden	UT	84405
McKee Medical Center	2000 Boise Avenue	Loveland	CO	80538
Mclaren Regional Medical Center	401 S. Ballenger Highway	Flint	MI	48532
McLeod Regional Medical Center	555 E. Chaves Street	Florence	SC	29501
Meadowcrest Hospital	2500 Belle Chasse Highway	Gretna	LA	70056
Mease Countryside Hospital	3231 Mccullen Booth Road	Safety Harbor	FL	34695
Mease Dunedin Hospital	207 Jeffords Street, MS 142	Clearwater	FL	33756
Med Central Mansfield	335 Glessner Avenue	Mansfield	OH	44903
Medcenter One	300 North 7th Street	Bismarck	ND	58501
Medical Center at Bowling Green	250 Park Street	Bowling Green	KY	42101
Medical Center East	50 Medical Park East Drive	Birmingham	AL	35235–3499
Medical Center Hospital	500 W. 4th Street	Odessa	TX	79760
Medical Center of Arlington	3301 Matlock Road	Arlington	TX	76015
Medical Center of Aurora	1501 S. Potomac Street	Aurora	CO	80012
Medical Center of Central Georgia	777 Hemlock Street HB 53	Macon	GA	31208
Medical Center of Lewisville	500 West Main Street	Lewisville	TX	75057
Medical Center of Mckinney	4500 Medical Center Drive	McKinney	TX	75069

Facility name	Address	City	State	Zip
Medical Center of Mesquite	1011 N. Galloway Avenue	Mesquite	TX	75149
Medical Center of Plano	3901 W 15th Street	Plano	TX	75075–7738
Medical Center of South Arkansas, LLC	700 West Grove Street	El Dorado	AR	71730
Medical City Dallas Hospital	7777 Forrest Lane	Dallas	TX	75230
Medical University of South Carolina	326 Calhoun Street—Suite 239	Charleston	SC	29401
Memorial Health University Medical Center	Cardiac Cath Lab, Memorial Health University Medic—4700 Waters Avenue.	Savannah	GA	31404
Memorial Hermann Hospital	6411 Fannin Street	Houston	TX	77030
Memorial Hermann South West	7600 Beechnut Street	Houston	TX	77074
Memorial Hermann Texas Medical Center	6411 Fannin Street	Houston	TX	77030
Memorial Hermann the Woodlands Hospital	9250 Pinecroft	The Woodlands	TX	77380
Memorial Hospital	1400 E. Boulder Street	Colorado Springs	CO	80909–5599
Memorial Hospital	2525 Desales Avenue	Chattanooga	TN	37404–1102
Memorial Hospital at Gulfport	4500 13th Street—PO Box 1810	Gulfport	MS	39502
Memorial Hospital Carbondale	405 W. Jackson Street	Carbondale	IL	65902
Memorial Hospital Miramar	1901 SW 172 Avenue	Miramar	FL	33029
Memorial Hospital of Martinsville	320 Hospital Drive	Martinsville	VA	24112
Memorial Hospital of Rhode Island Brown University.	111 Brewster Street	Pawtucket	RI	02860
Memorial Hospital of South Bend	615 N. Michigan Street	South Bend	IN	46601–1033
Memorial Hospital of Tampa	2901 W. Swann Avenue	Tampa	FL	33609
Memorial Hospital Pembroke/South Broward Hospital.	7800 Sheridan Street	Pembroke Pines	FL	33024
Memorial Hospital West/South Broward Hospital Dis.	703 North Flamingo Road	Pembroke Pines	FL	33028
Memorial Hospital-Jacksonville	3625 University Boulevard	South Jacksonville	FL	32216
Memorial Hospitals Association	1700 Coffee Road	Modesto	CA	95355
Memorial Medical Center	701 N. First Street	Springfield	IL	62781
Memorial Medical Center	2450 S. Telshor Boulevard	Las Cruces	NM	88011
Memorial Medical Center	1086 Franklin Street	Johnstown	PA	15905–4398
Memorial Regional Hospital/South Broward Hospital.	3501 Johnson Street	Hollywood	FL	33021
Memphis Hospital (Germantown) Campus)	1265 Union Avenue	Memphis	TN	38104–3499
Memphis Hospital (North Campus)	1265 Union Avenue	Memphis	TN	38104–3499
Memphis Hospital (South Campus)	1265 Union Avenue	Memphis	TN	38104–3499
Memphis Hospital (University Campus)	1265 Union Avenue	Memphis	TN	38104–3499
Menorah Medical Center	5721 West 119th Street	Overland Park	KS	66209
Mercy Fitgerald Hospital	1500 Lansdowne Avenue	Darby	PA	19023
Mercy General Health Partners	1500 East Sherman Boulevard	Muskegon	MI	49444
Mercy General Hospital—Sacramento	3939 J Street—Suite 215	Sacramento	CA	95819
Mercy Health System of Northwestern Arkansas.	1200 West Walnut Street	Rogers	AR	72756
Mercy Hospital				
Mercy Hospital	144 State Street	Portland	ME	04101
Mercy Hospital—Scranton	746 Jefferson Avenue	Scranton	PA	18510
Mercy Hospital & Medical Center	2525 S. Michigan Avenue	Chicago	IL	60616
Mercy Hospital Attn: Accounts Payable	3663 South Miami Avenue	Miami	FL	33133
Mercy Hospital of Buffalo	565 Abbott Road	Buffalo	NY	14220
Mercy Hospital of Pittsburgh	1400 Locust Street	Pittsburgh	PA	15219
Mercy Hospital Attn: A/P	271 Carew Street, PO Box 9012	Springfield	MA	01102
Mercy Iowa City	500 E. Market Street—Cardiac Cath Lab	Iowa City	IA	52245
Mercy Medical Center	701 10th Street, SE	Cedar Rapids	IA	52403
Mercy Medical Center	801 5th Street	Sioux City	IA	51101
Mercy Medical Center	1111 6th Avenue	Des Moines	IA	50314–2611
Mercy Medical Center	1000 North Village Avenue	Rockville Centre	NY	11571
Mercy Medical Center SCU	1320 Mercy Drive, NW—Attn:	Canton	OH	44708
Mercy Medical Center	1343 North Fountain Boulevard	Springfield	OH	45503
Mercy Medical Center	500 S. Oakwood Road	Oshkosh	WI	54904
Mercy Medical Center Merced	301 E. 13th Street	Merced	CA	95340
Mercy Medical Center Redding	2175 Rosaline Avenue; P.O. Box 496009	Redding	CA	96049–6009
Mercy Medical Center McGlannan Library	301 St. Paul Place	Baltimore	MD	21202
Mercy Medical Center-North Iowa	1000 4th Street SW	Mason City	IA	50401
Mercy Regional Medical Center	1010 Three Springs Boulevard	Durango	CO	81301
Mercy San Juan Hospital	3941 J Street—c/o Mercy General Hospital Administration.	Sacramento	CA	95819
MeritCare Hospital	MeritCare Hospital/Heart Services Data/Research—Route 108.	Fargo	ND	58122
Meriter Hospital Tower Heart Center	202 South Park Street—10	Madison	WI	53715
Mesa General Hospital	515 N. Mesa Drive	Mesa	AZ	85201
Mesquite Community Hospital	3500 I–30	Mesquite	TX	75150
Methodist Hospital	6500 Excelsior Building, 2nd St. floor HVC	St. Louis Park	MN	55426
Methodist Hospital	7700 Floyd Curl Drive	San Antonio	TX	78229
Methodist Hospital of South CA	300 W. Huntington Drive	Arcadia	CA	91007–3402
Methodist Hospital Southlake Campus	8701 Broadway	Merrillville	IN	46410–7035

Facility name	Address	City	State	Zip
Methodist Medical Center	280 Fort Sanders Boulevard, Building 4, Suite 218.	Knoxville	TN	37922
Methodist Medical Center of	221 NE Glen Oak Avenue Illinois	Peoria	IL	61636
Methodist Speciality and	7700 Floyd Curl Drive Transplant Hospital	San Antonio	TX	78229
Methodist Sugarland Hospital	16655 Southwest Freeway	Sugar land	TX	77479
Metro Health Hospital	1919 Boston Street SE	Grand Rapids	MI	49546
Metro Health Medical Center	2500 MetroHealth Drive	Cleveland	OH	44109
MetroHealth Medical Center	2500 MetroHealth Drive	Cleveland	OH	44109
MetroWest Medical Center	115 Lincoln Street	Framingham	MA	01702–6327
Miami Valley Hospital	One Wyoming Street	Dayton	OH	45409
Michael Reese Hospital	2929 S. Ellis Avenue	Chicago	IL	60616
Mid America Heart Institute	St. Lukes Hospital—Wornall Road	4401 Kanasas City	MO	64111
Midland Memorial Hospital Institute	2200 W. Illinois Ave c/o Heart	Midland	TX	79701
Midlands Community Hospital	6901 N. 72nd Street	Omaha	NE	68122
Midwest Regional Medical Center	2825 Parklawn Drive	Midwest City	OK	73110
Milford Regional Medical Center	14 Prospect Street	Milford	MA	01568
Millard Fillmore Hospital	100 High Street	Buffalo	NY	14203
Millard Fillmore Suburban	100 High Street	Buffalo	NY	14203
Mills-Peninsula Hospital	1783 El Camino Real	Burlingame	CA	94010
Mission Hospital Reg Med Center	27700 Medical Center Road	Mission Viejo	CA	92691–6426
Mission Hospitals, Inc.	509 Biltmore Avenue	Asheville	NC	28801–4690
Mission Regional Medical Center	900 S. Bryan Road	Mission	TX	78572
Mississippi Baptist Medical Center	1225 N. State Street	Jackson	MS	39202–2097
Missouri Baptist Medical Center	3015 N. Ballas Road	Saint Louis	MO	63131–2374
Moberly Regional Medical Center	1515 Union Avenue	Moberly	MO	65270
Mobile Infirmary Medical Center	PO Box 21445 Mobile Infirmary Circle	Mobile	AL	36652
Monongalia General Hospital	1200 JD Anderson Drive	Morgantown	WV	26505
Montefiore Medical Center	111 East 210th Street	Bronx	NY	10467–2490
Morris Hospital	150 West High Street	Morris	IL	60450
Morristown Memorial Hospital	100 Madison Avenue	Morristown	NJ	07962
Morton Plant Hospital	207 Jeffords Street, MS 142	Clearwater	FL	33756
Morton Plant North Bay Hospital	6600 Madison Street	New Port Richey	FL	34652
Moses Cone Health System	1200 N. Elm Street	Greensboro	NC	27401
Mother Frances Hospital	800 E. Dawson Street	Tyler	TX	75701
Mount Auburn Hospital	330 Mount Auburn Street—2 Administration	South Cambridge	MA	02138
Mount Carmel East	6150 East Broad Street	Columbus	OH	42313
Mount Carmel St. Anns Hospital	6150 East Broad Street	Columbus	OH	43213
Mount Carmel West	6150 East Broad Street—Suite 505A	Columbus	OH	43213
Mount Clemens General Hospital	1000 Harrington Street	Mount Clemens	MI	48043–2992
Mount Sinai Medical Center	4300 Alton Road	Miami Beach	FL	33140
Mount St Mary's Hospital	5300 Military Road,	Lewiston	NY	14092
Mountainview Hospital	3100 N. Tenaya Way	Las Vegas	NV	89128
Munroe Regional Medical Center	1500 SW 1st Avenue PO Box 6000	Ocala	FL	34478
Munson Medical Center	1105 Sixth Street	Traverse City	MI	49684–2386
Muskogee Regional Medical Center	300 Rockefeller Drive	Muskogee	OK	74401
Naples Community Hospital	350 7th Street	South Naples	FL	34102
Nashoba Valley Medical Center	200 Groton Road	Ayer	MA	01432
Natchez Community Hospital	129 Jefferson Davis Boulevard	Natchez	MS	39120
Natchez Regional Medical Center	54 Sgt. Prentiss Drive	Natchez	MS	39120
Navapaches Regional Medical Center	2200 East Show Low Lake Road	Show Low	AZ	85901
Nebraska Heart Hospital	7500 South 91st Street	Lincoln	NE	68526
Nebraska Methodist Hospital	8303 Dodge Street	Omaha	NE	68114
New Hanover Regional Medical Center	2131 S. 17th Street	Wilmington	NC	28402
New York Community Hospital	2525 Kings Highway	Brooklyn	NY	11229
New York Hospital Medical Center of Queens Health Education Library.	56–45 Main Street EP Lab/3rd Floor	Flushing	NY	11355
New York Methodist Hospital	506 6th Street, Brooklyn	New York City	NY	11215
New York Presbyterian Hospital	622 West 168th Street	New York	NY	10032
Newark Beth Israel Medical Center Terrace	201 Lyons Avenue at Osborne	Newark	NJ	07112
Newton Medical Center	5126 Hospital Drive	Covington	GA	30014
Niagara Falls Memorial Medical Center	621 Tenth Street	Niagara Falls	NY	14092
Nicholas H. Noyes Memorial Hospital	111 Clara Barton Street	Dansville	NY	14437
Nix Healthcare System	414 Navarro Street	San Antonio	TX	78205
Norman Regional Health System	PO Box 1308	Norman	OK	73070–1308
North Austin Medical Center	12221 MoPac Expressway North	Austin	TX	78758
North Bay Medical Center	1200 B. Gale Wilson Boulevard	Fairfield	CA	94533
North Broward Hospital District	1600 S. Andrews Avenue	Ft. Lauderdale	FL	33316
North Broward Medical Center	201 E. Sample Road	PomPano Beach	FL	33064
North Carolina Baptist Hospital	Medical Center Boulevard	Winston-Salem	NC	27157
North Central Baptist Hospital	520 Madison Oak Drive	San Antonio	TX	78258
North Colorado Medical Center 1	801 16th Street	Greeley	CO	80631
North Florida Regional Medical Center	6500 Newberry Road	Gainesville	FL	32605
North Kansas City Hospital	2800 Clay Edwards Drive	North Kansas City	MO	64116
North Memorial Medical Center	3300 Oakdale Avenue N.	Robbinsdale	MN	55422

Facility name	Address	City	State	Zip
North Mississippi Medical Center	830 S. Gloster Street	Tupelo	MS	38801
North Oaks Medical Center	15790 Paul Vega MD Drive	Hammond	LA	70403
North Ridge Medical Center	5757 N. Dixie Highway	Fort Lauderdale	FL	33334
North Shore Medical Center	1100 NW 95th Street	Miami	FL	33150
North Shore Medical Center-Salem Hospital	81 Highland Avenue—Davenport 5	Salem	MA	1970
North Shore University Hospital	300 Community Drive	Manhasset	NY	11030
North Suburban Medical Center	9191 Grant Street	Denver	CO	80229
North Vista Hospital	1409 E. Lake Mead Boulevard	North Las Vegas	NV	89030
Northbay VacaValley Hospital	1200 B. Gale Wilson Boulevard	Fairfield	CA	94533
Northeast Baptist Hospital	8811 Village Drive	San Antonio	TX	78217
Northeast Georgia Medical Center	743 Spring Street	Gainesville	GA	30501
NorthEast Medical Center	920 Church Street	North Concord	NC	28025
Northeast Methodist Hospital	12412 Judson Road	Live Oak	TX	78233
Northeast Regional Medical Center	315 S. Osteopathy Street	Kirksville	MO	63501
Northern Illinois Medical Center	dwittkamp@centegra.com	McHenry	IL	60050
Northern Michigan Hospital	416 Connable Avenue	Petoskey	MI	49770
Northern Nevada Medical Center	2375 E. Prater Way	Sparks	NV	89434
Northern Virginia Community Hosptal	601 South Carlin Springs Road	Arlington	VA	22204
Northlake Medical Center	1455 Montreal Road	Tucker	GA	30084
Northridge Hospital Medical Center	18300 Roscoe Avenue	Northridge	CA	91325
Northshore Regional Medical Center	100 Medical Center Drive	Slidell	LA	70461
Northside Hospital	6000 49th Street N	Pinellas Park	FL	33709
Northside Hospital	1000 Johnson Ferry Road	Atlanta	GA	30342
Northwest Community Hospital	800 W. Central Raod	Arlington Heights	IL	60005
Northwest Hospital	1550 North 115th Street	Seattle	WA	98113
Northwest Medical Center	2801 N. State Road 7	Margate	FL	33063
Northwest Medical Center—Bentonville	3000 Medical Center Parkway	Bentonville	AR	72712
Northwest Medical Center—Springdale	609 West Maple Street	Springdale	AR	72764
Northwest Mississippi Regional Medical Center	1970 Hospital Drive	Clarksdale	MS	38614
Northwest Texas Surgical Hospital	3501 Soncy Road Suite 118	Amarillo	TX	79119
Northwestern Memorial Hospital	676 North St Clair Suite 1700	Chicago	IL	60611
Norton Audubon	P.O. Box 35070	Louisville	KY	40232
Norton Hospital	P.O. Box 35070	Louisville	KY	40232
Norwalk Hospital	24 Stevens Street	Norwalk	CT	06856
NYU Medical Center	560 First Avenue, TCH 576 Cath Lab	New York	NY	10016
Oak Hill Hospital	11375 Cortez Boulevard	Brooksville	FL	34613
Oakwood Hospital & Medical Center	18101 Oakwood Boulevard Suite 124	Dearborn	MI	48124
Obici Hospital	2800 Godwin Boulevard	Suffolk	VA	23434
Ocala Regional Medical Center	1431 SW First Avenue	Ocala	FL	34474
Ocean Springs Hospital	3109 Bienville Boulevard	Oceansprings	MS	39564
Ochsner Medical Center—Baton Rouge	17000 Medical Center Drive	Baton Rouge	LA	70816
Ochsner Medical foundation	1514 Jefferson Highway	New Orleans	LA	70121
O'Connor Hospital	2105 Forest Avenue	San Jose	CA	95128
Odessa Regional Hospital	520 East Sixth Street	Odessa	TX	79760
Ogden Regional Medical Center	5475 South 500 East	Ogden	UT	84403
Ohio State University Medical Center	410 W. 10th Avenue—1420 Doan Hall	Columbus	OH	43210–1228
Ohio Valley Medical Center	2000 Eoff Street	Wheeling	WV	26003
Oklahoma Heart Hospital	4050 W. Memorial Road	Oklahoma City	OK	73120
Oklahoma State University Medical Center	744 W. 9th	Tulsa	OK	74127
Olathe Medical Center	20333 W. 151 Street	Olathe	KS	66061–7211
Opelousas General Health System	539 E. Prudhomme Street	Opelousas	LA	70570
Orange Coast Memorial Medical Center	9920 Talbert Avenue	Fountain Valley	CA	92708
Orange Regional Medical Center	60 Prospect Avenue	Middletown	NY	10940
Oregon Health & Science University	3181 SW Sam Jackson Road	Portland	OR	97239
Orlando Regional Medical Center	1414 Kuhl Avenue	Orlando	FL	32806
Osceola Regional Medical Center	700 W. Oak Street	Kissimmee	FL	34745
OSF Saint Anthony Medical Center	5666 East State Street	Rockford	IL	61108
OSF Saint Joseph Medical Center	2200 E. Washington	Bloomington	IL	61701
OSF/Saint Francis Medical Center	530 NE Glen Oak Avenue	Peoria	IL	61637
OU Medical Center	1200 Everett Drive	Oklahoma City	OK	73104
Our Lady of Lourdes Medical Center	1600 Haddon Avenue	Camden	NJ	08103
Our Lady of Lourdes Regional Medical Center	611 St. Landry (PO Box 4027)	Lafayette	LA	70506
Our Lady of The Lake Regional	7777 Hennessy Boulevard Suite 2007	Baton Rouge	LA	70808
Our Lady of the Resurrection Medical Center	5645 W. Addison Street	Chicago	IL	60634
Overlake Hospital Medical Center	1035–116th Avenue NE	Bellevue	WA	98004
Overland Park Regional Med Center/Health Midwest.	10500 Quivira Road	Overland Park	KS	66215
Owensboro Medical Health System	811 E. Parrish Avenue	Owensboro	KY	42303
Ozarks Medical Center	1100 Kentucky Avenue	West Plains	MO	65775
Palm Beach Gardens Medical Center	3360 Burns Road	Palm Beach Gardens	FL	33410
Palmetto General Hospital	2001 West 68th Street	Hialeah	FL	33029
Palmetto Health Heart Hospital	5 Richland Medical Park Drive	Columbia	SC	29203
Palomar Medical Center	555 East Valley Parkway	Escondido	CA	92025
Palos Community Hospital	12251 S. 80th Avenue	Palos Heights	IL	60463–0930

Facility name	Address	City	State	Zip
Paoli Hospital	100 Lancaster Avenue	Wynnewood	PA	19096
Paradise Valley Hospital	3929 E. Bell Road	Phoenix	AZ	85023
Paradise Valley Hospital	2400 E. Fourth Street	National City	CA	91950
Paris Regional Medical Center	820 Clarksville Street	Paris	TX	75460
Park Plaza Hospital	1313 Hermann Drive	Houston	TX	77004
Parkridge Medical Center	2333 McCallie Avenue	Chattanooga	TN	37404
Parkview Hospital	2200 Randallia Drive	Fort Wayne	IN	46805
Parkview Hospital	1726 Shawano Avenue	Green Bay	WI	54303–3282
Parkview Medical Center	400 West 16th Street	Pueblo	CO	81003
Parkway Regional Medical Center	160 N.W. 170th Street	North Miami	FL	33169
Parkwest Medical Center	9352 Parkwest Boulevard	Knoxville	TN	37923
Parma Community General Hospital	7007 Powers Boulevard	Parma	OH	44129
Pasco Regional Medical Center	13000 100 Fort King Road	Dade City	FL	33525
PBI Regional Medical Center	350 Boulevard	Passaic	NJ	7055
Peace River Regional Medical	2500 Harbor Boulevard	Port Charlotte	FL	33952
Peconic Bay Medical Center	1300 Roanoke Avenue	Riverhead	NY	11901
Peninsula Regional Medical Center	100 East Carroll Street	Salisbury	MD	21801
Penn Presbyterian Medical Center	39th & Market Street	Philadelphia	PA	19104
Penn State Hershey Medical Center	PO Box 850 H139	Hershey	PA	17033
Pennsylvania Hospital	800 Spruce Street	Philadelphia	PA	19107–6192
Penrose—St. Francis Health Services	2222 North Nevada, #220	Colorado Springs	CO	80907
Phelps County Regional Medical Center	1000 W. 10th Street	Rolla	MI	65401
Phoenix Baptist Hospital	2000 W. Bethany Home Road	Phoenix	AZ	85015
Phoenixville Hospital	140 Nutt Road	Phoenixville	PA	19460–3906
Piedmont HealthCare Physicians Cath Lab LLC.	1968 Peachtree Road NW	Atlanta	GA	30309
Piedmont Hospital	95 Collier Road Suite 5005	Atlanta	GA	30309
Piedmont Medical Center	222 S. Herlong Avenue	Rock Hill	SC	29732
Pikeville Medical Center	911 Bypass Road	Pikeville	KY	41501
Pinnacle Health Invasive Cardiology	111 South Front Street	Harrisburg	PA	17101–2099
Pioneer Hospital	3590 West 9000 South, Suite 315	West Jordan	UT	84088
Pitt County Memorial Hospital	2100 Stantonsburg Road	Greenville	NC	27834–2832
Plantation General Hospital	401 N.W. 42nd Avenue	Plantation	FL	33317
Plaza Medical Center of Fort Worth	900 Eighth Avenue	Fort Worth	TX	76104
Pomona Valley Hospital Medical Center	1798 N. Garey Avenue	Pomona	CA	91722
Pontiac Osteopathic Hospital	50 North Perry Street	Pontiac	MI	48342
Poplar Bluff Regional Medical Center	2620 N. Westwood Boulevard	Poplar Bluff	MO	63901
Port Huron Hospital	1221 Pine Grove Avenue	Port Huron	MI	48060
Porter Adventist Hospital	2525 S Downing Street—Mailstop 33F	Denver	CO	80210–5817
Porter Valparaiso Hospital Campus	814 Laporte Avenue	Valparaiso	IN	46383
Portneuf Medical Center	651 Memorial Drive	Pocatello	ID	83201
Portsmouth Regional Hospital	333 Borthwick Avenue	Portsmouth	NH	03801
Poudre Valley Hospital	1024 South Lemay Avenue	Fort Collins	CO	80524
Presbyterian Healthcare Services	PO Box 26666	Albuqerque	NM	87125
Presbyterian Hospital	200 Hawthorne Lane	Charlotte	NC	28204
Presbyterian Hospital of Dallas	8200 Walnut Hill Lane	Dallas	TX	75231
Presbyterian Hospital of Plano	6200 West Parker Road	Plano	TX	75093–7914
Presbyterian Intercommunity Hospital	12401 Washington Boulevard	Whittier	CA	90602
Presbyterian/St.Lukes Medical Center	1719 E. 19th Avenue—CV Registry	Denver	CO	80218–1235
Prince George's Hospital Center	3001 Hospital Drive	Cheverly	MD	20785
Princeton Baptist Medical Center	701 Princeton Avenue	Birmingham	AL	35211–1399
Proctor Hospital	5409 N. Knoxville Avenue	Peoria	IL	61614
Protestant Memorial Medical Center	4500 Memorial Drive	Belleville	IL	62226
Provena Covenant Medical Center	1400 West Park Street	Urbana	IL	61801–9901
Provena Mercy Medical Center	1325 North Highland Avenue	Aurora	IL	60506
Provena Saint Joseph Medical Center	333 N. Madison Street	Joliet	IL	60435
Provena Saint Marys Hospital	500 West Court Street	Kankakee	IL	60901
Providence Alaska Medical Center	3200 Providence Drive	Anchorage	AK	99508–4662
Providence Everett Medical Center	1321 Coby Avenue—PO Box 1147	Everett	WA	98206–1147
Providence Health Center	6901 Medical Parkway	Waco	TX	76712
Providence Holy Cross Medical Center	15031 Rinaldi Street	Mission Hills	CA	91346
Providence Hospital	6801 Airport Boulevard	Mobile	AL	36608
Providence Hospital	2435 Forest Drive	Columbia	SC	29204
Providence Medical Center	8929 Parallel Parkway	Kansas City	KS	66112–1689
Providence Memorial Hospital	2001 North Oregon	El Paso	TX	79902
Providence Portland Medical Center	9205 SW Barnes Road	Portland	OR	97225
Providence Saint Joseph Medical Center	501 South Buena Vista	Burbank	CA	91505
Providence Saint Vincent Med Center	Regional Heart Data Services—9205 South West Barnes Road #33.	Portland	OR	97225
Providence St. Peter Hospital	413 N. Lilly Road	Olympia	WA	98506
Queen of the Valley Hospital	1000 Trancas Street	Napa	CA	94558
Queens Medical Center	1301 Punchbowl Street	Honolulu	HI	96813
Rancho Spring Medical Center	36485 Inland Valley	Wildomar	CA	92595
Rankin Medical Center	350 Crossgates Boulevard	Brandon	MS	39042

Facility name	Address	City	State	Zip
Rapid City Regional Hospital	353 Fairmont Boulevard	Rapid City	SD	57702
Rapides Regional Medical Center	211 4th Street (Box 30101)	Alexandria	LA	71301
Redmond Regional Medical Center	501 Redmond Road	Rome	GA	30165
Regents of the University of Michigan	2929 Plymouth Rd Suite 210	Ann Arbor	MI	48105
Regional Hospital of Jackson	367 Hospital	Boulevard Jackson	TN	38305
Regional Medical Center	400 East 10th Street	Anniston	AL	36202
Regional Medical Center	225 N. Jackson Street	San Jose	CA	95116
Regional Medical Center	900 Hospital Drive	Madisonville	KY	42431–1644
Regional Medical Center	3000 St. Matthews Road	Orangeburg	SC	29118
Regional Medical Center Bayonet Point	1400 Fivay Road	Hudson	FL	34667
Regions Hospital	640 Jackson Street	St. Paul	MN	55101
Reid Hospital & Healthcare Services	1401 Chester Boulevard	Richmond	IN	47374
Renown Regional Medical Center	77 Pringle Way	Reno	NV	89502
Research Medical Center	2316 East Meyer Boulevard	Kansas City	MO	64132
Reston Hospital Center	1850 Town Center Parkway	Reston	VA	20190
Resurrection Medical Center	7435 W. Talcott Avenue	Chicago	IL	60631
Rex Hospital	4420 Lake Boone Trail	Raleigh	NC	27607
RHD Memorial Medical Center	7 Medical Parkway	Dallas	TX	75234
Rhode Island Hospital	593 Eddy Street	Providence	RI	02903
Rideout Memorial Hospital	726 4th Street	Maryville	CA	95901
Ridgecrest Regional Hospital	1081 N. China Lake Boulevard	Ridgecrest	CA	93555
Riley Hospital	1102 Constitution Avenue	Meridian	MS	39301
Rio Grande Regional Hospital	101 E. Ridge Road	McAllen	TX	78503
River Oaks Hospital	1030 River Oaks Drive	Jackson	MS	39232
River Region Medical Center	2100 Highway 61 North	Vicksburg	MS	39180
River Region Health System	2100 Highway 61 North	Vicksburg	MS	39180
Riverside Community Hospital	4445 Magnolia Avenue	Riverside	CA	92501
Riverside Methodist Hospital	3535 Olentangy River Road	Columbus	OH	43214
Riverside Regional Medical Center	500 J. Clyde Morris Boulevard	Newport News	VA	23601
Riverview Hospital	395 Westfield Road	Noblesville	IN	46060
Riverview Regional Medical Center	600 South Third Street	Gadsden	AL	35901
Robert Packer Hospital	1 Guthrie Square	Sayre	PA	18840
Robinson Memorial Hospital	6847 N. Chestnut Street	Ravenna	OH	44266
Rochester General Hospital	1425 Portland Avenue	Rochester	NY	14621
Rockford Memorial Hospital	2400 N. Rockton Avenue	Rockford	IL	61103
Rogue Valley Medical Center	2825 E. Barnett Road	Medford	OR	97504
Roper Hospital	316 Calhoun Street	Charleston	SC	29401
Rose Medical Center	4567 E. 9th Avenue	Denver	CO	80220–3941
Round Rock Medical Center	2400 Round Rock Avenue	Round Rock	TX	78681
Rush Hospital	1314 19th Avenue	Meridian	MS	39301
Rush North Shore Medical Center	9600 Gross Point Road	Skokie	IL	60076
Rush University Medical Center	1653 West Congress Parkway	Chicago	IL	60612
Rush-Copley Medical Center Attn: Health Science Lib.	2000 Ogden Avenue	Aurora	IL	60504
Rush-Riverside Heart Care Center	350 N. Wall Street	Kankakee	IL	60901
Russell Medical Center	3316 Highway 280 (P.O. Box 939)	Alexander City	AL	35011
Russellville Hospital	15155 Highway 43	Russellville	AL	35653
Rutland Regional Medical Center	160 Allen Street	Rutland	VT	05701
Sacred Heart Health System	5151 North Ninth Avenue	Pensacola	FL	32504
Sacred Heart Hospital Attn:A/P	900 W. Clairemont Avenue	Eau Claire	WI	54701
Sacred Heart Medical Center	1155 Hilyard Street	Eugene	OR	97401
Sacred Heart Medical Center	101 W. Eighth Avenue	Spokane	WA	99204
Saddleback Memorial Medical Center	24451 Health Center Drive	Laguna Hills	CA	92653
Saint Agnes Medical Center	1303 East Herndon Avenue	Fresno	CA	93720
Saint Anthony Central Hospital	4231 W. 16th Avenue	Denver	CO	80204–1335
Saint Anthony Medical Center	1201 S. Main Street	Crown Point	IN	46307
Saint Anthonys Medical Center	10010 Kennerly Road	Saint Louis	MO	63128–2106
Saint Bernadine Medical Center	2101 N. Waterman Avenue	San Bernardino	CA	92404–4836
Saint Clare's Hospital	611 St. Joseph's Avenue	Marshfield	WI	54449
Saint Elizabeth Health Center	1044 Belmont Avenue	Youngstown	OH	44501
Saint Elizabeth Hospital	1611 S. Madison Street	Appleton	WI	54915
Saint Elizabeth Hospital	1611 S. Madison Street	Appleton	WI	54915
Saint Elizabeth Medical Center-South	One Medical Drive	Edgewood	KY	41017
Saint Elizabeth Regional Medical Center	555 S. 70th Street	Lincoln	NE	68510–2462
Saint Elizabeths Hospital	211 South 3rd Street	Belleville	IL	62220–1915
Saint Francis Heart Hospital	10501 E. 91st Street South	Tulsa	OK	74133
Saint Francis Hospital	2122 Manchester Expressway	Columbus	GA	31904
Saint Francis Hospital	6161 S. Yale Avenue	Tulsa	OK	74136
Saint Francis Hospital	5959 Park Ave	Memphis	TN	38119
Saint Francis Hospital & Health Center	8111 S. Emerson Avenue	Indianapolis	IN	46237
Saint Francis Hospital & Medical Center	118 Woodland Street	Hartford	CT	06105
Saint Francis Hospital and Health Center	12935 Gregory Street	Blue Island	IL	60406–2470
Saint Francis Hospital of Evanston	355 Ridge Avenue	Evanston	IL	60202
Saint Francis Medical Center	211 Saint Francis Drive	Cape Girardeau	MO	63703

Facility name	Address	City	State	Zip
Saint John Macomb Hospital	11800 E. 12 Mile Road, Room #2510	Warren	MI	48093
Saint Johns Health Center	1328 22nd Street	Santa Monica	CA	90404
Saint Johns Mercy Medical Center	615 S. New Ballas Road	Saint Louis	MO	63141–8221
Saint John's Regional Hlth Center	1235 E. Cherokee Street	Springfield	MO	65804
Saint Joseph Hospital				
Saint Joseph Hospital	St Josephs Hospital & Med Center—350 West Thomas Road.	Phoenix	AZ	85013
Saint Joseph Hospital	2700 Dolbeer Street	Eureka	CA	95501–4799
Saint Joseph Hospital	3001 W. Martin Luther King Boulevard	Tampa	FL	33607
Saint Joseph Hospital	2900 N Lake Shore Drive	Chicago	IL	60657–6274
Saint Joseph Hospital (Provena)	77 North Airlite Street	Elgin	IL	60123–4912
Saint Joseph Medical Center	1717 South J Street	Tacoma	WA	98405–4933
Saint Joseph Regional Health Center	2801 Franciscan Street	Bryan	TX	77802–2544
Saint Josephs Hospital	1824 Murdoch Avenue	Parkersburg	WV	26102–0327
Saint Josephs Hospital/Marshfield Clinic	611 St. Joseph Avenue	Marshfield	WI	54449–1832
Saint Josephs Hospital of Atlanta	5665 Peachtree Dunwoody Road	Atlanta	GA	30342
Saint Louis University Hospital	3635 Vista at Grand	Saint Louis	MO	63110
Saint Lukes Hospital	1026 A Avenue, North East	Cedar Rapids	IA	52406–3026
Saint Lukes Hospital	232 S. Woods Mill Road—Heart Failure Center.	Chesterfield	MO	63017–3417
Saint Luke's Hospital	4401 Wornall Road (MAHI 5th Floor)	Kansas City	MO	64111
Saint Lukes Regional Medical Center	190 E. Bannock Street	Boise	ID	83712–6241
Saint Margaret Mercy	5454 S. Hohman Avenue	Hammond	IN	46320
Saint Mary Corwin Medical Center	1008 Minnequa Avenue	Pueblo	CO	81004–3798
Saint Mary Mercy Hospital	36475 West Five Mile Road	Livonia	MI	48154
Saint Mary's Hospital	56 Franklin Street	Waterbury	CT	06706
Saint Marys Hospital and Regional Medical Center.	2635 N. 7th Street	Grand Junction	CO	81501–8209
Saint Marys Medical Center	3700 Washington Avenue	Evansville	IN	47750
Saint Marys Medical Center	2900 First Avenue	Huntington	WV	25702
Saint Mary's Medical Center	450 Stanyan Street	San Francisco	CA	94117
Saint Mary's Mercy Medical Center	310 Lafayette Avenue—STF #315	Grand Rapids	MI	49503
Saint Mary's Regional Medical Center	235 W. Sixth Street	Reno	NV	89503
Saint Peter's Hospital	315 South Manning Boulevard	Albany	NY	12208
Saint Ritas Medical Center	730 West Market Street	Lima	OH	45801–4602
Saint Thomas Health Care Services	4220 Harding Road—PO Box 380	Nashville	TN	37202–0380
Saint Thomas Health Services	4220 Harding Road	Nashville	TN	37203
Saint Vincent Health Center	232 West 25th Street	Erie	PA	16544
Saint Vincent Hospital	123 Summer Street	Worcester	MA	01608
Saint Vincent Hospital Manhattan	170 W. 12th Street	New York	NY	10011
Saint Vincent Medical Center/Hlth Ctr.	2 St. Vincent Circle	Little Rock	AR	72205
Saint Vincent's Staten Island	355 Bard Avenue	Staten Island	NY	10310
Salem Hospital (Regional Health Services)	665 Winter Street, SE	Salem	OR	97309–5014
Salina Regional Health Center	400 S. Santa Fe Avenue	Salina	KS	67401
Salinas Valley Memorial Hospital	450 E Romie Lane	Salinas	CA	93901–4098
Salt Lake Regional Medical Center	1050 East South Temple	Salt Lake	UT	84102
San Antonio Community Hospital	999 San Bernardino Road	Upland	CA	91786
San Francisco Heart and Vascular Institute	1900 Sullivan Avenue	Daly City	CA	94015
San Jacinto Methodist Hospital	4401 Garth Road	Baytown	TX	77521
San Joaquin Community Hospital	2615 Eye Street	Bakersfield	CA	93301
San Juan Regional Medical Center	801 West Maple	Farmington	NM	87401
San Ramon Regional Medical Center	6001 Norris Canyon Road	San Ramon	CA	94583
Sand Lake Hospital	1414 Kuhl Avenue	Orlando	FL	32806
Santa Barbara Cottage Hospital	PO Box 689	Santa Barbara	CA	93102–0689
Santa Clara Valley Medical Center	751 S. Bascom Avenue	San Jose	CA	95128
Santa Rosa Memorial Hospital	1165 Montgomery Drive PO BOX 522	Santa Rosa	CA	95402
Santa Teresa Community Hospital	250 Hospital Parkway, 1st Floor Cath Office	San Jose	CA	95119
Sarasota Memorial Hospital	1700 S. Tamiami Trail	Sarasota	FL	34239
Scott and White Clinic and Hospital	2401 S. 31 Street, Alexander Building, 218–E	Temple	TX	76508
Scottsdale Healthcare Osborn	9003 E. Shea Boulevard	Scottsdale	AZ	85260
Scottsdale Healthcare Shea	9003 E. Shea Boulevard—Administration	Scottsdale	AZ	85260
Scripps Green Hospital—La Jolla	10666 North Torrey Pines Road	La Jolla	CA	92037
Scripps Memorial Hospital Encinitas	354 Santa Fe Drive	Encinitas	CA	92024
Scripps Memorial Hospital-La Jolla	9888 Genesee Avenue LJ101	La Jolla	CA	92037
Scripps Mercy Hospital-San Diego	4077 5th Avenue, MER 74	San Diego	CA	92103
Scripps Mercy Hosptial-Chula Vista	435 H Street	Chula Vista	CA	91910
Sebastian River Medical Center	13695 U.S. Highway 1	Sebastian	FL	32962
Self Regional Healthcare	1325 Spring Street	Greenwood	SC	29646
Sentara Norfolk General Hospital	600 Gresham Drive	Norfolk	VA	23507
Sentara Virginia Beach General Hospital	1060 First Colonial Road	Virginia Beach	VA	23454–0685
Senton Medical Center	1900 Sullivan Avenue (Attn: SFHVI)	Daly City	CA	94015
Sequoia Hospital	Whipple & Alameda Avenue—170 Alameda de Las Pulgas.	Redwood City	CA	94062
Seton Medical Center	1201 W. 38th Street	Austin	TX	78705

Facility name	Address	City	State	Zip
Shady Grove Adventist Hospital	9901 Medical Center Drive	Rockville	MD	20850
Shands at AGH	801 SW 2nd Avenue	Gainesville	FL	32601
Shands Jacksonville Medical Center	655 West 8th Street	Jacksonville	FL	32209–6511
Sharp Chula Vista	8695 Spectrum Center Court	San Diego	CA	92123
Sharp Grossmont	5555 Grossmont Center Drive	La Mesa	CA	91942
Sharp Memorial Hospital	7901 Frost Street	San Diego	CA	92123
Shasta Regional Medical Center	1100 Butte Street	Redding	CA	96001
Shawnee Mission Medical Center	9100 West 74th Street	Shawnee Mission	KS	66204–4004
Shelby Baptist Medical Center	1000 First Street	North Alabaster	AL	35007
Sherman Hospital	934 Center Street—Decision Support	Elgin	IL	60120
Shore Health System of Maryland	219 South Washington Street	Easton	MD	21601
Sibley Memorial Hospital	5255 Loughboro Road, NW	Washington	DC	20016
Sid Peterson Memorial Hospital	710 Water Street	Kerrville	VA	78028
Sierra Medical Center	1625 Medical Center Drive	El Paso	TX	79902
Sierra Vista Regional Medical Center	1010 S. Murray Avenue	San Luis Obispo	CA	93420
Silver Cross Hospital	1200 Maple Road	Joliet	IL	60432
Simi Valley Hospital & Health Care Services	2975 N. Sycamore Drive	Simi Valley	CA	93065
Sinai-461Grace Hospital	6071 W. Outer Drive	Detroit	MI	48235
Sinai Hospital of Baltimore	2401 West Belvedere Avenue	Baltimore	MD	21215–5271
Singing River Hospital	2809 Denny Avenue	Pascagoula	MS	39567
Sioux Valley Hospitals & Health System	1305 West 18th Street	Sioux Falls	SD	57117
Sisters of Charity Hospital	2157 Main Street	Buffalo	NY	14120
Skaggs Community Health Center	PO Box 650	Branson	MO	65615-0650
Sky Ridge Medical Center	10101 Ridgegate Parkway	Lone Tree	CO	80124
Skyline Medical Center/HTI Memorial Hospital Corp.	3441 Dickerson Pike	Nashville	TN	37207
Smith of Georgia, LLC d.b.a. Smith Northview Hopsital.	PO Box 10010	Valdosta	GA	31604
Sound Shore Medical Center	16 Guion Place	New Rochelle	NY	10801
South Austin Hospital	901 W. Ben White Boulevard	Austin	TX	78704
South Crest Hospital	8801 S. 101Street E Avenue	Tulsa	OK	74133
South Fulton Medical Center	1170 Cleveland Avenue	East Point	GA	30344
South GA Medical Center	PO Box 1727	Valdosta	GA	31603-1727
South Miami Hospital	6200 SW 73rd Street	Miami	FL	33143-4989
South Nassau Communities Hospital	One Healthy Way	Oceanside	NY	11572
South Shore Hospital	55 Fogg Road South	Weymouth	MA	02190–2432
Southampton Hospital	240 Meeting House Lane	Southhampton	NY	11968
Southcoast Hospitals Group	363 Highland Avenue	Fall River	MA	02720
Southeast Alabama Medical Center	1108 Ross Clark Circle	Dothan	AL	36301
Southeast Baptist Hospital	4214 E. Southcross	San Antonio	TX	78222
Southeast Missouri Hospital	1701 Lacey Street Cape	Girardeau	MO	63701
Southern Hills Hospital	9300 West Sunset Road	Las Vegas	NV	89148
Southern New Hampshire Medical Center	8 Prospect Street	Nashua	NH	3060
Southern Ohio Medical Center	1805 27th Street	Portsmouth	OH	45662
Southern Regional Medical Center	11 Upper Riverdale Road	Riverdale	GA	30274
Southlake Hospital	1099 Citrus Tower Boulevard	Clermont	FL	34711
Southside Hospital	301 East Main Street	Bayshore	NY	11706
Southwest Florida Regional	2727 Winkler Avenue	Fort Myers	FL	33901
Southwest General Health Center	18697 Bagley Road	Middleburg Heights	OH	44130–3417
Southwest General Hospital	7400 Barlite Boulevard	San Antonio	TX	78224
Southwest Health Plan, Inc.	25500 Medical Center Drive	Murrieta	CA	92562
Southwest Medical Center	2810 Ambassador Caffery Parkway	Lafayette	LA	70506
Southwest MS Regional Medical Center	215 Marion Avenue	McComb	MS	39648
Southwest Washington Medical Center	600 NE 92nd Avenue	Vancouver	WA	98664
Southwestern Medical Center	5602 SW Lee Boulevard	Lawton	OK	73505
Spalding Regional Medical Center	601 South 8th Street	Griffin	GA	30224
Sparks Regional Medical Center	PO Box 17006	Fort Smith	AR	7291–7006
Sparrow Health System	1210 W. Saginaw Highway	Lansing	MI	48915
Spartanburg Regional Medical Center	101 East Wood Street—3rd Floor Heart Center.	Spartanburg	SC	29303
Spectrum Health	100 Michigan Street NE	Grand Rapids	MI	49503–2560
Springhill Memorial Hospital	3719 Dauphin Street	Mobile	AL	36608
Springs Memorial Hospital	800 West Meeting Street	Lancaster	SC	29720
SSM St. Joseph Health Center	300 First Captiol Drive	St. Charles	MO	63301
SSM St. Mary's Health Center	6420 Clayton Road	St. Louis	MO	63117
St James Hospital and Health Centers	20201 S. Crawford Avenue	Olympia Fields	IL	60461
St John's Hospital	69 W. Exchange Street	St. Paul	MN	55102
St. Joseph Hospital	700 Broadway Street	Fort Wayne	IN	46802
St. Joseph Hospital—Oakland	44405 Woodward Avenue	Pontiac	MI	48341–5023
St. Josephs Hospital	69 W. Exchange Street	St. Paul	MN	55102
St. Josephs Hospital Health Center	301 Prospect Avenue	Syracuse	NY	13203
St. Lukes's Cornwall Hospital	70 Dubois Street	Newburgh	NY	12550
St. Mary's Health Care Systems	1230 Baxter Street	Athens	GA	30606
St. Mary's Good Samaritan	400 North Pleasant	Centralia	IL	62801

Facility name	Address	City	State	Zip
St. Mary's Medical Center	407 E. 3rd Street	Duluth	MN	55805
St. Mary's of Michigan	800 S. Washington	Saginaw	MI	48601
St. Mary's Regional Medical Center	305 S. 5th Street	Enid	OK	73701
St. Vincent Mercy Medical Center	2213 Cherry Street	Toledo	OH	43608
St. Agnes Hospital	900 Caton Avenue	Baltimore	MD	21229
St. Alphonsus Regional Medical Center	1055 N. Curtis Road	Boise	ID	83706
St. Anthony Hospital	1000 N. Lee Avenue	Oklahoma City	OK	73102
St. Barnabas Medical Center	94 Old Short Hills Road	Livingston	NJ	07039
St. Bernards Medical Center	225 E. Jackson Avenue	Jonesboro	AR	72401
St. Catherine Hospital Chicago	E. 1500 South Lake Park Avenue	Hobart	IN	46342
St. Catherine of Siena	50 Route 25A	Smithtown	NY	11787
St. Charles Hospital	200 Belle Terre Road	Port Jefferson	NY	11777
St. Charles Medical Center	2500 North East Neff Road	Bend	OR	97701–6015
St. Clair Memorial Hospital Cardiac Rehab/ Medical A.	1000 Bower Hill Road	Pittsburg	PA	15243
St. Cloud Regional Medical Center	2906 17th Street	St. Cloud	FL	34769
St. David's Medical Center	919 East 32nd	Austin	TX	78765
St. Dominic-Jackson Memorial Hospital	969 Lakeland Drive	Jackson	MS	39216
St. Edward Mercy Medical Center Medical Library.	7301 Rogers Avenue/PO Box 17000	Ft. Smith	AR	72917–7000
St. Edwards Mercy Medical Center	7301 Rogers Avenue/PO Box 17000	Ft. Smith	AR	72917–7000
St. Elizabeth Hospital	2233 W. Division	Chicago	IL	60622
St. Elizabeth Medical Center	2209 Genesee Street	Utica	NY	13501
St. Francis Health Center	1700 SW 7th Street	Topeka	KS	66605
St. Francis Hospital	701 N. Clayton Street	Wilmington	DE	19805
St. Francis Hospital	100 Port Washington Boulevard	Roslyn	NY	11576
St. Francis Hospital	One St. Francis Drive	Greenville	SC	29601
St. Francis Hospital	333 Laidley Street—P.O. Box 44	Charleston	WV	25322
St. Francis Medical Center	3630 Imperal Highway	Lynwood	CA	90265
St. Francis Medical Center	309 Jackson Street	Monore	LA	71210
St. Francis Medical Center	211 Saint Francis Drive	Cape Girardeau	MO	63703–5049
St. Francis Medical Center	601 Hamilton Avenue	Trenton	NJ	08629
St. Francis North Hospital	3421 Medical Park Drive	Monroe	LA	71203
St. Helena Hospital	10 Woodland Road	St. Helena	CA	94574
St. James Health Care	400 South Clark Street	Butte	MT	59701
St. John Hospital & Medical Center	22151 Moross Road	Detroit	MI	48236–2148
St. John Medical Center	1923 S. Utica	Tulsa	OK	74104
St. John Medical Center	1615 Delaware Street	Longview	WA	98632
St. John West Shore Hospital	29000 Center Ridge Road	Westlake	OH	44145
St. John's Hospital	800 E. Carpenter Street	Springfield	IL	62769
St. John's Hospital	1235 E. Cherokee Street	Springfield	MO	65804
St. John's Pleasant Valley Hospital	2309 Antonio Avenue	Camarillo	CA	93010
St. John's Queens Hospital	90–02 Queens Boulevard	Elmhurst	NY	11373
St. Johns Regional Medical Center	1600 N. Rose Avenue	Oxnard	CA	93030–3722
St. Johns Regional Medical Center	2727 McClelland Boulevard	Joplin	MO	64804
St. Joseph Hospital	1 Saint Joseph Drive	Lexington	KY	40504
St. Joseph Hospital	360 Broadway	Bangor	ME	04401
St. Joseph Hospital	172 Kinsley Street	Nashua	NH	03060
St. Joseph Hospital	2901 Squalicum Parkway	Bellingham	WA	98225
St. Joseph Intercommunity Hospital	2605 Harlem Road	Cheektowaga	NY	14225
St. Joseph Medical Center	2200 E. Washington Street	Bloomington	IL	61701
St. Joseph Medical Center	7601 Osler Drive	Towson	MD	21204
St. Joseph Medical Center	12th & Walnut Street	Reading	PA	19603
St. Joseph Medical Center	1401 St. Joseph Parkway	Houston	TX	77002
St. Joseph Mercy Hospital	5325 Elliot Drive	Ann Arbor	MI	48106
St. Joseph Reg. Medical Center	801 E. Lasalle Avenue	South Bend	IN	46617
St. Joseph Regional Medical Center	703 Main Street	Paterson	NJ	07503
St. Joseph's Healthcare	15855 Nineteen Mile Road	Clinton Township	MI	48038
St. Joseph's Hospital	11705 Mercy Boulevard	Savannah	GA	31419
St. Joseph's Medical Center	127 South Broadway	Yonkers	NY	10701
St. Josephs Medical Center of Stockton	1805 North California Street, Suite 303	Stockton	CA	95204
St. Josephs Mercy Health Center	300 Werner Drive	Hot Springs	AR	71913
St. Jude Medical Center	101 East Valencia Mesa	Fullerton	CA	92838
St. Luke Hospital East.	85 N. Grand Avenue	Ft. Thomas	KY	41075
St. Luke Hospital West	7380 Turfway Road	Florence	KY	41042
St. Luke's Baptist Hospital	7830 Floyd Curl Drive	San Antonio	TX	78229
St. Luke's Community Medical Center (The Woodlands).	17200 St. Luke's Way	The Woodlands	TX	77384
St. Luke's Episcopal Hospital	6720 Bertner Avenue	Houston	TX	77030
St. Lukes Hospital	5901 Monclova Road	Maumee	OH	43537
St. Luke's Hospital	915 E. First Street	Duluth	MN	55805
St. Lukes Hospital & Health Network	801 Ostrum Street	Bethlehem	PA	18088
St. Luke's Hospital-Mayo Clinic	4201 Belfort Road	Jacksonville	FL	32216
St. Lukes Medical Center	2900 West Oklahoma Avenue	Milwaukee	WI	53215–4330

Facility name	Address	City	State	Zip
St. Luke's Medical Center	1800 East Van Buren	Phoenix	AZ	85006
St. Luke's Methodist Hospital	1026 A Avenue, NE (PO Box 3026)	PO Box 3026	IA	52406–3026
St. Luke's-Roosevelt Hospital Center	1111 Amsterdam Avenue	New York	NY	10025
St. Marks Hospital/Northern Utah Healthcare Corp.	1200 East 3900 South	Salt Lake City	UT	84124
St. Mary Hospital	1201 Langhorne Newtown Road	Langhorne	PA	19047
St. Mary Medical Center	1050 Linden Avenue	Long Beach	CA	90813–3321
St. Mary Medical Center	1500 South Lake Park Avenue	Hobart	ID	46342
St. Mary of Nazareth Hospital Center	2233 W. Division	Chicago	IL	60622
St. Mary's Health Center	6420 Clayton Road	St. Louis	MO	63117
St. Mary's Hospital	1800 East Lake Shore Drive	Decatur	IL	62521
St. Mary's Hospital	707 S. Mills Street	Madison	WI	53715–1849
St. Mary's Medical Center	901 45th Street	West Palm Beach	FL	33407
St. Mary's Medical Center	407 East Third Street	Duluth	MN	55805
St. Mary's Medical Center	900 Oak Hill Avenue	Knoxville	TN	37917–4556
St. Mary's Regional Medical Ctr	PO Box 291 Campus Avenue	Lewiston	ME	04243–0291
St. Michael Hospital	WFH Clinical Data 5000 West Chambers, M229.	Milwaukee	WI	53210
St. Nicholas Hospital	3100 Superior Avenue	Sheboygan	WI	53081
St. Patrick Hospital and Health Sciences Center.	500 W. Broadway	Missoula	MT	59802
St. Rose Hospital	27200 Calaroga Avenue	Hayward	CA	94539
St. Tammany Parish Hospital	1202 S. Tyler Street	Covington	LA	70433
St. Vincent Charity Hospital	2351 E. 22nd Street	Cleveland	OH	44115
St. Vincent Healthcare	1233 N. 30th Street	Billings	MT	59101
St. Vincent Hospital				
St. Vincent Hospital	810 St. Vincents Drive	Birmingham	AL	35205
St. Vincent Hospital and Health Center	8333 Naab Road, Suite 330	Indianapolis	IN	46260
St. Vincent Medical Center	2131 W. 3rd Street	Los Angeles	CA	90703
St. Vincent's Medical Center	1800 Barrs Street	Jacksonville	FL	32204
Stacia Hansen	45 Reade Place	Poughkeepsie	NY	12601
Stanford Hospital and Clinics	Falk Building 2nd Floor, 300 Pasteur Drive	Stanford	CA	94305
Staten Island University Hospital	475 Seaview Avenue	Staten Island	NY	10305
Stony Brook University Center	Medical 3 Technology Drive	East Setauket	NY	11733–4073
Stormont-Vail Regional Medical Center	1500 SW 10th Avenue	Topeka	KS	66604
Straub Clinic & Hospital: Cath Lab	888 S. King Street—Makai, 2nd Floor #22	Honolulu	HI	96813
Stringfellow Memorial Hospital	301 East 18th Street	Anniston	AL	36202
Suburban Hospital	8600 Old Georgetown Road	Bethesda	MD	20814
Summerlin Hospital Medical Center	657 Town Center Drive	Las Vegas	WI	89144
Summit Medical Center	East Main & South 20th Street	Van Buren	AR	72956
Sun Coast Hospital	2025 Indian Rocks Road	Largo	FL	33774
Sunrise Hospital and Medical Center	3186 S. Maryland Parkway	Las Vegas	NV	89109
Sutter Delta Medical Center	3901 Lone Tree Way	Antioch	CA	94509
Sutter Medical Center—Sacramento	PO Box 160727	Sacramento	CA	95819
Sutter Medical Center of Santa Rosa	3325 Chanate Road	Santa Rosa	CA	95404
Swedish American Hospital	1401 E. State Street	Rockford	IL	61104
Swedish Covenant Hospital	5145 N. California Avenue	Chicago	IL	60625
Swedish Heatlh Services	747 Broadway	Seattle	WA	98122
Swedish Medical Center	501 East Hampden Avenue	Englewood	CO	80113
T. J. Samson Community Hospital	1301 North Race Street	Glasgow	KY	42141
Tacoma General Hospital (Multicare Health System).	315 Martin Luther King Jr. Way	Tacoma	WA	98415
Tahlequah City Hospital	1400 East Downing	Tahlequah	OK	74465
Tallahassee Memorial Hospital	1310 N. Magnolia Drive	Tallahassee	FL	32308
Tampa General Hospital	PO Box 1289	Tampa	FL	33601
Temple University Hospital	3401 North Broad Street	Philadelphia	PA	19140
Terre Haute Regional Hospital	3901 South 7th Street	Terre Haute	IN	47802
Terrebonne General Medical Center	8166 Main Street	Houma	LA	70360
Texoma Medical Center	1000 Memorial Drive	Denison	TX	75020
TexsAn Heart Hospital	6700 IH–10 West	San Antonio	TX	78201
The Christ Hospital	2139 Auburn Avenue	Cincinnati	OH	45219
The George Washington University Hospital	900 23rd Street, NW	Washington	DC	20037
The Heart Hospital of Northwest Texas	1501 S. Coulter Street	Amarillo	TX	79106
The Hospital at Westlake Medical Center	5656 Bee Caves Road, M–302	Austin	TX	78746
The Hospital of Central Connecticut	100 Grand Street, PO Box 100	New Britain	CT	06050
The Indiana Heart Hospital	8075 North Shadeland Avenue	Indianapolis	ID	46250
The Medical Center (TMC)	1000 Dutch Ridge Road	Beaver	PA	15009
The Medical Center Of Southeast	2555 Jimmy Johnson Boulevard	Port Arthur	TX	77640
The Methodist DeBakey Heart Center	6565 Fannin Street	Houston	TX	77030
The Monroe Clinic	515 22nd Avenue	Monroe	WI	53566
The Mount Sinai Hospital of Queens	25–11 30th Avenue	Long Island City	NY	11102
The Mount Sinai Medical Center	Mt Sinai Medical Center	New York	NY	10029
The Nebraska Medical Center	987551 Nebraska Medical Center	Omaha	NE	68198
The Outpatient Cath Lab—BRCC	7777 Hennessy Boulevard, Suite 2007	Baton Rouge	LA	70808

Facility name	Address	City	State	Zip
The Outpatient Cath Lab—LCA	7777 Hennessy Boulevard, Suite2007	Baton Rouge	LA	70808
The Reading Hospital and Medical Center	Sixth Avenue and Spruce Street West	Reading	PA	19611
The Toledo Hospital	2142 North Cove Boulevard	Toledo	OH	43606
The Valley Hospital	223 North Van Dien Avenue	Ridgewood	NJ	07450
The Village Regional hospital	1451 El Camino Real	The Villages	FL	32159
The Western Pennsylvania Hospital	4800 Friendship Avenue	Pittsburgh	PA	15224
The Wisconsin Heart Hospital	WFH Clinical Data, 5000 West Chambers Street, M 229.	Milwaukee	WI	53210
Thomas Jefferson University Hospital	111 South 11th Street	Philadelphia	PA	19107
Tift Regional Medical Center	PO Box 747	Tifton	GA	31794
Timpanogos Regional Hospital	750 W. 800 N	Orem	UT	84057
Tomball Regional Hospital	605 Holderrieth Street	Tomball	TX	77375
Torrance Memorial Medical Center	3330 Lomita Boulevard	Torrance	CA	90505
Touro Infirmary Medical Center	1401 Foucher Street	New Orleans	LA	70115
Tri-City Medical Center	4002 Vista Way	Oceanside	CA	92056
Trident Regional Medical Center	9330 Medical Plaza Drive	Charleston	SC	29406
Trinity Hospitals	PO Box 5020	Minot	ND	58702–5020
Trinity Medical Center	800 Montclair Road	Birmingham	AL	35213
Trinity Medical Center	2701 17th Street	Rock Island	IL	61201
Trinity Medical Center West	4000 Johnson Road	Steubenville	OH	43952
Trinity Regional Medical Center	802 Kenyon Road	Fort Dodge	IA	50501
Trinity Regional Medical Center	4602 3rd Street	Moline	IL	61265
Trover FoundationRegional Medical Center	900 Hospital Drive	Madisonville	KY	42431
Tucson Heart Hospital	4888 North Stone Avenue	Tucson	AZ	85704
Tucson Medical Center	5301 E. Grant Road	Tucson	AZ	85712
Tufts-New England Medical Center	750 Washington Street	Boston	MA	02111
Tulane University Hospital and Clinic	1415 Tulane Avenue, HC–63	New Orleans	LA	70112
Tulare District Hospital	869 Cherry Street	Tulare	CA	93274
Tuomey Healthcare SystemTuomey Regional Medical Center.	129 N. Washington Street	Sumter	SC	29150
Twelve Oaks Medical Center	4200 Twelve Oaks Drive	Houston	TX	77027
Twin Cities Community Hospital	1100 Las Tablas Road	Templeton	CA	93465
Twin Cities Hospital	2190 Highway	85 N Niceville	FL	32578
UC San Diego Medical Center	200 W. Arbor Drive	San Diego	CA	92103
UMASS Memorial Medical Center	55 Lake Ave North	Worcester	MA	01655–0002
Union Hospital	1606 N. 7th Street	TerreHaute	IN	47804
Union Memorial Hospital	201 E. University Parkway	Baltimore	MD	21218–2891
United Health Services Hospitals/Wilson Regional Medical Center.	33—57 Harrison Street	Johnson City	NY	13790
United Hospital	333 Smith Avenue,	North Minneapolis	MN	55102
United Hospital Center, Inc.	PO Box 1680	Clarksburg	WV	26302–1680
United Hospital System	6308 8th Avenue	Kenosha	WI	53143
United Regional Healthcare System	1600 11th Street	Wichita Falls	TX	76301
Unity Hospital	550 Osbourne Road NE	Minneapolis	MN	55432
Unity Hospital	1555 Long Pond Road	Rochester	NY	14626
University Community Hospital	7171 North Dalemabry	Tampa	FL	33614
University Hospital	620 19th Street South	Birmingham	AL	35249
University Hospital	1350 Walton Way	Augusta	GA	30901–2629
University Hospital	234 Goodman Street	Cincinnati	OH	45219
University Hospitals of Cleveland	11100 Euclid Avenue	Cleveland	OH	44106
University Hospital UMDNJ	150 Bergen Street	Newark	NJ	07101
University Medical Center	1501 N. Campbell Avenue	Tucson	AZ	85724
University Medical Center	1411 Baddour Parkway	Lebanon	TN	37087
University Medical Center	602 Indiana Avenue	Lubbock	TX	79410
University Medical Center of Las Vegas	1800 W. Charleston Boulevard	Las Vegas	NV	89102
University of Arkansas Medical Sciences Physician R.	4301 West Markham Street, Suite 532	Little Rock	AR	72205
University of California (UCLA)	10833 Le Conte Avenue	Los Angeles	CA	90095
University Of California Davis	2315 Stockton Boulevard, Main Hospital, Room 6312.	Sacramento	CA	95817
University of California San francisco Medical Cent.	513 Parnassus Avenue, Room S–1164–E	San Francisco	CA	94143–0047
University of Chicago Hospitals	5841 S. Maryland Avenue	Chicago	IL	60637
University of Colorado Hospital Authority	4200 East Ninth Street	Denver	CO	80262
University of CT Health Center/John Dempsey Hospital.	263 Farmington Avenue	Farmington	CT	06030
University of Florida (Shands) College of Medicine.	1600 SW Archer Road	Gainesville	FL	32610
University of Illinois Medical Center at Chicago	1740 W. Taylor Street, Building 949, Room 2181.	Chicago	IL	60610
University of Iowa Hospitals and Clinics	200 Hawkins Drive	Iowa City	IA	52242
University of Kentucky	800 Rose Street	Lexington	KY	40536
University of Maryland Medical Center Cardiology.	22 S. Greene Street	Baltimore	MD	21201–1544

Facility name	Address	City	State	Zip
University of Mississippi Medical Center	2500 N. State Street	Jackson	MS	39216
University of Missouri Hospital and Clinics	1 Hospital Drive	Columbia	MO	65212
University of North Carolina Hospitals	101 Manning Drive	Chapel Hill	NC	27514
University of Rochester Medical Center	601 Elmwood Avenue	Rochester	NY	4642
University of South Alabama Cardiology Dept.	2451 Fillingim Street	Mobile	AL	36617
University of Tennessee Medical Center	1924 Alcoa Highway	Knoxville	TN	37920–6999
University of Texas Medical Branchat Galveston.	301 University Boulevard	Galveston	TX	77555–0294
University of Texas Southwestern-University Hospital.	5323 Harry Hines Boulevard	Dallas	TX	75390–9013
University of Toledo Medical Center	3065 Arlington Avenue—DH2261	Toledo	OH	43614
University of Utah Hospital and Clinic Division of.	50 North Medical Drive	Salt Lake City	UT	84132
University of Virginia Medical Center	PO Box 800679	Charlottesville	VA	22908–0679
University of Washington Medical Center	1959 NE Pacific Street	Seattle	WA	98195–6422
University of Wisconsin Hospital & Clinics	600 Highland Avenue	Madison	WI	53792
UPMC Passavant Hospital	9100 Babcock Boulevard	Pittsburgh	PA	15237
UPMC Presbyterian Hospital	200 Lothrop Street	Pittsburgh	PA	15213
UPMC Shadyside Hospital	5230 Centre Avenue	Pittsburgh	PA	15232
Upstate Medical University(suny)	750 East Adams Street	Syracuse	NY	13120
USC University Hospital	1500 San Pablo Street	Los Angeles	CA	90033
Utah Valley Regional Medical Center	1034 North 500 West	Provo	UT	84604
Val Verde Regional Medical Center	3600 Washington Street	Hollywood	FL	33021
Val Verde Regional Medical Center	801 Bedell Avenue	Del Rio	TX	78840
Valley Baptist Medical Center	2101 Pease Street	Harlingen	TX	78550
Valley Baptist Medical Center-Brownsville	1040 W. Jefferson Street	Brownsville	TX	78540
Valley Care Medical Center	1111 East Stanley Boulevard	Livermore	CA	94550
Valley Hospital Medical Center	620 Shadow Lane	Las Vegas	NV	89106
Valley Medical Center	400 South 43rd Street	Renton	WA	98058
Valley Presbyterian Hospital	15107 Vanowen Street	Van Nuys	CA	91405
Valley Regional Medical Center	100 Unit A East Alton Gloor Boulevard	Brownsville	TX	78526
Vanderbilt University Accounts Payable Section.	VU Station B–351810	Nashville	TN	37235
Vaughan Regional Medical Center	1015 Medical Center Parkway	Selma	AL	36701
VCU-Medical College Of Virginia	PO Box 980036	Richmond	VA	23298
Venice Regional Medical Center	540 The Rialto	Venice	FL	34285
Via Christi Regional Medical St. Joseph	929 N. St Francis Street	Wichita	KS	67214
Via Christi Wichita Health Network	929 N. St. Francis Street	Wichita	KS	67214
Virginia Hospital Center	1701 N. George Mason Drive	Arlington	VA	22205–3698
Virginia Mason Medical Center	1100 Ninth Avenue—X3–CVL	Seattle	WA	98111
W.A. Foote Memorial Hospital	205 N. East Avenue	Jackson	MI	49201
Wadley Regional Medical Center	1000 Pine Street	Texarkana	TX	75501
WakeMed Cary Hospital	3128 Smoketree Boulevard	Raleigh	NC	27518
WakeMed Raleigh Campus	3000 New Bern Avenue	Raleigh	NC	27610
Walker Regional Medical Center	3400 Highway 78 E	Jasper	AL	35501
Washington Adventist Hospital	7600 Carroll Avenue	Takoma Park	MD	20912
Washington County Hospital Wroth Memorial Library.	251 East Antietam Street	Hagerstown	MD	21740
Washington Hospital	2000–Mowry Avenue	Fremont	CA	94538
Washington Hospital Center	110 Irving Street, NW Room 5A14	Washington	DC	20010
Washington Regional Medical Center	1125 N College Avenue	Fayetteville	AR	72703–1994
Waterbury Hospital	PO Box 2153	Waterbury	CT	06722
Watsonville Community Hospital	75 Nielson Street	Watsonville	CA	95076
Waukesha Memorial Hospital	725 American Avenue	Waukesha	WI	53188
Weiss Memorial Hospital	4646 N. Marine Drive	Chicago	IL	60640
Wellmont Holston Valley Medical Center	130 W. Ravine Street	Kingsport	TN	37664
Wellstar Cobb Hospital	531 Roselane Street	Marietta	GA	30060
Wesley Medical Center	550 N. Hillside Street	Wichita	KS	67214
Wesley Medical Center	5001 Hardy Street	Hattiesburg	MS	39402
West Boca Medical Center	21644 State Road 7	Boca Raton	FL	33428
West Florida Hospital	8383 N. Davis Highway	Pensacola	FL	32514
West Florida Hospital	8383 N. Davis Highway	Pensacola	FL	32514
West Hills Hospital	7300 Medical Center Drive	West Hills	CA	91307
West Houston Medical Center	12141 Richmond Avenue	Houston	TX	77082
West Jefferson Medical Center	1101 Medical Center Boulevard	Marrero	LA	70072
West Suburban Medical Center	3 Erie Court	Oak Park	IL	60302
West Texas Medical Center	25 Village Circle	Midland	TX	79701
West Virginia University Hospitals Inc	Box 8003—Medical Center Drive	Morgantown	WV	26506–8003
Westchester County Medical Center	Valhalla Campus	Walhalla	NY	10595
Western Arizona Reg Medical Center	2735 Silver Creek Road	Bullhead City	AZ	86442
Western Baptist Hospital	2501 Kentucky Avenue	Paducah	KY	42003
Western Medical Center Anaheim	1025 South Anaheim Boulevard	Anaheim	CA	92805
Western Medical Center Santa Ana	1001 North Tustin Avenue	Santa Ana	CA	92705
Western Plains Medical Center	3001 Avenue A	Dodge City	KS	67801

Facility name	Address	City	State	Zip
Westside Regional Medical Center	8201 West Broward Boulevard	Plantation	FL	33324
Wheaton Franciscan Healthcare—All Saints, Inc..	3801 Spring Street	Racine	WI	53405
Wheaton Franciscan Healthcare—St. Francis, Inc.	WFH Clinical Data, 5000 West Chambers Street, M229.	Milwaukee	WI	53210
Wheaton Franciscan Healthcare—St. Joseph, Inc..	WFH Clinical Data, 5000 West Chambers Street, M229.	Milwaukee	WI	53210
Wheeling Hospital	1 Medical Park	Wheeling	WV	26003
White County Medical Center	3214 E. Race Avenue	Searcy	AR	72143–4810
White Memorial Medical Center	1720 Cesar Chavez Avenue	Los Angeles	CA	90033
White River Medical Center	1710 Harrison Street	Batesville	AR	72501
William Beaumont Hospital	3601 West Thirteen Mile Road	Royal Oak	MI	48073
William Beaumont Hospital	44201 Dequindre Road	Troy	MI	48085
Willis-Knighton Medical Center	2600 Greenwood Road	Shreveport	LA	71103
Willis-Knighton Medical Center	2600 Greenwood Road	Shreveport	LA	71103
Wilson Memorial Hospital	915 West Michigan Street	Sidney	OH	45365
Wilson N. Jones Medical Center	500 N. Highland Avenue	Sherman	TX	75092
Winchester Medical Center, Inc.	1840 Amherst Street	Winchester	VA	22601
Winter Haven Hospital	20005 Avenue F Northeast	Winter Haven	FL	33881
Winthrop University Hospital	259 First Street	Mineola	NY	11501
Wishard Health Services Attn: A/P	1001 W. 10th Street	Indianapolis	IN	46202
Woman's Christian Assoc. Hospital	207 Foote Avenue	Jamestown	NY	14701
Woodland Heights Medical Center	505 S. John Redditt Drive	Lufkin	TX	75904
Wooster Community Hospital	1761 Beall Avenue	Wooster	OH	44691
Wuesthoff Health System	110 Longwood Avenue	Rockledge	FL	32956–5002
Wyckoff Heights Medical Center	374 Stockholm Street	Brooklyn	NY	11237
Wyoming Medical Center	1233 East 2nd Street	Casper	WY	82601–2988
Wyoming Valley Health Care System	575 North River Street	Wilkes-Barre	PA	18764
Yakima Regional Medical Center/Cardiac Center.	110 South Ninth Avenue	Yakima	WA	98902
Yakima Valley Memorial Hospital	2811 Tieton Drive	Yakima	WA	98902
Yale New Haven Hospital	20 York Street	New Haven	CT	65104
Yavapai Regional Medical Center	1003 Willow Creek Road	Prescott	AZ	86301
York Hospital	15 Hospital Drive	York	ME	03909
York Hospital	1001 South George Street	York	PA	17405
Yuma Regional Medical Center	2400 S. Avenue A	Yuma	AZ	85364

Addendum X—Active CMS Coverage-Related Guidance Documents

[October Through December 2006]

On September 24, 2004, we published a notice in the **Federal Register** (69 FR 57325), in which we explained how we would develop coverage-related guidance documents. These guidance documents are required under section 731 of the MMA. In our notice, we committed to the public that, ''At regular intervals, we will update a list of all guidance documents in the **Federal Register**.''

Addendum X includes a list of active CMS guidance documents as of the ending date of the period covered by this notice. To obtain full-text copies of these documents, visit the CMS Coverage Web site at *http://www.cms.hhs.gov/mcd/index_list.asp?list_type=mcd_1*.

Document Name: Factors CMS Considers in Commissioning External Technology Assessments.

Date of Issuance: April 11, 2006.

Document Name: Factors CMS Considers in Opening a National Coverage Determination.

Date of Issuance: April 11, 2006.

Document Name: (Draft) Factors CMS Considers in Referring Topics to the Medicare Coverage Advisory Committee.

Date of Issuance: March 9, 2005.

Document Name: National Coverage Determinations with Data Collection as a Condition of Coverage: Coverage With Evidence Development.

Date of Issuance: July 12, 2006.

Addendum XI—List of Special One-Time Notices Regarding National Coverage Provisions

[October Through December 2006]

As medical technologies, the contexts under which they are delivered, and the health needs of Medicare beneficiaries grow increasingly complex, our national coverage determination (NCD) process must adapt to accommodate these complexities. As part of this adaptation, our national coverage decisions often include multi-faceted coverage determinations, which may place conditions on the patient populations eligible for coverage of a particular item or service, the providers who deliver a particular service, or the methods in which data are collected to supplement the delivery of the item or service (such as participation in a clinical trial).

We outline these conditions as we release new or revised NCDs. However, details surrounding these conditions may need to be shared with the public as ''one-time notices'' in the **Federal Register**. For example, we may require that a particular medical service may be delivered only in the context of a CMS-recognized clinical research study, which was not named in the NCD itself. We would then use Addendum XI of this notice, along with our coverage Web site at *http://www.cms.hhs.gov/coverage*, to provide the public with information about the clinical research study that it ultimately recognizes.

Addendum XI includes any additional information we may need to share about the conditions under which an NCD was issued as of the ending date of the period covered by this notice.

There were no Special One-Time Notices Regarding National Coverage Provisions published this quarter.

Addendum XII—National Oncologic PET Registry (NOPR)

In January 2005, we issued our decision memorandum on positron emission tomography (PET) scans,

which stated that CMS would cover PET scans for particular oncologic indications, as long as they were performed in the context of a clinical study. We have since recognized the National Oncologic PET Registry as one of these clinical studies. Therefore, in order for a beneficiary to receive a Medicare-covered PET scan, the beneficiary must receive the scan in a facility that participates in the Registry. The following facilities have met the CMS's requirements for performing PET scans under National Coverage Determination CAG–00181N.

Facility name	Provider No.	Date approved	State	Other
Barnes–Jewish Hospital, Barnes–Jewish Plaza/Mailstop #90–72–374, St. Louis, MO 63110.	o	03/07/2006	MO.	
Duke University Medical Center PET Facility, Room 0402 Duke So., Durham, NC 27710.	34003	03/07/2006	NC ..	Yellow Zone Box 3949.
VCU Health System—Molecular Imaging Center, Dept of Nuclear Medicine—North Hospital 7th Floor, Richmond, VA 23298.	490032	03/07/2006	VA ...	1300 East Marshall, PO Box 980001.
Acadiana Oncologic Imaging, 2311 Kaliste Saloom, Lafayette, LA 70508.	5CA64	03/06/2006	LA.	
Adler Institute for Advanced Imaging, 261 Old York Road, Suite 106, Jenkintown, PA 19046.		03/07/2006	PA.	
Advanced Medical Imaging San Saba, 215 N San Saba, Suite 107, San Antonio, TX 78207.	00BC90	03/07/2006	TX.	
Advanced Medical Imaging Stone Oak, 540 Oak Centre, Suite 100, San Antonio, TX 78258.	00BC90	03/07/2006	TX.	
Advanced Radiological PET Imaging, PC, 2334 30th Avenue, Astoria, NY 11102.	05677	03/07/2006	NY.	
Akron Regional PET Scan, LLC, 3009 Smith Road, Suite 350, Akron, OH 44333.	AKID01691	03/07/2006	OH.	
American Radiology Services—Owings Mills, 21 Crossroads Drive, Suite 100, Owings Mills, MD 21117.	434L	03/07/2006	MD.	
American Radiology Services—Bethesda, 6430 Rockledge Drive, Suite 100, Bethesda, MD 20817.	G00000	03/07/2006	MD.	
American Radiology Services—Waldorf, 3510 Old Washington Road, Suite 101, Waldorf, MD 20602.	435L	03/07/2006	MD.	
American Radiology Services—Columbia, MD, 8820 Columbia Parkway 100, Columbia, MD 21045.	434L	03/07/2006	MD.	
American Radiology Services—Frederick, MD, 141 Thomas Johnson Drive, Suite 170, Frederick, MD 21702.	435L	03/07/2006	MD.	
American Radiology Services—Timonium, 2080 York Road, Suite 160, Timonium, MD 21093.	434L	03/07/2006	MD.	
Angel Williamson Imaging Center—Ft. Walton Beach, 1013–D Mar-Walt Drive, Ft. Walton Beach, FL 32547.	39953A	03/07/2006	FL.	
Angel Williamson Imaging Center—Pensacola, 5120 Bayou Boulevard, Suite 9, Pensacola, FL 32503.	39953	03/07/2006	FL.	
Edison Imaging Center, 3900 Park Avenue, Suite 107, Edison, NJ 08820.	AS008835	03/07/2006	NJ.	
Avon Medical Diagnostic Center, 1480 Center Road, Suite C, Avon, OH 44011.	MC4039571	03/07/2006	OH.	
Baltimore Imaging Centers, 3708 Mountain Road, Pasadena, MD 21122.	H476	03/07/2006	MD.	
Baptist Hospital PET/CT, 1000 West Moreno Street, Pensacola, FL 32501.	100093	03/07/2006	FL.	
Bethesda Health City, 2623 S Seacrest Boulevard, Boynton Beach, FL 33435.	40237	03/07/2006	FL.	
PET/CT Imaging at White Marsh, 9900 Franklin Square Drive, Suite D, Nottingham, MD 21236.	FMNX01	03/07/2006	MD.	
Biomedical Research Foundation PET Imaging Ctr., 1505 Kings Highway, Shreveport, LA 71103.	5D914	03/07/2006	LA.	
BodyScan of Louisville LLC, 807 Shelbyville Road, Suite 201, Louisville, KY 40222.	9372701	03/07/2006	KY.	
Bradley Regional PET Imaging, Cleveland, TN 37311,	3373976	03/07/2006	TN ...	2305 Chambliss Avenue, NW.
PET Imaging Institute of NJ, 1608 Rte 88 West, Street 302, Brick, NJ 08724.	070684	03/07/2006	NJ.	
Broward PET Imaging Center, LLC, 4850 W. Oakland Park Boulevard, Suite A, Fort Lauderdale, FL 33313.	E5709	03/07/2006	FL.	
Camelback Imaging, 15215 S 48th Street, #110, Phoenix, AZ 85044.	100488	03/07/2006	AZ.	
California Imaging and Treatment Center, 3000 Oak Road, #111, Walnut Creek, CA 95497.	ZZZ27175Z	03/07/2006	CA.	
Cancer Care Centers of Brevard, 1430 S Pine Street, Melbourne, FL 32901.	39835	03/07/2006	FL.	
Center for Medical Imaging—Florida Hospital, 1922 Salk Avenue, Tavares, FL 32778.	100057	03/07/2006	FL.	
Cancer Center of Colorado Springs, 320 E Fontanero, Suite 200, Colorado Springs, CO 80907.	79804	03/07/2006	CO.	
Centro Sononuclear de Rio Piedras, 1028 Los Angeles Street, San Juan, PR 00926.	83910	03/07/2006	PR.	

Facility name	Provider No.	Date approved	State	Other
Chattanooga Imaging East, 1710 Gunbarrel Road, Chattanooga, TN 37421.	3716643	03/07/2006	TN.	
Chester County PET Associates, 701 East Chester Marshall Street, West Chester, PA 19380.	085698	03/07/2006	PA.	
Cincinnati PET Scan, LLC—Kenwood, 7730 Montgomery Road, Suite 120, Cincinnati, OH 45236.	311754291	03/07/2006	OH.	
Cincinnati PET Scan, LLC—Monfort Heights, 5575 Cheviot Road, Cincinnati, OH 45247.	311754291	03/07/2006	OH.	
Clinical PET of Hernando, 4003 Mariner Boulevard, Spring Hill, FL 34609.	L13228	03/07/2006	FL.	
Clinical PET of Citrus, 6140 W Corporate Oaks Drive, Crystal River, FL 34429.	U0121	03/07/2006	FL.	
Clinical PET of Lake City, 484 SW Commerce Drive, Suite 145, Lake City, FL 32025.	V2683	03/07/2006	FL.	
Clinical PET of Ocala, 3143 SW 32nd Avenue, Suite 100, Ocala, FL 34474.	E7179	03/07/2006	FL.	
Columbus Regional Hospital, 2400 East 17th Street, Columbus, IN 47201.	150112	03/07/2006	IN.	
Concord Imaging, 18802 Meisner Drive, San Antonio, TX 78258.	00126Z	03/07/2006	TX.	
Dartmouth Hitchcock Medical Center, One Medical Center Drive, Lebanon, NH 03756.	03/07/2006	.....	NH.	
Dedicated PET Imaging, 2315 Sunset Boulevard, Suite E, Steubenville, OH 43952.	01181	03/07/2006	OH.	
Diablo Valley Oncology & Hematology Med. Group, 3000 Oak Road, #111, Walnut Creek, CA 94597.	ZZZ26796Z	03/07/2006	CA.	
Diagnostic Imaging at Baywalk, 129 1st Avenue N, St. Petersburg, FL 33701.	00022	03/07/2006	FL.	
DMS Imaging, 2101 N University Drive, Fargo, ND 58109	.....	03/07/2006	ND ..	PO Box 8070.
Doylestown PET Associates, 599 W. State Street, Doylestown PA 18901.	059536	03/07/2006	PA ...	Suite 202.
East Bay Medical Oncology-Hematology Assoc. Inc., 3000 Oak Road, #111, Walnut Creek, CA 94597.	ZZZ267792	03/07/2006	CA.	
East River Medical Imaging, 519 East 72 Street, Suite 103, New York, NY 10021.	W11781	03/07/2006	NY.	
El Camino Imaging Center, 8020 Constitution Place NE, Albequerque, NM 87110.	237150	03/07/2006	NM.	
Elite Imaging LLC, 2845 Aventura Boulevard, Suite 145, Aventura, FL 33180.	K3535	03/07/2006	FL.	
EPIC Imaging Center, 233 NE 102 Avenue, Portland, OR 97220	0000WCGNQ ...	03/07/2006	OR.	
Evergreen Radia, 11521 NE 128th Street, Kirkland, WA 98034	GAB39931	03/07/2006	WA.	
Excel Diagnostics Imaging Clinics, 9701 Richmond Avenue, Suite 122, Houston, TX 77042.	FTA109	03/07/2006	TX.	
First Imaging of the Carolinas, 30 Memorial Drive, Pinehurst, NC 29374.	2346997	03/07/2006	NC.	
Florida Hospital Advanced Nuclear Imaging PET, 328 Spruce Street, Orlando, FL 32804.	100007	03/07/2006	FL.	
Fort Jesse Imaging Center LLC, 2200 Fort Jesse Road, Suite 120, Normal, IL 61761.	209824	03/07/2006	IL.	
Fox Chase Cancer Center, 333 Cotman Avenue, Philadelphia, PA 19111.	390196	03/07/2006	PA.	
Frederick Imaging Centers, 46B Thomas Johnson Drive, Frederick, MD 21702.	H476	03/07/2006	MD.	
Fusion Diagnostic Group, LLC, 1700 California Street, Suite 260, San Francisco, CA 94109.	00G366470	03/07/2006	CA.	
Fusion Imaging Institute, 2419 E. Commercial Boulevard, Suite 101, Ft. Lauderdale, FL 33308.	18281	03/07/2006	FL.	
Future Diagnostics Group, 254 N. Republic, Joliet, IL 60435	200825	03/07/2006	IL.	
Greater Niagra PET, LLC, 1 Columbia Drive, Suite 3, Niagra Falls, NY 14305.	BA0213	03/07/2006	NY ...	Witmer Park Medical Center.
Hematology Oncology Associates of Baton Rouge, 4950 Essen Lane, Baton Rouge, LA 70809.	5C696	03/07/2006	LA.	
Gulf Coast Cancer & Diagnostic of Southeast, 12811 Beamer, Houston, TX 77089.	149949301	03/07/2006	TX.	
Henry Ford, Department of Radiology, 2799 W Grand Boulevard, Detroit, MI 48202.	230053	03/07/2006	MI.	
High Point Regional Health System, 601 N Elm Street, High Point, NC 27262.	3400040	03/07/2006	NC.	
Highlands Oncology Group, 3232 N. North Hills Boulevard, Fayetteville, AR 27203.	5B823	03/07/2006	AR.	
Holy Name Hospital, 718 Teaneck Road, Teaneck, NJ 07666	310008	03/07/2006	NJ ...	PET/CT Center.
Holy Family Memorial Medical Center, PO Box 1450, Manitowoc, WI 54221.	520107	03/07/2006	WI ...	2300 Western Avenue.
Hospital of Saint Raphael, 1450 Chapel Street, New Haven, CT 05611.	070001	03/07/2006	CT.	

Facility name	Provider No.	Date approved	State	Other
San Patricio MRI & CT Center, 1508 Roosevelt Avenue, Suite 103, San Juan, PR 00920.	84997	03/07/2006	PR.	
Imaging Center of Hartford Hospital, 80 Seymour Street, PO Box 5037, Hartford, CT 06102.	070025	03/07/2006	CT.	
Indian Wells PET/CT Center, 74785 Highway 111, #101, Indian Wells, CA 92210.	1264523891	03/07/2006	CA.	
Imaging Technology Associates, 3800 Reservoir Road NW, Washington, DC 20007.	FDNCX1	03/07/2006	DC ..	Gorman 2043, PET Scan.
San Francisco Magnetic Resonance Ctr., 1180 Post Street, San Francisco, CA 94109.	ZZZ27498Z	03/07/2006	CA.	
Intermountain Medical Imaging, 2929 E. Magic View Drive, Meridian, ID 83642.	82–05144–22 ...	03/07/2006	ID.	
Jefferson Center City Imaging, 850 Walnut Street, Philadelphia, PA 19107.	66277	03/07/2006	PA.	
Kansas City Cancer Center—Kansas, 12200 W 110th Street, Overland Park, KS 66210.	5650000D	03/07/2006	KS.	
Kansas City Cancer Center—Missouri, 4881 Goodview Circle, Lee's Summit, MO 66064.	5650000E	03/07/2006	MO.	
LakePointe PET, 10914 Hefner Pointe Drive. Suite. 100, Oklahoma City, OK 73120.	700522143	03/07/2006	OK.	
Kreitchman PET Center, 180 Ft Washington Avenue, HP3–315, New York, NY 10032.	WEM661	03/07/2006	NY.	
Lakeshore PET Imaging, LLC, 4932 W 95th Street, Oak Lawn, IL 60453.	200108	03/07/2006	IL.	
Larchmont Imaging Associates, LLC, 210 Ark Road, Mt. Laurel, NJ 8054.	517216	03/07/2006	NJ.	
Las Cruces PET/CT Imaging, 1121 Mall Drive, Suite D, Las Cruces, NM 88011.	300521065	03/07/2006	NM.	
Lehigh Valley Diagnostic Imaging Pet/CT, 1230 S. Cedar Crest Boulevard, Suite 104, Allentown, PA 18103.	563802	03/07/2006	PA.	
LifeScan Louisville, LLC, 4046 Dutchmans Lane, Louisville, KY 40207.	9365601	03/07/2006	KY.	
Limerick PET Associates, 420 W. Linfield-Trappe Road, Limerick, PA 19468.	075015	03/07/2006	PA ...	Suite 3400, Third Floor Rear.
LifeScan Minnesota, 6525 France Avenue S, Suite 225, Edina, MN 55435.	470000014	03/07/2006	MN.	
Louisiana PET Imaging of Alexandra, LLC, 5419 A Jackson Street Ext, Alexandria, LA 71303.	5C743	03/07/2006	LA.	
LMR PET, 12600 Creekside Lane, Ft. Meyers, FL 33919	E5725	03/07/2006	FL.	
Louisiana PET Imaging of Lake Charles, LLC, 1750 Ryan Street, Lake Charles, LA 70601.	5C905	03/07/2006	LA.	
Insight Diagnostic Center—Forest Lane, 11617 N Central Expressway, #132, Dallas, TX 75243.	FTA016	03/07/2006	TX.	
MDI of Thousand Oaks, 300 Lombard Street, Thousand Oaks, CA 91360.	W14186	03/07/2006	CA.	
Meadowbrook PET Associates, 1695 Huntington Pike, Meadowbrook, PA 19046.	064866	03/08/2006	PA.	
Medical Imaging of Baltimore, 6715 N Charles Street, Baltimore, MD 21204.	258L	03/08/2006	MD.	
Metabolic Imaging of Laredo, 2344 Laguna Del Mar, Suite 5 & 6, Laredo, TX 78045.	FTN029	03/08/2006	TX.	
Methodist Hospital PET Imaging Center, 301 W Huntington Drive, Suite 120, Arcadia, CA 91007.	9511643336	03/08/2006	CA.	
Metro Region PET Center at Chevy Chase, 5454 Wisconsin Avenue, Suite 810, Chevy Chase, MD 20815.	724811	03/08/2006	MD.	
Clinical PET of St. Charles County, 1475 Kisker Road, St. Charles, MO 63304.	000047047	03/08/2006	MO.	
Metro Region PET Ctr. at Woodburn Nuclear Med., 3289 Woodburn Road, Annandale, VA 22003.	724811	03/08/2006	VA.	
Michiana Hematology—Oncology, PC, 100 Navarre Place, Suite 5550, South Bend, IN 46601.	216950	03/08/2006	IN.	
Michigan State University—Radiology, 184 Radiology Building, East Lansing, MI 48824.	OC36350	03/08/2006	MI.	
Clinical PET. of West County, 450 N New Ballas Road, Creve Coeur, MO 63141.	000093043	03/08/2006	MO.	
Modality Integration Services, Inc, 1854 SW Greenway Circle, West Linn, OR 97068.	.....	03/08/2006	OR.	
Molecular Imaging Center, 1733 Curie, Suite 305, El Paso, TX 79912.	00315U	03/08/2006	TX.	
Molecular Imaging of Suburban Chicago, LLC, 908 N. Elm Street, Suite 110, Hinsdale, IL 60521.	212300	03/08/2006	IL.	
Montclair Road Imaging LLC, 924 Montclair Road, Suite 108, Birmingham, AL 35213.	000056277	03/08/2006	AL.	

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Montefiore Medical Center, 1695A Eastchester Road, Bronx, NY 10461.	W06552	03/08/2006	NY.	
Neurodiagnostics, PSC, 1725 Harrodsburg Road, Suite 100, Lexington, KY 40504.	0406	03/08/2006	KY.	
New Century Imaging, 555 Kinderkamack Road, Oradel, NJ 07649.	085146	03/08/2006	NJ.	
Newport Diagnostic Center, 1605 Avocado Avenue, Newport Beach, CA 92660.	W13396	03/08/2006	CA.	
Next Generation Radiology PET/CT, 560 Northern Boulevard, Suite 111, Great Neck, NY 11021.	WR6091	03/08/2006	NY.	
North Valley MRI and CT, 1638 Esplanade, Chico, CA 95926	ZZZ247802	03/08/2006	CA.	
Northwest Alabama Cancer Ctr. Rad. Services, 302 W. Dr. Hicks Boulevard, Florence, AL 35630.	051552219	03/08/2006	AL.	
Northern Kentucky PET Scan, LLC, 651 Centre View Boulevard, Crestview Hills, KY 41017.	311754291	03/08/2006	KY.	
Northwest Cancer Center, 17323 Red Oak Drive, Houston, TX 77090.	00D29C	03/08/2006	TX.	
Northwestern Memorial Hospital, 251 East Huron, Chicago, IL 60611.	140281	03/08/2006	IL	Galter 8–113.
Northern Shared Medical Services—Atlantic, IA, 1501 East Tenth Street, Atlantic, IA 50022.	I16068	03/08/2006	IA	Cass County Memorial Hospital.
Northern Shared Medical Services—Audubon, IA, 515 Pacific Street, Audubon, Iowa 50025.	I16068	03/08/2006	IA	Audubon County Memorial Hospital.
Northern Shared Medical Services—Beloit, KS, 400 West Eighth, Beloit, KS 67420.	130618	03/10/2006	KS	Mitchell County Hospital.
Northern Shared Medical Services—Bloomfield, IA, 507 North Madison Street, Bloomfield, IA 52537.	I16068	03/10/2006	KS	Davis County Hospital.
Northern Shared Medical Services—Carrollton, MO, 1502 North Jefferson, Carrollton, MO 64633.	000047013	03/10/2006	MO	Carroll County Memorial Hospital.
Northern Shared Medical Services—Centerville, IA, 1st St Joseph Drive, Centerville, IA 52544.	I16068	03/10/2006	IA	Mercy Medical Center.
Northern Shared Medical Services—Carthage, IL, 160 S. Adams Street, Carthage, IL 62321.	208196	03/10/2006	IL	Memorial Hospital.
Northern Shared Medical Services—Clarinda, IA, 823 S. 17th Street, Clarinda, IA 51632.	I16068	03/10/2006	IA	Clarinda Regional Health Center.
Northern Shared Medical Services—Chanute, KS, 629 South Plummer, Chanute, KS 66720.	130618	03/10/2006	KS	Neosho Memorial Regional Medical Center.
Northern Shared Medical Services—Edwardsville, IL, 1121 University Drive, Edwardsville, IL 62025.	208196	03/10/2006	IL	Edwardsville Health Center.
Northern Shared Medical Services—El Dorado, AR, 700 West Grove Street, El Dorado, AR 71730.	5F168	03/10/2006	AR	Medical Center of South Arkansas.
Northern Shared Medical Services—Farmington, MO, 1212 Weber Road, Farmington, MO 63640.	000047013	03/10/2006	MO	Mineral Area Regional Medical Center.
Northern Shared Medical Services—Janesville, WI, 1321 Creston Park Drive, Janesville, WI 53545.	000092420	03/10/2006	WI	Janesville Occupational Health and Medicine.
Northern Shared Medical Services—Hiawatha, KS, 300 Utah Street, Hiawatha, KS 66434.	130618	03/10/2006	KS	Hiawatha Community Hospital.
Northern Shared Medical Services—Keokuk, IA, 1600 Morgan Street, Keokuk, IA 52632.	I16068	03/10/2006	IA	Keokuk Area Hospital.
Northern Shared Medical Services—Macomb, IL, 525 East Grant Street, Macomb, IL 61455.	208196	03/10/2006	IL	McDonough District Hospital.
Northern Shared Medical Services—Mexico, MO, 620 East Monroe Street, Mexico, MO 65265.	000047013	03/10/2006	MO	Audrain Medical Center.
Northern Shared Medical Services—Moberly, MO, 1515 Union Avenue, Moberly, MO 65270.	000047013	03/10/2006	MO	Moberly Regional Medical Center.
Northern Shared Medical Services—Mountain Home, AR, 899 Burnett Drive, Mountain Home, AR 72653.	5F168	03/10/2006	AR	Cogburn Cancer Clinic.
Northern Shared Medical Services—Poplar Bluff, MO, 221 Physicians Park Drive, Poplar Bluff, MO 63901.	000047013	03/10/2006	MO	Poplar Bluff Medical Partners.
Northern Shared Medical Services—Perryville, MO, 434 North West Street, Perryville, MO 63775.	000047013	03/10/2006	MO	Perry County Memorial Hospital.
Northern Shared Medical Services—Rolla, MO, 1000 West Tenth Street, Rolla, MO 65401.	000047013	03/10/2006	MO	Phelps County Regional Medical Center.
Northern Shared Medical Services—Virginia, MN, 901 Ninth Street North, Virginia, MN 55792.	470000057	03/10/2006	MN	Virginia Regional Medical Center.
Northern Shared Medical Services—Russellville, AR, 2504 West Main Street, Russellville, AR 72801.	5F168	03/10/2006	AR	Russellville Land Co.
Northern Shared Medical Services—West Plains, MO, 1100 Kentucky Avenue, West Plains, MO 65775.	000047013	03/10/2006	MO	Ozarks Medical Center.
Oakwood Hospital Medical Center, 18101 Oakwood Boulevard, Dearborn, MI 48124.	230020	03/10/2006	MI.	
Oakwood Southshore Medical Center, 5450 Fort Street, Trenton, MI 48183.	230176	03/10/2006	MI.	

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Ocean Medical Imaging Center, 21 Stockton Drive, Toms River, NJ 08755.	158432	03/10/2006	NJ.	
Orange County Regional PET Center, LLC, 16300 Sand Canyon Avenue, Suite 103, Irvine, CA 92618.	TP018	03/10/2006	CA.	
Orange Advanced Imaging Center, 230 Main Street, #101, Orange, CA 92868	TP016A	03/10/2006	CA.	
Pacific Coast Imaging—Irvine, 250 E Yale Loop, Suite A, Irvine, CA 92604.	WG87478B	03/10/2006	CA.	
Pacific Coast Imaging—Newport, 3300 West Coast Highway, Newport Beach, CA 92663.	WG87478	03/10/2006	CA.	
Pacific Imaging and Treatment Center, 5395 Ruffin Road, Suite 202, San Diego, CA 92123.	TP126	03/10/2006	CA.	
Palm Beach Cancer Institute, 1395 State Road 7, Suite 310, Wellington, FL 33414.	34754	03/10/2006	FL.	
Pennsylvania PET Associates, 800 Spruce Street, Philadelphia, PA 19107.	066282	03/10/2006	PA ...	Second Floor Widener Building.
PET Center of Western NY, 127 North Street, Batavia, NY 14020	187140	03/10/2006	NY.	
Pet Imaging at CDR, 7600 N 15th Street, Suite 102, Phoenix, AZ 85020.	WCFDG	03/10/2006	AZ.	
PET Imaging at the Lake, 5000 Hennessy Boulevard, Baton Rouge, LA 70809.	5C868	03/10/2006	LA.	
PET Imaging Center at Harford County, 602 S Atwood Road, Suite 201, Bel Air, MD 21014.	FMN006	03/10/2006	MD.	
PET Imaging Institute of South Florida—East, 1150 N 35th Avenue, 665, Hollywood, FL 33021.	E3783	03/10/2006	FL.	
PET Imaging Institute of South Florida—West, 603 N Flamingo Road, S–155, Pembroke Pines, FL 33028.	E3783	03/10/2006	FL.	
PET Scan Arizona—Peoria, 13460 N 94th Drive, Suite J1, Peoria, AZ 85381.	75400	03/10/2006	AZ.	
PET Scan Arizona—Phoenix, 6036 N 19th Avenue, Suite 305, Phoenix, AZ 85015.	66860	03/10/2006	AZ.	
PET/CT Diagnostic Medical Imaging, PC, 1200 Waters Place, Suite M108, Bronx, NY 10461.	W31091	03/10/2006	NY.	
Precision Imaging, 4416 East West Highway, Suite 410, Bethesda, MD 20814.	FMN005	03/10/2006	MD.	
Preferred PET Imaging of Kansas, LLC, 928 N St. Francis, Wichita, KS 67214.	110693	03/10/2006	KS.	
Premium Diagnostics Center, 5319 Hoag Drive, Suite 130, Elyria, OH 44035.	ID01851	03/10/2006	OH.	
PET Center Ft. Worth, 800 W. Magnolia Avenue, Fort Worth, TX 76104.	0J062	03/10/2006	TX ...	Suite 100.
Radiology Associates, LLP, 6001 S. Staples, Corpus Christi, TX 78413.	00E816	03/10/2006	TX.	
S. Arlington Imaging Center, 4601 Matlock Road, Arlington, TX 76018.	0J062	03/10/2006	TX.	
Radiology Group Imaging Center, LLC, 1970 E 53rd Street, Davenport, IA 52807.	16031	03/10/2006	IA.	
PET/CT Scan Center Pembroke, 11325 Pembroke Square, Suite 116, Waldorf, MD 20603.	521454775	03/10/2006	MD.	
New York MedScan, 751 Second Avenue, New York, NY 10017	978701	03/10/2006	NY.	
Rex Healthcare, 4420 Lake Boone Trail, Raleigh, NC 27607	340114	03/10/2006	NC.	
San Fernando Regional PET Center, 6855 Noble Avenue, Van Nuys, CA 91405.	TP078	03/10/2006	CA.	
PET/CT Imaging Center of Northwest Florida, 5149 North 9th Avenue, Suite 124, Pensacola, FL 32504.	U4696	03/10/2006	FL.	
Saint Joseph's Hospital—Nuclear Medicine, 611 St. Joseph Avenue, Marshfield, WI 54449.	520037	03/10/2006	WI.	
Shared PET Imaging, LLC—Brooklyn NY, 6300 Eight Avenue, Brooklyn, NY 11220.	97Z661	03/10/2006	NY.	
SC Cancer Specialists, 25 Hospital Center Boulevard #301, Hilton Head Island, SC 29926.	1285633289	03/10/2006	SC.	
Shared PET Imaging, LLC—Granger IN, 6901 N Main Street, Granger, IN 46530.	232800	03/10/2006	IN.	
University Hospital—Cincinnati, Eden Ave & Albert Sabin Way, Cincinnati, OH 45219.	.....	03/10/2006	OH.	
Shared PET Imaging, LLC—Marion OH, 1050 Delaware Avenue, Marion, OH 43302.	ID01511	03/10/2006	OH.	
Shared PET Imaging, LLC—Terre Haute IN, 3702 South Fourth Street, Terre Haute, IN 47802.	201320	03/10/2006	IN.	
South Jersey Radiology Associates, PA, 100 Carnie Boulevard, Suite B5, Voorhees, NJ 08043.	S0429966	03/10/2006	NJ.	
Southwest PET/CT Institute—Tucson, 3503 N. Campbell, Suite 155, Tucson, AZ 85719.	1396736922	03/10/2006	AZ.	

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Southwest PET/CT Institute—Yuma, 1951 W. 25th Street, Suite G, Yuma, AZ 85364.	106077	03/10/2006	AZ.	
St. Francis Health Center, 1700 SW 7th Street, Topeka, KS 66606.	17–0016	03/10/2006	KS.	
Southwoods PET Scan LLC, 250 Debartolo Place, Building B, Youngstown, OH 44512.	PCN05210036	03/10/2006	OH.	
St. Louis PET Centers, LLC, 12637 Olive Boulevard, Creve Coeur, MO 63376.	1861470734	03/10/2006	MO.	
St. Vincent's PET Center, LLC, 2660 10th Avenue S, POBI Suite 104, Birmingham, AL 35205.	051555054	03/10/2006	AL.	
Sun Molecular Imaging—Peoria, 13090 N 94th Drive, #103, Peoria, AZ 85381.	71585	03/10/2006	AZ.	
Sun Molecular Imaging—Sun City West, 13909 W Camino Del Sol, #101, Sun City West, AZ 85375.	71585	03/10/2006	AZ.	
Tarzana Advanced Imaging, 5536 Reseda Boulevard, Tarzana, CA 91356.	TP051A	03/10/2006	CA.	
The Methodist Hospital PET Center, 6565 Fannin Street, MBI—066, Houston, TX 77030.	450358	03/10/2006	TX.	
Texarkana PET Imaging Institute, LP, 1929 Moores Lane, Texarkana, TX 75503.	FTN008	03/10/2006	TX.	
The PET/CT Center of North Florida, 5742 Booth Road, Jacksonville, FL 32207.	K7038P	03/10/2006	FL.	
The Washington Hospital, 155 Wilson Ave, Washington, PA 15301.	390042	03/10/2006	PA.	
The PET/CT Scanning Center, 235 18th Street, SE, Hickory, NC 28602.	2881788	03/10/2006	NC.	
Thompson Cancer Survival Ctr. PET Imaging Center, 9711 Sherrill Boulevard, Knoxville, TN 37923.	3791106	03/10/2006	TN.	
Thunderbird MRI and PET Center, 6591 W. Thunderbird Road, Suite A–1, Glendale, AZ 85306.	79467	03/10/2006	AZ.	
Tower Imaging Roxsan, 465 N Roxbury Drive, Suite 101, Beverly Hills, CA 90210.	TP114	03/10/2006	CA.	
Tower Hematology Oncology Medical Group, 9090 Wilshire Boulevard, Suite 200, Beverly Hills, CA 90211.	W11793	03/10/2006	CA.	
TRA Medical Imaging, 2202 S Cedar, Suite 200, Tacoma, WA 98405.	001055600	03/10/2006	WA.	
Trident PET of Fayette, 1275 Highway 54 West, Suite 102, Fayetteville, GA 30214.	47BBBJJ	03/10/2006	GA.	
Trident PET of Gwinnett, 545 Old Norcross Road, Lawrenceville, GA 30045.	47BBBGX	03/10/2006	GA ..	Suite 200.
Trident PET of Savannah, 7135 Hodgson Memorial Drive, Savannah, GA 31406.	47BBBKP	03/10/2006	GA ..	Suite 10A.
Tristan Associates, 4520 Union Deposit Road, Harrisburg, PA 17111.	112344	03/10/2006	PA.	
Union Square Diagnostic Imaging, 144 Fourth Avenue, New York, NY 10003.	WR7502	03/10/2006	NY.	
UCLA—Dept. of Molecular & Medical Pharmacology, 10833 Le Conte Avenue, Los Angeles, CA 90095.	HW13029	03/10/2006	CA ...	AR–115–CHS.
UCLA—Dept. of Molecular & Medical Pharmacology, 10833 Le Conte Avenue, Los Angeles, CA 90095.	HW13029	03/10/2006	CA ...	AR–115–CHS.
University Nuclear Medicine, Inc, 105 Parker Hall, Buffalo, NY 14214.	14414A	03/10/2006	NY ...	3435 Main Street.
University Radiology Group, 75 Veronica Avenue, Suite 102, Somerset, NJ 08873.	425699	03/10/2006	NJ.	
Anne Arundel Medical Center, 2001 Medical Parkway, Annapolis, MD 21401.	210023	03/10/2006	MD.	
US Imaging Center Corp. LLC, 842 Sunset Lake Boulevard, Suite 301, Venice, FL 34292.	U0331	03/10/2006	FL.	
USC PET Imaging Science Center, 1510 San Pablo Street, Suite 350, Los Angeles, CA 90033.	W11874	03/10/2006	CA.	
Rolling Oaks Radiology, 415 Rolling Oak Drive, Suite 160, Thousand Oaks, CA 91361.	W10746	03/10/2006	CA.	
Vero Radiology Associates, Inc, 777 37th Street, Suite A–103, Vero Beach, FL 32960.	97445	03/10/2006	FL.	
Ventura Coast Imaging Center, 4601 Telephone Road, Suite 101, Ventura, CA 93003.	W11335	03/10/2006	CA.	
Washington Imaging Services, LLC, 1135—116th Avenue, NE, Bellevue, WA 98004.	GAB23386	03/10/2006	WA.	
Washington Hospital Center, 110 Irving Street, NW, Washington, DC 20010.	090011	03/10/2006	DC.	
Washoe Med Imaging Services at 75 Kirman, 75 Kirman Avenue, Reno, NV 89502.	WCHBB	03/10/2006	NV.	
Wesley Long Hospital—Moses Cone Health System, 501 North Elam Avenue, Greensboro, NC 27403.	34–0091	03/10/2006	NC.	

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Westcoast Radiology, 36463 US Highway, 19 N., Palm Harbor, FL 34684.	E4187	03/10/2006	FL.	
Western Washington Oncology, 4525 3RD Avenue SE, Lacey, WA 98503.	1497749642	03/10/2006	WA.	
Windber Medical Center, 600 Somerset Avenue, Windber, PA 15963.	390112	03/10/2006	PA.	
Wyoming Valley PET Associates, 190 Welles Street, Forty Fort, PA 18704.	045012	03/10/2006	PA.	
Youngstown Regional PET Scan, 850 McKay Court, Youngstown, OH 44512.	Y0ID0174	03/10/2006	OH.	
X-RAY Associates at Santa Fe, 490 A West Zia Road, Suite 130, Santa Fe, NM 87505.	2258263	03/10/2006	NM.	
Sibley Memorial Hospital, 5255 Loughboro Road, NW, Washington, DC 20016.	090005	03/10/2006	DC.	
Lerman Diagnostic Imaging, 6511 Fort Hamilton Parkway, Brooklyn, NY 11215.	16H771	03/10/2006	NY.	
XRC Medical Imaging, 53940 Carmichael Drive, South Bend, IN 46635.	187390	03/10/2006	IN.	
St. Luke's Hospital, 1026 A. Avenue N.E., Cedar Rapids, IA 52406–3026.	160045	03/10/2006	IA	PO Box 3026.
University Imaging at Science Park, 110 Science Parkway, Suite 100, Rochester, NY 14620.	16624A	03/10/2006	NY.	
Kadlec Medical Center/Nuclear Medicine Dept., 945 Goethals Street, Richland, WA 99352.	1972507580	03/10/2006	WA.	
Central Georgia P.E.T., LLC, 1650 Hardmon, Macon, GA 31201	47BBBKC	03/10/2006	GA.	
PET/CT Imaging at Swedish Cancer Institute, 1221 Madison Street, First Floor, Seattle, WA 98104.	8857387	03/10/2006	WA.	
National P.E.T. Scan Duval, LLC, 425 North Lee Street, Jacksonville, FL 32204.	E7348	03/10/2006	FL.	
National P.E.T. Scan Pinellas, LLC, 805 Executive Center Drive W, St. Petersburg, FL 33702.	E7503	03/10/2006	FL.	
National P.E.T. Scan Dade, LLC, 7867 North Kendall Drive, Suite 121, Miami, FL 33156.	E5427	03/10/2006	FL.	
National P.E.T. Scan Broward, LLC, 6290 North Federal Highway, Fort Lauderdale, FL 33308.	E5432	03/10/2006	FL.	
Scottsdale Medical Imaging, Ltd., 7624 E. Indian School Road, Suite 109–1, Scottsdale, AZ 85251.	WCFKX	03/10/2006	AZ.	
Lakes Regional General Hospital, 80 Highland Street, Laconia, NH 03246.	300005	03/10/2006	NH.	
Northern California PET Imaging Center, 3195 Folsom Boulevard, Sacramento, CA 95816.	ZZZ15725Z	03/10/2006	CA.	
Northern California PET Imaging Center—Mobile, 3195 Folsom Boulevard, Sacramento, CA 95816.	ZZZ25157Z	03/10/2006	CA.	
Northern California PET Imaging Center—VAPA, 3801 Miranda Avenue NA, Palo Alto, CA 94304.	ZZZ21308Z	03/10/2006	CA.	
Advanced Medical Imaging, 3548 Route 9 South, Old Bridge, NJ 08857.	595865	03/10/2006	NJ.	
St. Vincent Infirmary Medical Center, PET/CT Center, 2 St. Vincent Circle, Little Rock, AR 72205–5499.	04–0007	03/10/2006	AR.	
Lincoln Trail Diagnostics, 1111 Woodland Drive, Elizabethtown, KY 42701.	470001408	03/10/2006	KY.	
LifeScan Imaging, 607 Clifty Street, Somerset, NJ 42503	7614	03/10/2006	NJ.	
St. John's Hos., Springfield Nuclear Medicine, 1235 E. Cherokee, Springfield, MO 65804.	26–0065	03/10/2006	MO.	
City of Hope, 1500 E. Duarte Road, Duarte, CA 91010	050146	03/10/2006	CA	Dept. of Nuclear Medicine.
Hackettstown Regional Medical Center, 651 Willow Grove Street, Hackettstown, NJ 07840.	310115	03/10/2006	NJ.	
Imaging Alliance—Nashville PET, LLC, 52 White Bridge Road, Nashville, TN 37205.	3791068	03/10/2006	TN.	
Molecular Imaging of Bradenton, 2301 60th St. Court West, Suite A, Bradenton, FL 34209.	U1334	03/10/2006	FL.	
Molecular Imaging of Charlotte County, 4130 Tamiami Trail, Port Charlotte, FL 33952.	U1934	03/10/2006	FL.	
Imaging For Life, 3830 Bee Ridge Road, Suite A, Sarasota, FL 34233.	E6704	03/10/2006	FL.	
Seattle Nuclear Medicine/Ultrasound Associates, 1229 Madison Street, Suite 1050, Seattle, WA 98104.	G000158400	03/10/2006	WA.	
Columbus Circle Imaging, 1790 Broadway, 9th Floor, Yonkers, NY 10704.	W00691	03/10/2006	NY.	
Bryn Mawr Imaging Center—PET, 100 Lancaster Avenue, Wynnewood, PA 19096.	473120	03/10/2006	PA.	
Beth Israel Deaconess Medical Center, 330 Brookline Avenue, Boston, MA 02215.	220086	03/10/2006	MA.	

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Boca Raton Community Hospital, 800 Meadows Road, Boca Raton, FL 33486.	100168	03/10/2006	FL.	
Centro Tomograficio de PR, Inc., 1409 Ashford Avenue, San Juan, PR 00907.	0087834	03/10/2006	PR.	
Comprehensive Cancer Centers of Nevada, 3730 S. Easton, Las Vegas, NV 89109.	WCHCX	03/10/2006	NV.	
Grossman Imaging Center of CMH, 2151 E. Gonzales, Suite 101, Oxnard, CA 93036.	W17252	03/10/2006	CA.	
Cookeville Regional Medical Center, 142 W 5th Street, Cookeville, TN 38501.	440059	03/10/2006	TN.	
Instituto Central de Diagnostico, Inc., 1 er. Floor Oncologic Hospital, San Juan, PR 00928.	007835	03/10/2006	PR ...	PR Medical Center.
Mercy Medical Center—Cedar Rapids, 701 Tenth Street SE, Cedar Rapids, IA 52403.	16–0079	03/10/2006	IA.	
Midwest Radiologic Imaging—1144217241, 4087 Gateway Boulevard, Newburgh, IN 47630.	1144217241	03/10/2006	IN.	
Miami Valley Hospital, 1 Wyoming Street, Dayton, OH 45409	360051	03/10/2006	OH.	
Midwest Radiologic Imaging—214790, 4087 Gateway Boulevard, Newburgh, IN 47630.	214790	03/10/2006	IN.	
Midwest Regional PET/CT Center, 6001 S. Sharon Avenue, Suite #2, Sioux Falls, SD 57108.	41406	03/10/2006	SD.	
Mission Hospital, PET Center, 222 Asheland Avenue, Asheville, NC 28801.	3400002	03/10/2006	NC.	
Mobile Molecular Imaging, LLC, 100 Memorial Hospital Drive, Suite 1E, Mobile, AL 36608.	1003804345	03/10/2006	AL.	
Nebraska Health Imaging, 7819 Dodge, Omaha, NE 68114	098975	03/13/2006	NE.	
Montgomery Metabolic & Memory Imaging Center, 7100 University Center, Montgomery, AL 36117.	057554625	03/13/2006	AL.	
Orange County Diagnostic Rad., Inc, 17150 Euclid Street, Suite 101, Fountain Valley, CA 92708.	TD057	03/13/2006	CA.	
Northwest PET Imaging, 265 N. Broadway, Portland, OR 97227	105512	03/13/2006	OR.	
Nevada Cancer Institute Medical Group, One Breakthrough Way, 10441 W. Twain Avenue, Las Vegas, NV 89135.	100505	03/13/2006	NV.	
Positron Emission Tomography Institute at Hampton, 5357 Henneman Drive, Norfolk, VA 23513.	FVN001	03/13/2006	VA.	
Positron Imaging Facility, 1311 Record Crossing Road, Mail Code 9140, Dallas, TX 75235.	UT000F626	03/13/2006	TX.	
Premier Diagnostic Imaging, 10019 Forest Gren Boulevard, Louisville, KY 40299.	9375201	03/13/2006	KY.	
Positron PET/CT of the Southern Tier, 169 Riverside Drive, Binghamton, NY 13905.	AA1047	03/13/2006	NY.	
Radiology Regional Center, PA, Inc—Naples, 700 Goodlette Road, Naples, FL 34102.	77185	03/13/2006	FL.	
Somascan Plaza, Inc., Suite 405 Torre de Plaza, Plaza Las Americas, San Juan, PR 00917.	0089178	03/13/2006	PR.	
Somascan, Inc, Jose Marti #56, San Juan, PR 00917	0082435	03/13/2006	PR.	
Southern Indiana Radiological Associates, 500 Landmark Avenue, Bloomington, IN 47403.	214160	03/13/2006	IN.	
Southern Illinois Cancer Center, 10286 Fleming Road, Carterville, IL 62918.	643740	03/13/2006	IL.	
South Nassau PET, One Healthy Way, Oceanside, NY 11572	97z851	03/13/2003	NY.	
Southwest Diagnostic Center for Molecular Imaging, 8440 Walnut Hill Lane, Suite 100, Dallas, TX 75231.	FTN–015	03/13/2006	TX.	
St. Mary's Health Systems, 900 E. Oakhill Avenue, Knoxville, TN 37917.	440120	03/13/2006	TN.	
Tower Diagnostic Center, 4719 N. Habana Avenue, Tampa, FL 33614.	00169	03/13/2003	FL.	
Torrance Morial Medical Center, 3330 Lomita Boulevard, Torrance, CA 90505.	050351	03/13/2006	CA.	
University of Colorado Hospital (AOP), 1635 N Ursula Street, Aurora, CO 80045.	06–0024	03/13/2006	CO.	
William Beaumont Hospital—Royal Oak, 3601 West 13 Mile Road, Royal Oak, MI 48073–6769.	23030	03/13/2006	MI.	
Esther Quijoy Catalya, M.D., 3000 Oak Road #111, Walnut Creek, CA 94597.	00A449120	03/13/2006	CA.	
Valley PET Institute, 311 S. Ham Lane, Lodi, CA 95242	00C283720	03/13/2006	CA.	
Dan Ben-Zeev, M.D., 3000 Oak Road #111, Walnut Creek, CA 94597.	00G129831	03/13/2006	CA.	
Midwest Center for Advanced Imaging, 1307 Macom Drive., Naperville, IL 60564.	L72461	03/13/2006	IL.	
Crittenton Hospital Medical Center, 1101 W University Drive, Rochester, MI 48307.	230054	03/13/2006	MI.	
Medical Specialists of Palm Beaches, Inc, 5700 Lake Worth Road, Suite 204, Lake Worth, FL 33463.	33941A	03/13/2006	FL.	

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PET Medical Imaging Center, 3264 North Evergreen Drive, Grand Rapids, MI 49525.	0P02650	03/13/2006	MI.	
Radiology Regional Center, P.A., Inc.—RPET, 6100 Winkler Road Suite A, Fort Myers, FL 33919.	77185	03/13/2006	FL.	
Good Samaritan Hospital, 520 S 7th Street, Vincennes, IN 47591	150042	03/13/2006	IN.	
Central Indiana Cancer Center, 6845 Rama Drive, Indianapolis, IN 46219.	065910	03/13/2006	IN.	
Decatur PET Imaging, 2774 W Decatur Road, Decatur, GA 30033.	47BBBLP	03/13/2006	GA.	
Community Memorial Hospital, Medical Imaging, 855 S Main Street, Oconto Falls, WI 54154.	00439MPN	03/13/2006	WI.	
Olympic Radiology, 2700 Clare Avenue, Bremerton, WA 98310 ...	000242100	03/13/2006	WA.	
Capitol Imaging, 3161 L Street, Sacramento, CA 95816	1285615294	03/13/2006	CA.	
National Medical Imaging—Bryn Mawr, 574 W Lancaster Avenue, Bryn Mawr, PA 19010.	024513	03/13/2006	PA.	
National Medical Imaging—Langhorne, 2 Doublewoods Road, Suite B, Langhorne, PA 19047.	024513	03/13/2006	PA.	
National Medical Imaging—Philadelphia, 1903–05 South Broad Street, Philadelphia, PA 19148.	024513	03/13/2006	PA.	
University of VA Health System, Radiology, 1215 Lee Street, Charlottesville, VA 22908.	490009	03/13/2006	VA.	
Florida Institute for Advanced Diagnostic Imaging, 9238 US 19, Port Richey, FL 34668.	59–3475930	03/13/2006	FL.	
Roseville PET & Nuclear Medicine Imaging, 2241 Douglas Boulevard #110, Roseville, CA 95661.	1194706689	03/13/2006	CA.	
Memorial Sloan Kettering Cancer Center, 1275 York Avenue, New York, NY 10021.	330154	03/13/2006	NY.	
Northeast PET Imaging Center, 8400 Roosevelt Boulevard, Suite 208, Philadelphia, PA 19152.	083723	03/13/2006	PA ...	Medical Arts Center at Parte Ridge.
UAMS PET Center, 4301 West Markham, Little Rock, AR 72205	50528	03/13/2006	AR.	
Joliet Oncology—Hematology Assoc., LTD, 1600 W Route 6, Morris, IL 60450.	205474	03/13/2006	IL.	
Saint Luke's Hospital, 4323 Wornall Road, Kansas City, MO 64111.	26–0138	03/13/2006	MO ..	AH Peet Center.
Mercy Medical Center, 1320 Mercy Drive, Canton, OH 44708	360070	03/13/2006	OH.	
Dayton Medical Imaging Center, 7901 Schatz Pointe Drive, Dayton, OH 45459.	US1D00231	03/13/2006	OH.	
Community Radiology of Virginia, 2000 Leatherwood Lane, Bluefield, VA 24605.	FVA002	03/13/2006	VA.	
Bab Radiology—Huntington, 75 East Main Street, Huntington, NY 11743.	W1L612	03/13/2006	NY.	
Bab Radiology—Hauppauge, 521 Route 111, Suite 312, Hauppauge, NY 11788.	W1L601	03/13/2006	NY.	
Center for Diagnostic Imaging—37, 5775 Wayzata Boulevard #190, St. Louis Park, MN 55416.	470000037	03/13/2006	MN.	
Center for Diagnostic Imaging, 5775 Wayzata Boulevard, Suite 190, St Louis Park, MO 55416.	C01307	03/13/2006	MO.	
Center for Diagnostic Imaging—Mendota Heights, 910 Sibley Memorial Highway, Mendota Heights, MN 55118.	470000038	03/13/2006	MN.	
Huntsville Hospital Imaging Center, 1963 Memorial Parkway, Huntsville, AL 35801.	010039	03/13/2006	AL.	
Long Beach PET Imaging Center, 2888 Long Beach Boulevard, Suite 110, Long Beach, CA 90806.	TG167	03/13/2006	CA.	
Highway Imaging Associates, LLP, 2095 Flatbush Avenue, Brooklyn, NY 11234.	W10671	03/13/2006	NY.	
St Vincent Hospital, PO Box 13508, Green Bay, WI 54307	520075	03/13/2006	WI.	
Park South Imaging Center, 6215 21st Avenue West #A, Bradenton, FL 34209.	E1858	03/13/2006	FL.	
Mary Bird Perkins Cancer Center, 4950 Essen Lane, Baton Rouge, LA 70809.	57290	03/13/2006	LA.	
Boston Diagnostic Imaging, 398 Altamonte Drive, Altamonte Springs, FL 32701.	E3510	03/13/2006	FL.	
Sioux Valley Hospital Medical Center, 1305 W 18th Street, Sioux Falls, SD 57117.	430027	03/13/2000	SD.	
Indianapolis Regional PET Scan, LLC, 3830 Shore Drive, Indianapolis, IN 46254.	207260	03/13/2006	IN.	
St Joseph's PET Center, 1 Mercy Lane, Suite 105, Hot Springs, AR 71913.	5C739	03/13/2006	AR.	
Hinsdale PET Scan, LLC, 812 Ogden Avenue, Westmont, IL 60559.	206271	03/13/2006	IL.	
Del Amo PET Imaging Center, 3531 Fashion Way, Torrance, CA 90501.	TP120	03/13/2006	CA.	
North Shore PET Imaging Center, 85 Herrick Street, Beverly, MA 1915.	327110	03/13/2006	MA ..	Beverly Hospital.

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Robert D. Russo & Associates Radiology, PC, PO Box 6128, Bridgeport, CT 06606.	C02013	03/13/2006	CT.	
Advanced Medical Specialties, 9035 Sunset Drive, Suite 102, Miami, FL 33173.	K7806	05/03/2006	FL.	
Baptist M & S Imaging Center—Downtown, 215 E. Quincy #100, San Antonio, TX 78205.	FTA078	05/03/2006	TX.	
Community Cancer Center, 545 W Umpqua Street, Roseburg, OR 97470.	R116571	05/03/2006	OR.	
Baptist M & S Imaging Center, 7888 Fredericksburg Road, San Antonio, TX 78228.	FTA078	05/03/2006	TX.	
Evanston Northwestern Healthcare—Highland Park, 757 Park Avenue West, Highland Park, IL 60035.	14–0010	05/03/2006	IL.	
Grenada Diagnostic Radiology, 1300 Sunset Drive, Suite U, Grenada, MS 38901.	470000034	05/03/2006	MS.	
Huntsman Cancer Hospital, 2000 Circle of Hope, Suite 2121, Salt Lake City, UT 84112–5550.	460009	05/03/2006	UT.	
High Tech Medical Park, 11800 Southwest Highway, Palos Heights, IL 60463.	0703070	05/03/2006	IL.	
Cyrus Diagnostic Imaging, Inc, 165 Waymont Court, Lake Mary, FL 32746.	40586	05/03/2006	FL.	
Indiana Regional PET Imaging, 7891 Broadway, Suite A, Merrillville, IN 46410.	229400	05/03/2006	IN.	
Lancaster PET Imaging, 2100 Harrisburg Pike, Lancaster, PA 17601.	054504	05/03/2006	PA.	
James PET/CT Imaging Center, 236 Doan Hall, Columbus, OH 43210.	360242	05/03/2006	OH ..	410 W. 10th Avenue.
Mary Lanning Memorial Hospital, 715 N St Joseph Avenue, Hastings, NE 68901.	280032	05/03/2006	NE.	
Maplewood Cancer Center—MOHPA, 1580 Beam Avenue, Maplewood, MN 55109.	C01828	05/03/2006	MN.	
Titusville Area Hospital, 406 W Oak Street, Titusville, PA 16354 ..	390122	05/03/2006	PA.	
Memorial Hospital, 325 S Belmont Street, York, PA 17403	390101	05/03/2006	PA.	
Mercy Regional Health Center, 1823 College Avenue, Manhattan, KS 66502.	17–0142	05/03/2006	KS.	
Northshore Regional PET Scan, LLC, 1464 Waukegan Road, Glenview, IL 60025.	206272	05/03/2006	IL.	
Northwest Indiana PET/CT Center, 1505 S Calument Road, Suite 7 & 8, Chesterton, IN 46304.	229810	05/03/2006	AL.	
Parkway Ventures Inc, 9000 Franklin Square Drive, Baltimore, MD 21237.	FMN002	05/03/2006	MD ..	Franklin Square Hospital.
PET Fusion Imaging, 3707 New Vision Drive, Fort Wayne, IN 46845.	190320	05/03/2006	IN.	
River Oaks Imaging & Diagnostics, PO Box 4346, Houston, TX 77210.	FTA059	05/03/2006	TX ...	Dept. 848.
Regional PET Scan, LLC—Beachwood, 2000 Auburn Road, Beachwood, OH 44122.	REID02211	05/03/2006	OH.	
Regional PET Scan, LLC—Fairview, 20455 Lorain Road, Fairview Park, OH 44126.	REID02211	05/03/2006	OH.	
Regional PET Scan, LLC—Ridgepark, 7575 Northcliff Avenue, Brooklyn, OH 44144.	REID02211	05/03/2006	OH.	
Saint Francis Hospital, 114 Woodland Street, Hartford, CT 06105	07–0002	05/03/2006	CT.	
St Nicholas Hospital, 3100 Superior Avenue, Sheboygan, WI 53081.	520044	05/03/2006	WI.	
Swedish Medical Center, 501 E Hampton Avenue, Englewood, CO 80113.	060034	05/03/2006	CO.	
St Bernards PET Center, 225 E Jackson, Jonesboro, AR 72401 ..	5C658	05/03/2006	AR.	
Toledo Regional PET Scan, LLC, 3442 Granite Circle, Toledo, OH 43617.	T0ID01881	05/03/2006	OH.	
University MRI, 3848 F.A.U. Boulevard, Suite 200, Boca Raton, FL 33431.	E1765	05/03/2006	FL.	
Tucson PET Imaging, 5355 E Erickson Drive, Tucson, AZ 85712	WCBBM	05/03/2006	AZ.	
Via Christi Oklahoma Regional Medical Center, 1900 N 14th Street, Ponca City, OK 74601.	370006	05/03/2006	OK.	
Christian Hospital, 11133 Dunn Road, St Louis, MO 63136	260180	05/03/2006	MO.	
DRA Imaging PC, 1 Columbia Street, Poughkeepsie, NY 12601 ..	W18691	05/03/2006	NY.	
Cleveland Clinic Star Imaging, 921 Jasonway Avenue, Columbus, OH 43214.	34–1932969	05/03/2006	OH.	
Norman PET Associates, LLC, 3750 W Robinson, Suite 130, Norman, OK 73072.	900522224	05/03/2006	OK.	
Rhode Island PET Services—St Josephs, 200 High Service Avenue, N Providence, RI 02904.	479003556	05/03/2006	RI.	
Rhode Island PET Services—South County Hosp, 100 Kenyon Avenue, Wakefield, RI 02879.	479003556	05/03/2006	RI.	

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Rhode Island PET Services—Roger Williams, 825 Chalkstone Avenue, Providence, RI 02908.	479003556	05/03/2006	RI.	
Rhode Island PET Services—Landmark, 115 Cass Avenue, Woonsocket, RI 02895.	479003556	05/03/2006	RI.	
Forest City Diagnostic Imaging, 735 Perryville Road, Rockford, IL 61107.	546450	05/03/2006	IL	Lower Level 2.
New England Molecular Imaging—York, 15 Hospital Drive, York, ME 03909.	479003556	05/03/2006	ME.	
Pavilion Imaging, 750 Wellington Avenue, Grand Junction, CO 81502.	060023	05/03/2006	CO.	
Lifescan Chicago, 2242 W Harrison Street, Chicago, IL 600612 ...	470000014	05/03/2006	IL.	
Southeast Medical Imaging, 300 Evergreen Drive, Suite 210, Glen Mills, PA 19342.	092801	05/03/2006	PA.	
The Western Pennsylvania Hospital, 4800 Friendship Avenue, Pittsburgh, PA 15224.	390090	05/03/2006	PA.	
Southtowns PET/CT, 550 Orchard Park Road, West Seneca, NY 14224.	14422A	05/03/2006	NY.	
Main Street Radiology—Bayside, 44–01 Francis Lewis Boulevard, Bayside, NY 11361.	04217	05/03/2006	NY.	
Main Street Radiology—Bayside, 44–01 Francis Lewis Boulevard, Bayside, NY 11361.	04217A	05/03/2006	NY.	
West VA University Center for Advanced Imaging, 1 Medical Center Drive, Morgantown, WV 26506.	9121131	05/03/2006	WV ..	PO Box 9236 Health Center South.
Twin Lakes Medical Specialist PA, 228 Bucher Drive, Mountain Home, AR 72653.	5B019	05/03/2006	AR.	
Valley Metabolic Imaging, LLC, 6121 N Thesta, Fresno, CA 93710.	ZZZ23924Z	05/03/2006	CA ...	Suite 207.
Johnson City Medical Center, 400 North State of Franklin, Johnson City, TN 37642.	440063	05/03/2006	TN.	
St Louis University Hospital, 3665 Vista Avenue, St Louis, MO 63110.	000050109	05/03/2006	MO.	
Margaret R. Pardee Memorial Hospital, 800 North Justice Street, Hendersonville, NC 28791.	340017A	05/03/2006	NC.	
Valley Imaging Partnership, 1401 W Merced Avenue #103, West Covina, CA 91790.	TP035	05/03/2006	CA.	
Sierra Imaging, 155 Calle Portal, Sierra Vista, AZ 85635	Z68496	05/03/2006	AZ.	
Aspirus Wausau Hospital, 333 Pine Ridge Boulevard, Wausau, WI 54401.	520030A	05/03/2006	WI.	
Cancer Care Northwest PET Center, 910 W 5th, Spokane, WA 99204.	1922072081	05/03/2006	WA ..	Suite 130.
PET/CT Imaging of North Texas, 2900 North I–35, Denton, TX 76201.	00088Y	05/03/2006	TX ...	Suite 119.
Loyola University Health System, 2160 S First Avenue, Maywood, IL 60153.	140276	05/03/2006	IL.	
St Elizabeth Medical Center, One Medical Village Drive, Edgewood, KY 41017.	180035	05/03/2006	KY.	
Cleveland Clinic, 9500 Euclid Ave, Cleveland, OH 44195	9925511	05/03/2006	OH.	
Ingalls Family Care Center, 6701 159th Street, Tinley Park, IL 60477.	14–0191	05/03/2006	IL.	
PET Fusion Center, 4204 Houma Boulevard, Metairie, LA 70006	5CB31	05/03/2006	LA.	
United Regional Medical Center, 1001 McArthur Drive, Manchester, TN 37355.	440007	05/03/2006	TN.	
Joel Bernstein, MD, 5395 Ruffin Road, Suite 202, San Diego, CA 92123.	W18972	05/03/2006	CA.	
Hasnat Ahmed, MD, 5395 Ruffin Road, Suite 202, San Diego, CA 92123.	W18370	05/03/2006	CA.	
Meridian North Imaging Center, 12188 N Meridian Street, Carmel, IN 46280.	026010	05/03/2006	IN	Suite 100.
Cancer Center Oncology Med. Group, 5395 Ruffin Road, Suite 202, San Diego, CA 92123.	W12245A	05/06/2006	CA.	
Firelands Regional Medical Center, 1101 Decatur Street, Sandusky, OH 44870.	360025	05/03/2006	OH.	
United Radiology—Greenbelt, PO Box 34979, West Bethesda, MD 20827.	FMN007	05/03/2006	MD.	
Richard Just, MD, 5395 Ruffin Road, Suite 202, San Diego, CA 92123.	W16197	05/03/2006	CA.	
Michael Kipper, MD, 5395 Ruffin Road, Suite 202, San Diego, CA 92123.	A24091	05/03/2006	CA.	
McLaren Regional Medical Center, 401 S. Ballenger Highway, Flint, MI 48532.	230141	05/03/2006	MI.	
United Radiology—Silver Spring, PO Box 34979, West Bethesda, MD 20827.	FMN007	05/03/2006	MD.	
United Radiology—Rockville, PO Box 34979, West Bethesda, MD 20827.	FMN007	05/03/2006	MD.	

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St Mary's Health Center, 6420 Clayton Road, St Louis, MO 63117.	260091	05/03/2006	MO.	
Bay Regional Medical Center, 1900 Columbus Avenue, Bay City, MI 48708.	230041	05/03/2006	MI.	
Lapeer Regional Medical Center, 1375 N. Main Street, Lapeer, MI 48446.	230193	05/03/2006	MI.	
Scottsdale Medical Imaging, Ltd.—SW Diagnostics, 9003 E. Shea Boulevard, Scottsdale, AZ 85260.	1902896236	05/03/2006	AZ.	
Valley Medical Oncology Consultants, Inc., 3000 Oak Road #111, Walnut Creek, CA 94597.	ZZZ29659Z	05/03/2006	CA.	
Northwest Community Hospital, 800 W Central Road, Arlington Heights, IL 60005.	36–2340313	05/03/2006	IL.	
PET Imaging of Dallas, 8333 Douglas Ave, C–20, Dallas, TX 75225.	FTN017	05/03/2006	TX.	
PET Imaging of Dallas—Northeast, 1250 R Northwest Highway, Garland, TX 75041.	FTN028	05/03/2006	TX.	
St Joseph's Regional Medical Center, 703 Main Street, Paterson, NJ 07503.	310019	05/03/2006	NJ.	
PET Imaging of Houston, 2493–A South Braeswood, Houston, TX 77030.	FTN010	05/03/2006	TX.	
Goshen General Hospital, 200 High Park, Goshen, IN 46526	150026	05/03/2006	IN.	
PET Imaging of ELMC, 8550 West 38th Avenue, Suite 102, Wheat Ridge, CO 80033.	800665	05/03/2006	CO.	
PET Imaging of Houston—Southeast, 6021 Fairmont Parkway, Suite 120, Pasadena, TX 77505.	FTN030	05/03/2006	TX.	
Peninsula Imaging, LLC, 560 Riverside Drive Suite A104, Salisbury, MD 21801.	481L	05/03/2006	AL.	
Zwanger-Pesiri, 126 Hicksville Road, Massapequa, NY 11758	W13931	05/03/2006	NY.	
Las Calinas PET Imaging, LLP, 1110 Cottonwood Lane, Irving, TX 75038.	FTN019	05/03/2006	TX	Suite 220.
Mt Carmel Regional Medical Center, 1102 East Centennial, Pittsburg, KS 66762.	014041	05/03/2006	KS.	
Iowa Blood & Cancer Care, PLC, 855 A. Avenue N.E., Cedar Rapids, IA 52402.	I6672	05/03/2006	IA	Medical Office Plaza LL4.
Hackensack University Medical Center, 30 Prospect Avenue, Hackensack, NJ 07601.	310001	05/03/2006	NJ.	
McLeod PET Imaging Center, 800 East Cheves Street, Florence, SC 29501.	570370242001	05/03/2006	SC	Suite 170.
St Alexius Medical Center, 900 E Broadway, Bismarck, ND 58506.	35–0002	05/03/2006	ND	PO Box 5510.
Center for Diagnostic Imaging, 1295 Orange Avenue, Winter Park, FL 32789.	K0097	05/03/2006	FL.	
Charleston Radiologists, PA, 9313 Medical Plaza Drive, Charleston, SC 29406.	1709	05/03/2006	SC	Suite 302.
PET Imaging of Houston—West, 9525 Katy Freeway, Suite 102, Houston, TX 77024.	FTN023	05/03/2006	TX.	
University Hospitals of Cleveland, 11100 Euclid Avenue, Cleveland, OH 44106.	36–0137	05/03/2006	OH	Mailstop BSHB5056.
PET Imaging of Sugarland, 17320 W Grand Parkway S., Suite A, Sugar Land, TX 77479.	FTN027	05/03/2006	TX.	
PET Imaging of Oklahoma City, 1000 N Lincoln Boulevard, Suite 250, Oklahoma City, OK 73104.	800522283	05/03/2006	OK.	
PET Imaging of Tulsa, 6711 S Yale, #104, Tulsa, OK 74136	400522320	05/03/2006	OK.	
PET Imaging of The Woodlands, 3091 College Park Drive, Suite 340, The Woodlands, TX 77384.	FTN021	05/03/2006	TX.	
Tarrant Diagnostic Imaging, 1121 8th Avenue, Fort Worth, TX 76104.	FTN012	05/03/2006	TX.	
Wyandot Memorial Hospital, 85 North Sandusky, Avenue, Upper Sandusky, OH 43351.	361329	05/03/2006	OH.	
Oregon Health & Science University, 3181 SW Sam Jackson Park Road, Portland, OR 97229.	380009	05/03/2006	OR.	
Saint John's Health System, 2015 Jackson Street, Anderson, IN 46016.	150088	05/03/2006	IN.	
Hudson Valley PET Imaging, LLC, 160 North Midland Avenue, Nyack, NY 10960.	W1L903	05/03/2006	NY.	
Kingston Diagnostic Center, 167 Schwenk Drive, Kingston, NY 12401.	W1L921	05/03/2006	NY.	
Appleton Medical Center, 1818 N Meade Street, Appleton, WI 54911.	520160	05/03/2006	WI.	
St Elizabeth Health Center, 1044 Belmont Avenue, Youngstown, OH 44501.	360064	05/03/2006	OH.	
Sinai Hospital of Baltimore, 2401 West Belvedere Avenue, Baltimore, MD 21215.	210012	05/03/2006	MD.	

Facility name	Provider No.	Date approved	State	Other
Associates in Radiology of Plattsburgh, NY, 762 Route 3, Suite 14, Plattsburgh, NY 12901.	33572A	05/03/2006	NY.	
Affiliated PET Systems—Rockville, 9711 Medical Center Drive, Rockville, MD 20850.	FDNX01	05/03/2006	MD.	
Lake Medical Imaging & Breast Center, 1400 US Highway 441 North, Suite 510, The Villages, FL 32159.	59–3522082	05/03/2006	FL.	
Affiliated PET Systems—Silver Spring, 1400 Forest Glen Road, Silver Spring, MD 20910.	FDNX01	05/03/2006	MD ..	Suite 430.
North Texas Clinical PET Institute, 3535 Worth Street, Suite 150, Dallas, TX 75246.	99R339	05/03/2006	TX.	
Lake Imaging Center, 801 E Dixie Avenue, Suite 104, Leesburg, FL 34748.	59–3635297	05/06/2006	FL.	
Edwards Comprehensive Cancer Center, 1400 Hal Greer Boulevard, Huntington, WV 25701.	510055	05/03/2006	WV.	
Allison Cancer Center, 301 North N Street, Midland, TX 79701	140414744	05/03/2006	TX.	
Clinical PET of Leesburg, 8525 US Highway 441, Leesburg, FL 34748.	E7179A	05/03/2006	FL.	
Greene Medical Imaging PC, 159 Jefferson Heights, D–106, Catskill, NY 12414.	W25021	05/03/2006	NY.	
Caritas PET Imaging, LLC—Norwood Hospital, 70 Walnut Street, Foxboro, MA 02035.	32–7092	05/03/2006	MA ..	Caritas Norwood Hospital—Foxboro C.
Caritas PET Imaging, LLC—New England Medical Center, 750 Washington Street, Boston, MA 02111.	32–7092	05/03/2006	MA ..	Tufts—New England Medical Center.
Austin, Radiological Assn—San Marcos, 1348 B Highway 123 South, San Marcos, TX 78666.	74–1597116	05/03/2006	TX.	
ARA Imaging—Rock Creek, 2120 N Mays, #220, Round Rock, TX 78664.	20–1651590	05/03/2006	TX.	
ARA Imaging—Southwood, 1701 W Ben White Boulevard, #170, Austin, TX 78704.	20–1651590	05/03/2006	TX.	
Elkhart General Hospital, 600 East Boulevard, Elkhart, IN 46514	15–0018	05/03/2006	IN.	
Austin, Radiological Assn—Midtown, 1301 W 38th Street, Suite 100, Austin, TX 78705.	74–1597116	05/03/2006	TX.	
Caritas PET Imaging, LLC—St Elizabeth's, 736 Cambridge Street, Boston, MA 02135.	32–7092	05/03/2006	MA ..	St. Elizabeth's Medical Center.
Global PET Imaging, LLC, 1800 Hollister Drive, Suite G–10, Libertyville, IL 60048.	309590	05/03/2006	IL	Grand Oaks Health Center.
Caritas PET Imaging, LLC—Carney Hospital, 2100 Dorchester Avenue, Dorchester, MA 02124.	32–7092	05/03/2006	MA ..	Caritas Carney Hospital.
Caritas PET Imaging, LLC—Milton Hospital, 92 Highland Street, Milton, MA 02186.	32–7092	05/03/2006	MA.	
Caritas PET Imaging, LLC—St Anne's Hospital, 795 Middle Street, Fall River, MA 02721.	32–7087	05/03/2006	MA ..	St. Anne's Hospital.
Caritas PET Imaging, LLC—Good Samaritan, 235 North Pearl Street, Brockton, MA 02301.	32–7087	05/03/2006	MA ..	Caritas Good Samaritan Medical Center.
Panhandle PET Imaging, 6700 W 9th, Amarillo, TX 79106	TFN0007	05/03/2006	TX.	
PET Imaging of San Francisco, 1700 California Street, Suite 480, San Francisco, CA 94109.	ZZZ–223–782 ...	05/03/2006	CA.	
PET/CT Imaging of Berkeley, 2855 Telegraph Avenue, Suite 100, Berkeley, CA 94705.	ZZZ–288–837 ...	05/03/2006	CA.	
Western Maryland Health System—Sacred Heart Campus, 902 Seton Drive, Cumberland, MD 21502.	210027	05/03/2006	MD ..	Western Maryland Health System—Sacred Heart.
Desert PET Imaging, LLC, 1180 N Indian Cyn Drive, Palm Springs, CA 92262.	ZZZ28648Z	05/03/2006	CA.	
First PET of Stockton, 4744 Quail Lake Drive, Stockton, CA 95207.	00A484230	05/03/2006	CA.	
Utah Cancer Specialist, 3838 South 700 East, Salt Lake City, UT 84106.	57172	05/03/2006	UT ...	Suite 100.
Washington Radiology Associates, PC, 2121 K Street, NW, Washington, DC 20006.	WA409885	05/03/2006	DC ..	Suite T–120.
New Rochelle Radiology Associates, PC, 175 Memorial Highway, New Rochelle, NY 10801.	W05571	05/03/2006	NY.	
North Little Rock PET Associates, LLC, 3500 Springhill Drive, North Little Rock, AR 72117.	5F437	05/03/2006	AR ...	Suite 100.
Advanced Imaging Concepts, PL, 13063 Cortez Boulevard, Brooksville, FL 34613.	94774	05/03/2006	FL.	
Mansfield Imaging Center, 536 S Trimble Road, Mansfield, OH 44906.	MAD10921	05/03/2006	OH.	
West Tennessee Imaging Center, 300 Coatsland Drive, Jackson, TN 38305.	44–0002	05/03/2006	TN.	
Imaging Center of North Central Indiana, Inc., 2201 W Boulevard, Kokomo, IN 46902.	224110	05/03/2006	IN.	
University of Kansas Hospital, 3901 Rainbow Boulevard, Kansas City, KS 66160.	17–00040	05/03/2006	KS ...	Division of Nuclear Medicine.

Facility name	Provider No.	Date approved	State	Other
PET Imaging of SWLA LLC, 600 Bayou Pines East, Lake Charles, LA 70601.	5CK63	05/03/2006	LA	Suite A.
Community Imaging Partners of Frederick, 67 Thomas Johnson Drive, Frederick, MD 21702.	980M	05/03/2006	MD.	
Community Imaging Partners of Olney, 18111 Prince Phillip Drive # T–20, Olney, MD 20832.	409410	05/03/2006	MD	Community Imaging Partners.
The West Clinic, PC, 100 N. Humphreys Boulevard, Memphis, TN 38120.	3704066	05/03/2006	TN.	
Imaging Central LLC, 7111 W Central Avenue, Toledo, OH 43617.	IMID01641	05/03/2006	OH.	
Advanced Radiology—Dixon, 291 Stoner Avenue, Westminster, MD 21157.	527L	05/03/2006	MD.	
Advanced Radiology—Harford Imaging, 104 Plumtree Road, Bel Air, MD 21015.	527L	05/03/2006	MD.	
Advanced Radiology—Cross Roads, 4801 Dorsey Hall Road, Ellicott City, MD 21042.	527L	05/03/2006	MD	Suite 101.
Advanced Radiology—PET Imaging of MD, 1700 Reisterstown Road, Baltimore, MD 21208.	527L	05/03/2006	MD	Suite119.
Cancer & Blood Disease Center, 521 No Lecanto Highway, Lecanto, FL 34461.	72840	05/03/2006	FL.	
Huntington Outpatient Imaging Center, INC, 800 S Fairmount Avenue, Pasadena, CA 91105.	W1575B	05/03/2006	CA	Suite 120.
Universal Imaging, Inc., 4600 Investment Drive, Troy, MI 48083	ON69130	05/03/2006	MI.	
Berger Health System, 1170 North Court Street, Circleville, OH 43113.	360710	05/03/2006	OH.	
Contemporary Imaging—Trenton, 1676 Fort Street, Trenton, MI 48183.	0P23200	05/03/2006	MI.	
South Tulsa PET, LLC, 7712 S Yale, Tulsa, OK 74136	800522360	05/03/2006	OK	Suite 100.
Cancer Center of the Carolinas, 200 Andrews Street, Greenville, SC 29601.	6526	05/03/2006	SC	Suite 100.
OSF Saint Francis Medical Center, 530 NE Glen Oak Avenue, Peoria, IL 61637.	14–0067	05/03/2006	IL.	
Sacred Heart—St Mary's Hospitals Inc., 2251 Northshore Drive, Rhinelander, WI 54501.	1100700	05/03/2006	WI.	
Capital Region Radiation Therapy & Imaging, 3400 W Truman Boulevard, Jefferson City, MO 65109.	260047	05/03/2006	MO	PO 150832.
University PET/CT Imaging, 19 Bradhurst Avenue, Hawthorne, NY 10532.	W2Y371	05/03/2006	NY	Suite 1200.
Aztech Radiology—Apache Trail, 1840 W Apache Trail, Apache Junction, AZ 85222.	Z72398	05/03/2006	AZ.	
Aztech Radiology—Casa Grande, 1669 E McMurray Boulevard, Casa Grande, AZ 85222.	Z25341	05/03/2006	AZ.	
Missouri Cancer Associates, 105 N Keene Street, Columbia, MO 65201.	000012700	05/03/2006	MO	Suite 100.
White River Medical Center, 1710 Harrison Street, Batesville, AR 72501.	040119	05/03/2006	AR.	
Englewood Hospital & Medical Center, 350 Engle Street, Englewood, NJ 07631.	310045	05/03/2006	NJ.	
Regional Imaging & Therapeutic Radiology Service, 360 Bard Avenue, Staten Island, NY 10310.	1023095445	05/03/2006	NY.	
Rocky Mountain Cancer Centers—South, 7951 E Maplewood Avenue, Suite 300, Greenwood Village, CO 80111.	204508	05/03/2006	CO.	
Rocky Mountain Cancer Centers—North, 7951 E Maplewood Avenue, Suite 300, Greenwood Village, CO 80111.	204508	05/03/2006	CO.	
Molecular Imaging of Hamilton County—Bethesda, 4197 Fulton Road NW, Suite C, Canton, OH 44718.	MOID01221	05/03/2006	OH.	
Molecular Imaging of Hamilton County—Good Som, 4197 Fulton Road NW, Suite C, Canton, OH 44718.	MOID01221	05/03/2006	OH.	
Kettering Medical Center, 3535 Southern Boulevard, Kettering, OH 45429.	360079	05/03/2006	OH.	
St Mary's Hospital, 5801 Bremo Road, Richmond, VA 23226	540793767	05/03/2006	VA.	
Columbus Medical Institute of NY, 97–85 Queens Boulevard, Rego Park, NY 11374.	05679	05/03/2006	NY.	
Meadville Medical Center, 1034 Grove Street, Meadville, PA 16335.	39–0113	05/03/2006	PA.	
Chambersburg Hospital—Radiology, 112 North Seventh Street, Chambersburg, PA 17201.	390151	05/03/2006	PA.	
Oregon Advanced Imaging, 881 O'Hare Parkway, Medford, OR 97504.	R114546	05/03/2006	OR.	
Singing River Hospital, 2809 Denny Avenue, Pascagoula, MS 39581.	250040	05/03/2006	MS.	
East Texas Medical Center—Tyler, 1000 S Beckham, Tyler, TX 75701.	4500833	05/03/2006	TX.	

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Columbia, St Mary's Hospital, 2025 E Newport Avenue, Columbia, Campus, Milwaukee, WI 53211.	520051	05/03/2006	WI.	
Sharon Regional Health System, 740 East State Street, Sharon, PA 16146.	390211	05/03/2006	PA.	
Northern Ohio Imaging Center, 1900 West River Road, Elyria, OH 44035.	36–0172	05/03/2006	OH.	
Oxford Valley Diagnostic Center, 940 Town Center Drive, Langhorne, PA 19047.	232745550	05/03/2006	PA ...	Suite F50.
The Emory Clinic, 1365 Clifton Road, Building C, Room Court 048, Atlanta, GA 30322.	582030692	05/03/2006	GA.	
Alegent Health Bergan Mercy Medical Center, 7500 Mercy Road, Omaha, NE 68124.	280060	05/03/2006	NE.	
University Center Imaging, 1065 Delaware Avenue, Marion, OH 43302.	20–3873307	05/03/2006	OH.	
Elk Regional Health Center, 763 Johnsonburg Road, St Mary's, PA 15857.	39–0154	05/03/2006	PA.	
Health Park Hospital, 1636 Higdon Ferry Road, Hot Springs, AR 71913.	04–0142	05/03/2006	AR.	
Johnsonburg Health Center, 81 Clarion Road, Johnsonburg, PA 15845.	39–0104	05/03/2006	PA.	
Jane Phillips Medical Center, 3500 E Frank Phillips Boulevard, Bartlesville, OK 74006.	370015	05/03/2006	OK.	
North Main Imaging Center, 7650 First Place, Suite B, Oakwood Village, OH 44146.	NEID01521	05/03/2006	OH.	
PET Imaging Center of Delaware County—DCMH, 501 North Lansdowne Avenue, Drexel Hill, PA 19026.	390081	05/03/2006	PA.	
NEO-PET CRC Imaging, 7650 First Place, Suite B, Oakwood Village, OH 44146.	NEID01521	05/03/2006	OH.	
PET Imaging Center of Delaware County—Springfield, 190 West Sproul Road, Springfield, PA 19064.	381080	05/03/2006	PA.	
Harper University Hospital, 3990 John R, Detroit, MI 48201	230104	05/03/2006	MI.	
Sinai-Grace Hospital, 6071 W Outer Drive, Detroit, MI 48235	23–0024	05/03/2006	MI.	
Seattle Radiologists APC, 1229 Madison, Seattle, WA 98104	G0001589600 ...	05/03/2006	WA ..	#900.
Huron Valley-Sinai Hospital, 1 William Carl Drive, Commerce, MI 48382.	23–0277	05/03/2006	MI.	
East Memphis PET Imaging, 6005 Park Avenue, Memphis, TN 38119.	3374526	05/03/2006	TN ...	Suite 101B.
UPMC-PET Imaging Facility, 200 Lothrop Street, Pittsburgh, PA 15213.	390164	05/03/2006	PA ...	9th Floor B-Wing PUH.
UPMC-PET Imaging Facility, 300 Halket Street, Pittsburgh, PA 15213.	390114	05/03/2006	PA.	
Rhode Island Hospital, 593 Eddy Street, Providence, RI 02903 ...	05–025–8954 ...	05/03/2006	RI.	
David C. Pratt Cancer Center, 607 South New Bulbs Road, St Louis, MO 63141.	260020	05/03/2006	MO.	
Lewistown Hospital, 400 Highland Avenue, Lewistown, PA 17044	390048	05/03/2006	PA.	
Lawrence Memorial Hospital, 325 Maine Street, Lawrence, KS 66044.	170137	05/03/2006	KS.	
Jameson Hospital, 1211 Wilmington Avenue, New Castle, PA 16105.	39–0016	05/03/2006	PA.	
Diagnostic Clinic of Houston, 1200 Binz, Houston, TX 77004	76–0203506	05/03/2006	TX.	
Arlington Heights Radiology Center, LLC, 121 South Wilke Road, Arlington Heights, IL 60005.	212301	05/03/2006	IL.	
Oregon Imaging Center, 1200 Hilyard Street, Eugene, OR 97401	R0000WCPGH	05/03/2006	OR ..	#330.
Arlington Heights Radiology Center, LLC, 121 South Wilke Road, Arlington Heights, IL 60005.	212301	05/03/2006	IL.	
Indiana Univ Radiology Assoc PET Imaging Center, 950 W Walnut, Room E124, Indianapolis, IN 46202.	959090	05/03/2006	IN.	
Morristown Memorial Hospital, 100 Madison Avenue, Morristown, NJ 07962.	310015	05/03/2006	NJ.	
Baton Rouge Radiology Group, 5422 Dijon Drive, Baton Rouge, LA 70808.	5B039	05/03/2006	LA.	
North Texas PET Imaging, 3720 South I–35E, Denton, TX 76210	752131429	05/03/2006	TX.	
Children's Hospital of Michigan Pet Center, 3901 Beaubien, Detroit, MI 48201.	23–3300	05/03/2006	MI.	
Winchester Medical Center, 1840 Amherst Street, Winchester, VA 22601.	490005	05/03/2006	VA.	
Decatur Health Imaging, LLC, 1123 16th Avenue SE, Decatur, AL 35601.	051555161	05/03/2006	AL.	
Health Imaging Services, LLC, 1760 Warnke Circle NE, Cullman, AL 35058.	051553273HEA	05/03/2006	AL.	
PET/CT Imaging of the Mainline, 21 Industrial Blvd., Suite 103, Paoli, PA 19301.	097715	05/03/2006	PA.	
PET Imaging of Brevard, 1430 Pine Street, Melbourne, FL 32901	39254	05/03/2006	FL.	

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North Carolina Baptist Hospital, Medical Center Boulevard, Winston Salem, NC 27157.	34–0047	05/03/2006	NC.	
St Francis Hospital, 34515 9th Avenue S, Federal Way, WA 98003.	500108	05/03/2006	WA.	
Saint Barnabas Outpatient Center, 200 S Orange Avenue, Livingston, NJ 07039.	440149	05/03/2006	NJ.	
PET/CT Imaging of Ramapa Radiology, 972 Route 45, Suite 106, Pomona, NY 10970.	W21711	05/03/2006	NY.	
Medical University of South Carolina PET/CT, 169 Ashley Avenue, Charleston, SC 29425.	420004	05/03/2006	SC.	
Akron General Medical Center, 300 Wabash Avenue, Akron, OH 44307.	36–0027	05/03/2006	OH.	
New England Molecular Imaging—Mercy Hospital, 144 State Road, Portland, ME 04103.	NE327075	05/03/2006	ME.	
New England Molecular Imaging—Penobscot Bay, 6 Glenn Cove Drive, Rockport, ME 04856.	NE327076	05/03/2006	ME.	
Center for Outpatient Services—St Joseph, 3900 Hollywood Road, St Joseph, MI 49085.	23–0021	05/03/2006	MI.	
New England Molecular Imaging—Central Maine, 12 High Street, Lewiston, ME 04240.	NE327076	05/03/2006	ME.	
Imaging Consultants Inc.—Berkshire, 8 Conte Drive, Pittsfield, MA 01210.	327085	05/03/2006	MA.	
Imaging Consultants Inc.—Boston Medical, 840 Harrison Avenue, Boston, MA 02118.	327083	05/03/2006	MA.	
Imaging Consultants Inc—Boston PET, One Brookline, Place, Brookline, MA 02445.	327083	05/03/2006	MA.	
Baptist Memorial HospitalPET Center, 6027 Walnut Grove Road, Memphis, TN 38120.	44–0048	05/03/2006	TN.	
Southern Oklahoma PET/CT Imaging, 701 E Robinson, Norman, OK 73071.	90015477	05/03/2006	OK.	
Ann G Fetters Diagnostic Imaging Center, 2151 N Harbor Boulevard, Fullerton, CA 92835.	050168	05/03/2006	CA.	
Pitt County Memorial Hospital, 2100 Stantonsburg Road, Greenville, NC 27835.	56–0585243	05/03/2006	NC.	
Inland Imaging, LLC, 105 W 8th Avenue, Spokane, WA 99202	AB01749	05/03/2006	WA ..	Suite 100C.
University of Chicago Hospitals, 5758 S. Maryland Avenue, Chicago, IL 60637.	140088	05/03/2006	IL	Room #1050.
Birch Medical Imaging Center, 20162 S.W. Birch Street New, Newport Beach, CA 92660.	W19353	05/03/2006	CA.	
Tennessee Oncology PET Services, 2018 Murphy Avenue, Nashville, TN 37203.	3709319	05/03/2006	TN ...	Suite 200.
Tennessee PET Scan, 1020 N Highland Avenue, Murfreesboro, TN 37130.	3791187	05/03/2006	TN ...	Suite A.
Texas Oncology—Harris Center HEB, 1615 Hospital Parkway, Bedford, TX 76022.	00R66C	05/03/2006	TX ...	Suite 300.
Greater Dayton Cancer Center, 3120 Governor's Place Boulevard, Kettering, OH 45409.	9295791	05/03/2006	OH.	
Martha Jefferson Hospital, 459 Locust Avenue, Charlottesville, VA 22902.	490077	05/03/2006	VA.	
Modern Diagnostic Imaging, 600 S Dobson Road, Chandler, AZ 85224.	107628	05/03/2006	AZ ...	Suite B–16.
Christiana Care Nuclear Medicine/PET, 4755 Ogletown-Stanton Road, Newark, DE 19718.	080001	05/03/2006	DE.	
Advanced Imaging of Port Charlotte LLC, 2625 Tamiami Trail, Port Charlotte, FL 33952.	K6802	05/03/2006	FL ...	Suite 1.
St Joseph's Diagnostic Center—MLK, 3003 Martin Luther King, Jr. Boulevard, Tampa, FL 33067.	97779	05/03/2006	FL.	
South Carolina Oncology Associates, 166 Stoneridge Dr, Columbia, SC 29210.	6275	05/03/2006	SC.	
South Carolina Oncology Associates, 166 Stoneridge Drive, Columbia, SC 29210.	6276	05/03/2006	SC.	
Access Health Imaging, 5257 Highway 82, East, Lake Village, AR 71653.	5M809	05/03/2006	AR.	
PET/CT Services of Florida—Beverly Hills, 3404 N Lecanto Highway, Beverly Hills, FL 34465.	V0103	05/03/2006	FL ...	Beverly Hill Medical Park.
PET/CT Services of Florida—Ocala, 1541 SW 1st Avenue, Ocala, FL 34474.	V0103	05/03/2006	FL ...	Suite 101B.
Blanchard Valley Regional Health Center, 145 W Wallace Street, Findlay, OH 45840.	360095	05/03/2006	OH.	
Papastavros Associates Medical Imaging, 1701 Augustine Cutoff, Wilmington, DE 19803.	1083615561	05/03/2006	DE.	
PET Imaging of Willowbrook, 13300 Hargrave Road, Houston, TX 77070.	FTN032	05/03/2006	TX ...	Suite 130.

Facility name	Provider No.	Date approved	State	Other
PET Imaging of Northern Colorado, 1915 Wilmington Drive, Ft Collins, CO 80528.	804621	05/03/2006	CO ..	Suite 101.
Temecula Valley Advanced Imaging, 25395 Hancock Avenue, Murrieta, CA 92592.	ZZZ–150752	05/03/2006	CA ...	Suite 110.
Saint Anthony Memorial Health Center, 301 West Homer Street, Michigan City, IN 46360.	A150015	05/03/2006	IN.	
Salina Regional Health Center, 400 S Santa Fe, Salina, KS 67401.	170012	05/03/2006	KS ...	PO Box 5080.
Cancer Center of Kansas, 818 N Emporia, Wichita, KS 67214	110217	05/03/2006	KS ...	Suite 100.
Clinton Crossings Imaging, 995 Senator Keating Boulevard, Rochester, NY 14618.	14439A	05/03/2006	NY.	
NSMS—Shelby County, 4253 Argosy Court, Madison, WI 53714	I16068	05/03/2006	WI.	
Verrazano Radiology, PC, 256A Mason Avenue, Staten Island, NY 10305.	200011201	05/03/2006	NY.	
Imaging Consultants Inc—Brockton Hospital, 680 Centre Street, Brockton, MA 02301.	327085	05/03/2006	MA.	
Imaging Consultants Inc—Cape Cod, 252 Long Pond Drive, Harwich, MA 02645.	327085	05/03/2006	MA ..	Fontaine Medical Center.
Imaging Consultants Inc—Falmouth, 100 Ter Hewn Drive, Falmouth, MA 02540.	327085	05/03/2006	MA.	
Imaging Consultants Inc—Jordan, 275 Sandwich Street, Plymouth, MA 02360.	327085	05/03/2006	MA.	
Imaging Consultants Inc—Holyoke, 575 Beech Street, Holyoke, MA 01040.	327085	05/03/2006	MA.	
Imaging Consultants Inc—Mercy Medical, 271 Carew Street, Springfield, MA 01089.	327085	05/03/2006	MA.	
Imaging Consultants Inc—Lawrence Memorial, 170 Governors Avenue, Medford, MA 02155.	327083	05/03/2006	MA.	
Imaging Consultants Inc—Metro West, 115 Lincoln Street, Framingham, MA 01701.	327083	05/03/2006	MA.	
Imaging Consultants Inc—Milford, 14 Prospect Street, Milford, MA 01757.	327085	05/03/2006	MA.	
Imaging Consultants Inc—Quincy, 114 Whitwell Street, Quincy, MA 02196.	327083	05/03/2006	MA.	
Imaging Consultants Inc—Saints Memorial, 2 Hospital Drive, Lowell, MA 01852.	327083	05/03/2006	MA.	
Imaging Consultants Inc—Truesdale, 1030 Presidents Avenue, Fall River, MA 02720.	327085	05/03/2006	MA.	
Imaging Consultants Inc—Twin City, 76 Summer Street, Fitenburg, MA 01420.	N/A	05/03/2006	MA.	
Imaging Consultants Inc—Worcester, 20 Worcester Center Boulevard, Worcester, MA 01608.	327085	05/03/2006	MA.	
Sentara Mobile PET/CT—Careplex, 5900 Lake Wright Drive, Suite B, Norfolk, VA 23502.	250605	05/04/2006	VA.	
Sentara Mobile PET/CT—Lake Wright, 5900 Lake Wright Drive, Suite B, Norfolk, VA 23502.	250605	05/04/2006	VA.	
Sentara Mobile PET/CT—Princess Anne, 5900 Lake Wright Drive, Suite B, Norfolk, VA 23502.	250605	05/04/2006	VA.	
Sentara Mobile PET/CT—Williamsburg, 5900 Lake Wright Drive, Suite B, Norfolk, VA 23502.	250605	05/04/2006	VA.	
Memorial Hospital of South Bend, 615 N Michigan, South Bend, IN 46601.	150058	05/04/2006	IN.	
NSMS—Belleville, IL, 4253 Argosy Court, Madison, WI 53714	208196	05/04/2006	WI.	
NSMS—Flora, IL, 4253 Argosy Court, Madison, WI 53714	208196	05/04/2006	IL.	
NSMS—Breese, IL, 4253 Argosy Court, Madison, WI 53714	208196	05/04/2006	IL.	
SSM DePaul Health Center, 12303 DePaul Drive, St Louis, MO 63044.	260104	05/04/2006	MO.	
Lutheran Hospital, 7950 W Jefferson, Fort Wayne, IN 46804	150017	05/11/2006	IN.	
Memorial MRI and Diagnostic, 1346 Campbell Road, Houston, TX 77055.	00941U	05/11/2006	TX.	
Shields Imaging of Eastern Mass, 55 Fogg Road, Weymouth, MA 2190.	327088	05/11/2006	MA.	
Baystate MRI and Imaging Center, 3300 Main Street, Springfield, MA 1107.	327039	05/11/2006	MA.	
Advanced Imaging Center, 16110 Jog Road, 200, Delray Beach, FL 33446.	U2049	05/11/2006	FL.	
UMASS Memorial MRI and Imaging Center, 214 Shrewsburg Street, Worcester, MA 01604.	327040	05/11/2006	MA.	
RCOA Imaging Services, 1108 Minnequa, Pueblo, CO 81004	475748	05/11/2006	CO.	
Adventist Health PET/CT—Hanford, 450 N Greenfield Avenue, Hanford, CA 93230.	ZZZ318852	05/11/2006	CA.	
Adventist Health PET/CT—Feather River, 5974 Pertz Road, Paradise, CA 95969.	ZZZ318852	05/11/2006	CA.	

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Adventist Health PET/CT—Sonora, 1000 Greenley Road, Sonora, CA 95370.	ZZZ318852	05/11/2006	CA.	
Sarasota Memorial PET, 5350 University Parkway, Sarasota, FL 34238.	U1775	05/11/2006	FL.	
Adventist Health PET/CT—Redbud, 18th Ave at Highway 53, PO Box 6710, Clear Lake, CA 95422.	ZZZ318852	05/11/2006	CA.	
Adventist Health PET/CT—St Helena, 10 Woodland Road, St Helena, CA 94574.	ZZZ318852	05/11/2006	CA.	
Adventist Health PET/CT—Ukiah, 275 Hospital Drive, Ukiah, CA 95482.	ZZZ318852	05/11/2006	CA.	
Mease Outpatient Imaging, 1840 Mease Drive, Safety Harbor, FL 34685.	100265	05/11/2006	FL.	
Bardmoor Outpatient Center, 8787 Bryan Dairy Road, Largo, FL 33777.	00594C	05/11/2006	FL.	
Trinity Outpatient Center, 2102 Trinity Oaks Boulevard, New Port Richey, FL 34655.	00594D	05/11/2006	FL.	
Walnut Creek Imaging Center, 114 la Casa Via, #200, Walnut Creek, CA 94598.	ZZZ13902Z	05/11/2006	CA.	
Carlisle Imaging Center, 1240 S Ft Harrison, Clearwater, FL 33756.	594	05/11/2006	FL.	
Valley Radiology Imaging at Samaritan, 2581 Samaritan Drive, #100, San Jose, CA 95124.	ZZZ139851Z	05/11/2006	CA.	
Forest Hills PET Imaging, 102–02 Queens Boulevard, Forest Hills, NY 11375.	06998G	05/11/2006	NY.	
Roper LowCountry PET Imaging Center, 316 Calhoun Street, Charleston, SC 29401.	Q326280001	05/11/2006	SC.	
Premier PET Imaging of NJ, 119 Cherry Hill Road, Parsippany, NJ 7054.	68433	05/11/2006	NJ ...	Suite 100.
Methodist Medical Center of Illinois, 221 NE Glen Oak Avenue, Peoria, IL 61636.	370661223	05/11/2006	IL.	
Medical Imaging of Baltimore, 6715 N. Charles Street, Baltimore, MD 21204.	258L	05/12/2006	MD.	
Yagnesh Oza, MD, 4117 Velerous Memorial Drive, Mt Vernon, IL 62864.	212702	05/12/2006	IL.	
Moffitt Cancer Center, 12902 Magnolia Drive, Tampa, FL 33612	100271	05/12/2006	FL.	
PrimeMed Imaging, 5 Morgan Highway, Suite 7, Scranton, PA 18505.	260	05/12/2006	PA ...	Morgan Medical Complex.
Rockville PET Imaging, PC, 119 North Park Avenue, Rockville Centre, NY 11570.	WTC601	05/12/2006	NY ...	Suite 101.
Porter Adventist Hospital, 2525 South Downing Street, Denver, CO 80210.	60064	05/12/2006	CO.	
Rapid City Regional Hospital Medical Imaging Services, 353 Fairmont Boulevard, Rapid City, SD 57701.	43007	05/12/2006	SD.	
Advanced Radiolgy, Consultants, 56 Quarry Road, Trumbull, CT 06611.	C02747	05/12/2006	CT.	
Northeastern PA Imaging Center, 2601 Stafford Avenue, Scranton, PA 18505–0305.	475385	05/12/2006	PA ...	PO Box 3305.
Billings MRI Center, 1041 North 29th. Street, Billings, MT 59101–1075.	81030	05/12/2006	MT.	
Aurora St. Luke's Medical Center, 2900 W. Oklahoma Avenue, Milwaukee, WI 53215.	520138	05/12/2006	WI ...	Nuclear Medicine Dept.
Memorial & St. Elizabeth's Healthcare Services, LL, 4000 N. Illinois Lane, Swansea, IL 62226.	201339	05/12/2006	IL	PET/CT Imaging Center.
Palm Beach Cancer Institute—West Palm Beach, 1309 North Flagler Drive, West Palm Beach, FL 33401–2710.	34754	05/12/2006	FL.	
Overlook Hospital, 99 Beauvoir Avenue, Summit, NJ 7902	8772966189	05/12/2006	NJ.	
Ashland Bellefonte Cancer Center, 122 Saint Christopher Drive, Ashland, KY 41101.	2150	05/12/2006	KY.	
Bryn Mawr Imaging Center, 101 S Bryn Mawr Avenue, Bryn Mawr, PA 19010.	473120	05/12/2006	PA.	
Oncology Alliance, 1055 N. Mayfair Road, Suite 100, Wauwatosa, WI 53220.	32836000	05/12/2006	WI.	
Shared PET Maimonides, 6300 Eighth Avenue, Brooklyn, NY 11220.	97Z661	05/12/2006	NY.	
Hoboken Radiology, LLC, 79 Hudson Street, Suite 100, Hoboken, NJ 07030.	80395	05/12/2006	NJ.	
Akron City Hospital, 525 E Main Street, Akron, OH 44309	360020	05/12/2006	OH.	
Park Avenue Radiologists, PC, 525 E. Main Street, Rome, GA 30165.	W21771	05/12/2006	NY.	
Comprehensive Blood & Cancer Center, 6501 Truxtun Avenue, Bakersfield, CA 93309.	zzz238732	05/12/2006	CA.	
Rome Imaging Center, 309 West 10th Street, Rome, GA 30165 ..	GRP1221	05/12/2006	GA.	
Hawaii PET Imaging, 2230 Liliha Street, Honolulu, HI 96817	54537	05/12/2006	HI.	
Imaging Consultants Inc., 242 Green Street, Gardner, MA 01440	327085	05/12/2006	MA.	

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Imaging Consultants Inc, 200 Groton School Road, Ayer, MA 01432.	327085	05/12/2006	MA.	
Rhode Island Pet Services at Memorial Hospital, 111 Brewster Street, Pawtucket, RI 2860.	479003556	05/12/2006	RI.	
Osceola Cancer Center, 737 W. Oak Street, Kissimmee, FL 34741.	1629034202	05/12/2006	FL.	
Valley Radiologists, Ltd.—Paseo II Office, 5605 W. Eugie Avenue, Suite 110, Glendale, AZ 85304.	1902896236	06/13/2006	AZ.	
Southeast GYN, Oncology PET, 5210 Belfort Road, Suite 130, Jacksonville, FL 32256.	45542	06/13/2006	FL.	
The Johns Hopkins PET Center, 600 N. Wolfe Street, Baltimore, MD 21287.	210009	06/13/2006	MD ..	Nelson Basement.
Maklansky, Grunter, Kurzban, Cohen, Zimmer, Hyman, 165 East 84th Street, New York, NY 10028.	W20393	06/13/2006	NY.	
Methodist Medical Center of Illinois, 112 Crescent Avenue, Peoria, IL 61636.	370661223	06/13/2006	IL.	
Phoebe Putney Memorial Hospital, 417 Third Avenue/PO Box 1828, Albany, GA 31702–1828.	110007	06/13/2006	GA.	
Eiber Radiology/PET Premier Imaging, 21 West 49 Street, Hialeah, FL 33012.	k3166	06/13/2006	FL.	
Botsford Hospital, 28050 Grand River Avenue, Farmington Hills, MI 48336.	230151	06/13/2006	MI.	
Middletown Regional Hospital, 105 McKnight Drive, Middletown, OH 45044.	360076	06/13/2006	OH.	
Waukesha Memorial Hospital, 725 American Avenue, Waukesha, WI 53188.	390910727	06/13/2006	WI.	
Battle Creek Health System, 300 North Avenue, Battle Creek, MI 49016.	230075	06/13/2006	MI.	
Orlando Regional Medical Center, 1414 Kuhl Avenue, Orlando, FL 32806.	100006	06/13/2006	FL.	
NorthEast Medical Center, 1065 NorthEast Gateway Court NE, Concord, NC 28025.	340001	06/13/2006	NC.	
Premier Medical Imaging, 7651 Stagers Loop, Delaware, OH 43015.	9912921	06/13/2006	OH.	
Advanced Radiolgy Consultants, 15 Corporate Drive, Trumbull, CT 6611.	C02747	06/13/2006	CT.	
Advance Pet Imaging, 23 Technology Drive, East Setauket, NY 11733.	46a401	06/13/2006	NY.	
Premier PET Imaging of Wichita, 500 S. Main Street, Suite B, Wichita, KS 67202.	110682	06/13/2006	KS.	
Health Center Northwest, 320 Sunnyview Lane, Kalispell, MT 59901.	270087	06/13/2006	MT.	
Olympic Medical Center, 844 N. 5th Avenue, Sequim, WA 98382	500072	06/13/2006	WA.	
Premier PET Imaging of Jacksonville, 5210 Belfort Road, Suite 130, Jacksonville, FL 32256.	K3166	06/13/2006	FL.	
PET/Center Imaging of Jacksonville, 5210 Belfort Road, Suite 130, Jacksonville, FL 32256.	ZZZ19866Z	06/13/2006	CA.	
The Reading Hospital and Medical Center, 6th and Spruce Streets, West Reading, PA 19611.	390044	06/13/2006	PA.	
Julia Rackley Perry Memorial Hospital, 530 Park Avenue East, Princeton, IL 61356.	141337	06/13/2006	IL.	
Ashland Bellefonte Cancer Center, 122 Saint Christopher Drive, Ashland, KY 41101.	2150	06/13/2006	KY.	
Tower Imaging BBD, 14231 Bruce B Down Boulevard, Tampa, FL 33613.	169	06/13/2006	FL.	
VyMed Diagnostic Imaging Tampa, LLC, 10010 N. Dale Mabry Suite 160, Tampa, FL 33618.	U4068	06/13/2006	FL.	
Texas Oncology Cancer Center Sugar Land, 1350 First Colony Boulevard, Sugar Land, TX 77479.	00073F	06/13/2006	TX.	
Samaritan North Health Center, 9000 N. Main Street, Dayton, OH 45415.	360052	06/13/2006	OH.	
The PET Center of Oxford, 1612 US Highway 78 East, Suite 102, Oxford, AL 36203.	51554888	06/13/2006	AL.	
Shared PET Mem Lighthouse, 6901 N Main Street, Granger, IN 46530.	232800	06/13/2006	IN.	
Shared PET Hope Cancer Center, 3702 South Fourth Street, Terre Haute, IN 47802.	201320	06/13/2006	IN.	
Athens Regional Medical Center, 1199 Prince Avenue, Athens, GA 30606.	110074	06/13/2006	GA.	
Muskogee PET & Nuclear Imaging, 3300 Chandler Road, Suite #106, Muskogee, OK 74403.	400522529	06/13/2006	OK.	
Lubbock Imaging Center, 4011 19th Street, Lubbock, TX 79410 ..	00027K	06/13/2006	TX.	
Memorial Medical Center, 701 N. First Street, Springfield, IL 62781.	140148	06/13/2006	IL.	

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Hamamatsu/Queen's PET Imaging Center, 1301 Punchbowl Street, Honolulu, HI 96813.	.....	06/13/2006	HI.	
Aurora BayCare Medical Center, 2845 Greenbrier Road, Green Bay, WI 54308.	520193	06/13/2006	WI.	
Medical Center of Plano, 3901 W. 15th Street, Plano, TX 75002	450651	06/13/2006	TX.	
Carolinas Medical Center, 1000 Blythe Boulevard, Charlotte, NC 28203.	340113	06/13/2006	NC.	
Redwood Regional Medical Group d.b.a. Santa Rosa Rad., 121 Sotoyome Street, Santa Rosa, CA 95405.	680344865	06/13/2006	CA.	
Boone Hospital Center, 1600 East Broadway, Columbia, MO 65201.	260068	06/13/2006	MO.	
River Radiology, 45 Pine Grove Avenue, Kingston, NY 12401	W30681	06/13/2006	NY.	
University of Washinton Medical Center, 1959 NE Pacific Street, Seattle, WA 98195.	142700	06/13/2006	WA.	
Mid American Imaging—Salem, 1987 E. 4th Street, Salem, OH 44460.	ID00804	06/13/2006	OH.	
Piedmont Medical Center, 222 S. Herlong Avenue, Rock Hill, SC 29732.	420002	06/13/2006	SC.	
Alliance Imaging—Sparks, 1311 South I Street, Fort Smith, AR 72817.	5F463	06/13/2006	AR.	
Radiology Imaging Associates, 1825 SE Tiffany Avenue, Suite 104, Port St Lucie, FL 34952.	52	06/13/2006	FL.	
Mount Sinai Medical Center, One Gustave L. Levy Place, New York, NY 10029.	H23620	06/13/2006	NY.	
NSMS—Ottawa, IL, 4253 Argosy Court, Madison, WI 53714	208196	06/13/2006	WI.	
Center for Diagnostic Imaging, 1550 E Chestnut Avenue, Vineland, NJ 08360.	53290	06/13/2006	NJ ...	Building 4, Suite A.
St Mary Mercy Hosp Livonia, 36475 Five Mile Road, Livonia, MI 48154.	230002	06/13/2006	MI.	
Harold Leever Regional Cancer, 1075 Chase Parkway, Waterbury, CT 06708.	470000025	06/13/2006	CT.	
Kentucky Metabolic Imaging, 2425 Regency Road, Suite B, Lexington, KY 40503.	9366001	06/13/2006	KY.	
Western Baptist Hospital, 2501 Kentucky Avenue, Paducah, KY 42001.	180104	06/13/2006	KY.	
St. Anthony Regional Hospital, 311 South Clark Street, Box 628, Carroll, IA 51401.	1720067127	06/13/2006	IA.	
Alliance Imaging—Sequoia Hospital, 170 Alameda De Las Pulgas, Redwood City, CA 94062.	ZZZ28890Z	06/13/2006	CA.	
Craven Regional Medical Center, 2000 Neuse Boulevard, New Bern, NC 28560.	340131	06/13/2006	NC.	
Alliance Imaging—Tri City Medical Center, 4002 Vista Way, Oceanside, CA 92056, Columbia Diagnostic Center.	TG281C	06/13/2006	CA.	
Alliance Imaging—Yavapai, Del Webb Outpatient Center, Prescott Valley, AZ 86314.	76103	06/13/2006	AZ ...	3262 Windsong Drive.
Saint Vincent's Comprehensive Cancer Center, 325 West 15th Street, New York, NY 10011.	330290	06/13/2006	NY.	
Alliance Imaging—Southwest Medical Imaging, 3104 Stockton Hill Road, Kingman, AR 86401.	76103	06/13/2006	AZ.	
Alliance Imaging—North Idaho Imaging, 700 Ironwood Drive, Coeur d'Alene, ID 93814.	1790291	06/13/2006	ID.	
Froedtert Hospital, 9200 W Wisconsin Avenue, Milwaukee, WI 53226.	520177	06/13/2006	WI.	
Alliance Imaging—Flagstaff Medical Center, 1200 N. Beaver Street, Flagstaff, AZ 86001.	71855	06/13/2006	AZ.	
South Florida Oncology and Hematology Consultants, 4850 W. Oakland Park Boulevard, Lauderdale Lakes, FL 33313.	33873	06/13/2006	FL ...	Suite A.
Alliance Imaging—Sierra Vista, 300 El Camino Real, Sierra Vista, AZ 85635.	71855	06/13/2006	AZ.	
Alliance Imaging—St. Joseph Eureka, 2700 Dolbeer Street, Eureka, CA 95501.	zzz23046z	06/13/2006	CA.	
Alliance Imaging—Corvallis Clinic, 3680 NW. Samaritan Drive, Corvallis, OR 97330.	132104	06/13/2006	OR.	
Bridgeport Hospital, 267 Grant Street, Bridgeport, CT 06610	70010	06/13/2006	CT.	
Valley Radiologists Ltd.—Paseo II Office, 5605 W. Eugie Avenue, Glendale, AZ 85304.	1902896236	06/13/2006	AZ ...	Suite 110.
Central Texas Medical Center, 1301 Wonder World Drive, San Marcos, TX 78666.	450272	06/13/2006	TX.	
Alliance Imaging—Verde Valley Medical Center, 269 S. Candy Lane, Cottonwood, AZ 86326.	76103	06/13/2006	AZ.	
Alliance Imaging—Union Hospital Cecil, 106 Bow Street, Elkton, MD 21821.	FMN008	06/13/2006	MD.	
St. Joseph Mercy Hospital—Ann Arbor, 5301 E. Huron River Road, Ann Arbor, MI 48106.	230156	06/13/2006	MI.	

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Alliance Imaging—Navapache, 2200 E. Show Low Lake, Show Low, AZ 85901.	76103	06/13/2006	AZ.	
St. Clare Medical Center, 1710 Lafayette Road, Crawfordsville, IN 17933.	150022	06/13/2006	IN.	
Boynton Beach EFL. Imaging Center, LLC, 2300 S Congress Avenue, Boynton Beach, FL 33426.	272376000	06/13/2006	FL	#105.
Aurora Medical Center Oshkosh, 855 N. Westhaven Drive, Oshkosh, WI 54904.	590198	06/13/2006	WI.	
Southeast GYN, Oncology PET, 5210 Belfort Road, Jacksonville, FL 32256.	45542	06/13/2006	FL	Suite 130.
Stockton MRI & Molecular Imaging Medical, 2320 N. California Street #2, Stockton, CA 95219.	ZZZ290872	06/13/2006	CA.	
South Texas Cancer Center, 2150 N. Expressway 83, Brownsville, TX 78521.	14041756	06/13/2006	TX.	
Southwest Cancer Care Medical Group, 5395 Ruffin Road, San Diego, CA 92123.	W4957B	06/13/2006	CA	#202.
Radiology Associates of Venice and Englewood, P.A., 512–516 S. Nokomis Avenue, Venice, FL 34285.	99390	06/13/2006	FL.	
Langlade Memorial Hospital Oncology, 112 E 5th Avenue, Antigo, WI 54409.	521350	06/13/2006	WI.	
RCOA Imaging Services, 305 South 5th, Enid, OK 73701	400522301	06/13/2006	OK.	
North Shore Hematology Oncology Associates, PC, 235 N. Belle Mead Road, East Setauket, NY 11733.	W04051	06/13/2006	NY.	
Providence Holy Cross Imaging Center, 26357 McBean Parkway, Suite 155, Santa Clarita, CA 91355.	TP129	06/13/2006	CA.	
Alaska Open Imaging Center, LLC, 6911 DeBarr Road, Anchorage, AK 99504.	K153149	06/13/2006	AK.	
Temecula Valley Nuclear Medicine, 25485 Medical Center Drive, Murrieta, CA 92562.	00A417170	06/13/2006	CA	Suite 102.
Hematology Oncology Assoc. of the Treasure Coast, 1801 SE. Hillmoor Drive, Port Saint Lucie, FL 34952.	40806	06/13/2006	FL	Suite B–107 (Mobile).
The Center for Cancer and Blood Disorders, 800 W. Magnolia Avenue, Fort Worth, TX 76104.	00L79L	06/13/2006	TX.	
Alliance Imaging—South Coast Med Ctr, 31872 Pacific Coast Highway, Laguna Beach, CA 92651.	TG281B	06/13/2006	CA.	
The Medical Center at Bowling Green, 250 Park Street, Bowling Green, KY 42101.	180013	06/13/2006	KY	PET/CT Center.
Johns Hopkins Bayview Medical Center, 4940 Eastern Avenue, Baltimore, MD 21224.	210029	06/13/2006	MD	Imaging Dept.—Nuclear Medicine.
University of Michigan, Department of Radiology, 1500 E. Medical Center Drive, Ann Arbor, MI 48109.	230046	06/13/2006	MI	Box 0028, B1H418 University Hospital.
Carmichael Imaging, LLC, 4147 Carmichael Road, Montgomery, AL 36106.	51551742	06/13/2006	AL.	
Clearfield Hospital, 809 Turn Pike Avenue, Clearfield, PA 16830	390052	06/13/2006	PA.	
Clinical Pet of Hernando, 4003 Mariner Boulevard, Spring Hill, FL 34609.	V2683	06/13/2006	FL.	
Booth Radiology, 105 Kings Way, W. Hurffville-Crosskeys Road, Sewell, NJ 08080.	39460	06/13/2006	NJ.	
Clinical PET of Zepherhills, 38044 Daughtery Road, Zephyr Hills, FL 33542.	E7179B	06/13/2006	FL.	
Radiology & Diagnostic Imaging, 2200 East Parrish Avenue, Owensboro, KY 42303.	3641	06/13/2006	KY	Building D.
Santa Monica Bay Physicians, 12524 W. Washington Boulevard, Los Angeles, CA 90066.	W14560	06/13/2006	CA.	
Missouri Baptist Medical Center, 3023 N. Ballas Road, St. Louis, MO 63141.	260108	06/13/2006	MO	Suite 150, Building D.
Radiology Associates of Tallahassee, P.A., 1600 Phillips Road, Tallahassee, FL 32308.	60	06/13/2006	FL.	
Pacific Imaging—Oakland, 3200 Telegraph, Oakland, CA 94609	1265480099	06/13/2006	CA.	
Medical Group of North County, 5395 Ruffin Road #202, San Diego, CA 92123.	W11609	06/13/2006	CA	#202.
Somerset Community Hospital, 225 South Center Avenue, Somerset, PA 15501.	390039	06/13/2006	PA.	
Elmbrook Memorial Hospital, 19333 W. North Avenue, Brookfield, WI 53045.	520170	06/13/2006	WI.	
San Luis Diagnostic Medical Associates, 1100 Monerery Street, San Luis Obispo, CA 93401.	W14221	06/13/2006	CA	Suite 210.
Cancer Care Centers of S.Texas, P.A. (New Braunfels), 1448 Common Street, New Braunfels, TX 78130.	00U40Q	06/13/2006	TX.	
Cancer Care Centers of S.Texas, P.A. (San Antonio), 8109 Fredericksburg Road, San Antonio, TX 78229.	00U40Q	06/13/2006	TX.	
Cancer Care Centers of S.Texas, P.A.(Kerrville), 694 Hill Country Drive, Kerrville, TX 78028.	00U40Q	06/13/2006	TX.	

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San Antonio Molecular Imaging SAMI, 9102 Floyd Curl Drive, San Antonio, TX 78240.	FTN025	06/13/2006	TX ...	Suite 193.
Pacific Medical Imaging and Oncology Center, Inc., 707 South Garfield Avenue, Alhambra, CA 91801.	W19267	06/13/2006	CA ...	Suite B–001.
Northern IL Cancer Treatment Center, 327 IL Route 2, Dixon, IL 61021.	210699	06/13/2006	IL.	
Cancer Care Center, 2210 Green Valley Road, New Albany, IN 47150.	243690	06/13/2006	IN	Suite 1.
Northeast Radiology, 3839 Danbury Road, Brewster, NY 10509 ..	1134118607	06/13/2006	NY.	
New England PET Imaging System, 70 East Street, Methuen, MA1844.	M20762	06/13/2006	MA.	
Southeast Texas PET Imaging, 690 North 14th Street, Beaumont, TX 77702.	0004CC	06/13/2006	TX.	
Sun City West PET Scan, 14418 W. Meeker Boulevard, Sun City West, AZ 85374.	102496	06/13/2006	AZ ...	Suite 105.
Butler Memorial Hospital, 911 East Brady Street, Butler, PA 16001.	390168	06/13/2006	PA.	
Diagnos, Inc., d.b.a. Diagnos PET/CT Imaging, 2000 North Loop West, Houston, TX 77018.	ftnx11	06/13/2006	TX ...	Suite 100.
Alliance Imaging—Washington Hospital, 38950 Civic Center Drive, Fremont, CA 94538.	ZZZ28890Z	06/13/2006	CA.	
Providence Saint Joseph Hospital, 201 S Buena Vista, Burbank, CA 91505.	50235	06/13/2006	CA ...	#125.
Alliance Imaging—Centinela Freeman, 333 Prairie Avenue, Inglewood, CA 90301.	TG281	06/13/2006	CA.	
Alliance Imaging—Corona Regional Hospital, 800 S. Main Street, Corona, CA 91720.	ZZZ23042Z	06/14/2006	CA.	
Alliance Imaging—St. Mary's Regional Medical Center, 235 W. 6th Street, Reno, NV 89503.	37860	06/14/2006	NV ...	235 W. 6th Street.
Alliance Imaging—Downey Regional Medical Center, 11500 Brookshire Avenue, Downey, CA 90241.	TG490	06/14/2006	CA.	
Alliance Imaging—Visalia Medical Clinic, 5400 W. Hillsdale Drive, Visalia, CA 93291.	ZZZ23046Z	06/14/2006	CA.	
Alliance Imaging—Anaheim Memorial Medical Center, 1111 W. La Palma Avenue, Anaheim, CA 92801.	TD017C	06/14/2006	CA ...	Anaheim Memorial Medical Center.
Glendale Diagnostic Imaging Network Medical Office, 403 South Glendale Avenue, Glendale, CA 91205.	W19100	06/14/2006	CA.	
Advanced Imaging at Baybrook, 11 Murray Street, Glens Falls, NY 12801.	33554a	06/14/2006	NY.	
Elizabethtown Hematology-Oncology PLC, 1107 Woodland Drive, Elizabethtown, KY 42701.	3638	06/14/2006	KY ...	Suite 105.
Northern Arizona Radiology, 77 W. Forest Avenue, Suite 101, Flagstaff, AZ 86001.	WCGJX	06/14/2006	AZ.	
Suburban Imaging—Coon Rapids, 8990 Springbrook Drive, Suite 140, Coon Rapids, MN 55433.	3087	06/14/2006	MN.	
Covenant Medical Center, 200 East Ridgeway Avenue, Waterloo, IA 50702.	421264647	06/14/2006	IA.	
Mayo Clinic Rochester, 10, 3rd Avenue NW., Rochester, MN 55905.	1922074434	06/14/2006	MN ..	Charlton Building.
Thousand Oaks Diagnostic Imaging Center, 2180 Lynn Road, Thousand Oaks, CA 91360.	TP118	06/14/2006	CA.	
InnerVision Advanced Medical Imaging, 3801 Amelia Avenue, Lafayette, IN 47905.	167840	06/14/2006	IN.	
UT M.D. Anderson Cancer Center—PET Facility, 1220 Holcombe Boulevard, Houston, TX 77030.	450076	06/14/2006	TX ...	ACB 6th Floor.
Emory University Hospital, 1364 Clifton Road, NE., Atlanta, GA 30322.	110010	06/14/2006	GA ..	Room E121 Nuclear Medicine/PET.
Glendale MRI Institute, 624 S. Central Avenue, Glendale, CA 91204.	HW9951	06/14/2006	CA.	
Princeton Radiology, 9 Centre Drive, Jamesburg, NJ 8540	526492	06/14/2006	NJ.	
Caromont Imaging Services, 620 Summit Crossing Place, Gastonia, NC 28054.	340032	06/14/2006	NC ..	Suite 106.
North Central Imaging, 155 Sonterra Boulevard, Suite 100, San Antonio, TX 78258.	00867N	06/14/2006	TX.	
Robert L.B. Tobin Diagnostic Imaging Center, 7979 Wurzbach Drive, Suite U113, San Antonio, TX 78229.	00867N	06/14/2006	TX.	
Edwards Comprehensive Cancer Center, 1400 Hal Greer, Huntington, WV 25701.	510055	06/14/2006	WV.	
Home Hospital GLHS, 2400 South Street, Lafayette, IN 47904	150109	06/14/2006	IN.	
St. Luke's North PET, 153 Brodhead Road, Bethlehem, PA 18017.	390049	06/14/2006	PA.	
Alamance Regional Medical Center, 1240 Huffman Mill Road, Burlington, NC 27216–0202.	340070	06/14/2006	NC ..	PO Box 202.

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Verrazano Radiology, 256 Mason Avenue, Staten Island, NY 10305.	1698	06/14/2006	NY.	
Total Imaging Sun City, 3862 Sun City Center, Sun City Center, FL 33571.	U4840	06/14/2006	FL.	
Ortonville Area Health Services, 450 Eastvold Avenue, Ortonville, MN 56278.	241342	06/14/2006	MN.	
Merle West Medical Center, 2865 Daggett, Klamath Falls, OR 97601.	380050	06/14/2006	OR.	
Elite Imaging, LLC, 2845 Aventura Boulevard, Aventura, FL 33180.	K3535	06/14/2006	FL ...	Suite 145.
St Mary Centralia, 400 N Pleasant, Centralia, IL 62801	140034	06/14/2006	IL.	
North Texas Regional Cancer Center, 3705 W 15th Street, Plano, TX 75075.	00543K	06/14/2006	TX.	
Centegra Health System, 4201 Medical Center Drive, McHenry, IL 60050.	140116	06/14/2006	IL.	
Boston Diagnostic Imaging, 398 East Altamonte Drive, Altamonte Springs, FL 32701.	77022	06/14/2006	FL.	
William W. Backus Hospital, 326 Washington Street, Norwich, CT 06360.	70024	06/14/2006	CT.	
NSMS—Sparta, IL, 4253 Argosy Court, Madison, WI 53714	208196	06/14/2006	WI.	
LaPorte Hospital & Healthcare Services, 1007 Lincolnway, LaPorte, IN 46350.	150006	06/14/2006	IN.	
Skagit Valley Hospital, 1415 E. Kincaid, Mt.Vernon, WA 98273	500003	06/14/2006	WA.	
Alliance Imaging—Fairfield Hosp, 303 NW 11th Street, Fairfield, IL 62837.	213393	06/14/2006	IL.	
Anderson Hospital, 6800 State Route 162, Maryville, IL 62062	212761	06/14/2006	IL.	
Alliance Imaging—Dean, 1313 Fish Hatchery Road, Madison, WI 53715.	92170	06/14/2006	WI.	
Alliance Imaging—Research, 2316 E. Meyer Blvd., Kansas City, MO 64112.	9004263A	06/14/2006	MO.	
Alliance Imaging—St. Joseph, 1000 Carondelet Drive, Kansas City, MO 64114.	9004263A	06/14/2006	MO.	
Beebe Health Campus, d.b.a. Beebe Medical Center, 18941 John J Williams Highway, Rehoboth, DE 19971.	80007	06/14/2006	DE.	
Medical Outsourcing Services, LLC, 1200 Maple Road, Joliet, IL 60432.	211223	06/14/2006	IL.	
Silver Spring Radiology, 10801 Lockwood Drive, Silver Spring, MD 20901.	FDX009	06/14/2006	MD ..	Suite 170.
New England PET of Greater Lowell, 295 Varnum Avenue, Lowell, MA 01854.	327080	06/14/2006	MA.	
Stanford University, 900A Blake Wilbur Drive, Stanford, CA 94305.	50441	06/14/2006	CA.	
Medical Outsourcing Services, LLC, 3333 W DeYoung Street, Marion, IL 62959.	211224	06/14/2006	IL.	
Medical Outsourcing Services, LLC, 1700 Clinton Street, Muskegon, MI 49443.	230066	06/14/2006	MI.	
Medical Outsourcing Services, LLC, 1001 Bellefontaine Avenue, Lima, OH 45807.	MEID02391	06/14/2006	OH.	
Golf Diagnostic Imaging Center, 9680 Golf Road, Des Plaines, IL 60016.	378810	06/14/2006	IL.	
Medical Outsourcing Services, LLC, 2816 South Ellis Avenue, Chicago, IL 60616.	211222	06/14/2006	IL.	
Medical Outsourcing Services, LLC, 1100 E. Norris Drive, Ottawa, IL 61350.	211224	06/14/2006	IL.	
Medical Outsourcing Services, LLC, 111 E Spring Street, Streator, IL 61364.	211224	06/14/2006	IL.	
Mansfield Imaging Center, 536 S Trimble Road, Mansfield, OH 44906.	MAD10921	06/14/2006	OH ..	Suite A.
Manhattan Diagnostic Radiology, 400 East 66th Street, New York, NY 10021.	W23211	06/14/2006	NY.	
Riverside Walter Reed Hospital, 7519 Hospital Drive, Gloucester, VA 23061.	490130	06/14/2006	VA.	
Good Shepherd Hospital, 450 West Highway 22, Barrington, IL 60010.	140291	06/14/2006	IL.	
Alliance Imaging—Presbyterian Intercomm Hospital, 12401 Washington Boulevard, Whittier CA 90602.	TG281A	06/14/2006	CA ...	Presbyterian Intercommunity Hospital.
Altru Hospital, 1200 S. Columbia Road, Grand Forks, ND 58201	350019	06/14/2006	ND.	
Mid American Imaging—Union Hospital, 659 Boulevard, Dover, OH 44622.	ID00805	06/14/2006	OH.	
Gundersen Clinic, 1900 South Avenue, Lacrosse, WI 54601	34217	06/14/2006	WI.	
University of Minnesota Medical Center, Fairview, 500 Harvard Street, SE., Box 292, Minneapolis, MN 55455.	C02390	06/14/2006	MN.	
The Christ Hospital, 2139 Auburn Avenue, Cincinnati, OH 45219	360163	06/14/2006	OH.	

Facility name	Provider No.	Date approved	State	Other
West Michigan Cancer Center, 200 N. Park Street, Kalamazoo, MI 49007.	0N66660	06/14/2006	MI.	
Cyrus Diagnostic Imaging, Inc., 165 Waymont Court, Lake Mary, FL 32746.	40586	06/14/2006	FL.	
Cancer Centers of Florida, 1561 West Fairbanks Avenue, Winter Park, FL 32789.	K1833	06/14/2006	FL.	
Cedars-Sinai Medical Center, 8700 Beverly Boulevard, Adler-Nail PET Center, Los Angeles, CA 90048.	951644600	06/14/2006	CA	S. Mark Taper Foundation Imaging Center.
Cancer Centers of Florida, 52 West Gore Street, Orlando, FL 32806.	K1833	06/14/2006	FL.	
Cancer Centers of Florida, 1111 Blackwood Avenue, Ocoee, FL 34761.	K1833	06/14/2006	FL.	
Mt. Clemens Regional Medical Center, 1000 Harrington, Mt. Clemens, MI 48043.	230227	06/14/2006	MI.	
Truxtun Radiology Medical Group, L.P., 1818 16th Street, Bakersfield, CA 93301.	ZZZ25213Z	06/14/2006	CA.	
Medical Outsourcing Services, LLC, 1515 North Madison Avenue, Anderson, IN 46011.	223260	06/14/2006	IN.	
Medical Outsourcing Services, LLC, 1215 Franciscan Drive, Litchfield, IL 62056.	211224	06/14/2006	IL.	
Piedmont Medical Center, 1968 Peachtree Road NW., Atlanta, GA 30305.	110083	06/14/2006	GA.	
Medical Outsourcing Services, LLC, 1400 West Park Street, Urbana, IL 61801.	211224	06/14/2006	IL.	
Central Indiana PET, LLC, 8301 Harcourt Road, Suite 100, Indianapolis, IN 46260.	201930	06/14/2006	IN.	
Medical Outsourcing Services, LLC, 812 North Logan, Danville, IL 61832.	211224	06/14/2006	IL.	
Queens Medical Imaging, PC, 69–15 Austin Street, Forest Hills, NY 11375.	1023011285	06/14/2006	NY.	
NYOH PET/CT Imaging, 43 New Scotland Avenue, Albany, NY 12208.	56917A	06/14/2006	NY.	
Conroe Regional Medical Center, 504 Medical Center Boulevard, Conroe, TX 77304.	450222	06/14/2006	TX.	
Northeast Georgia Health System, Inc., Northeast Georgia Medical, Center, 743 Spring StreetGainesville, GA 30501.	110029	06/14/2006	GA.	
Texas Oncology, PA—Mckinney, 4510 Medical Center Drive, Mckinney, TX 75069.	00543K	06/14/2006	TX	#215.
Medical Outsourcing Services LLC, 7150 Clearwater Drive, Indianapolis, IN 46256.	223260	06/14/2006	IN.	
Medical Outsourcing Services LLC, 1402 East County Line Road, Indianapolis, IN 46227.	223260	06/14/2006	IN.	
Texas Cancer Center—Sherman, 2800 Highway 75 North, Sherman, TX 75090.	00543K	06/14/2006	TX.	
Medical Outsourcing Services LLC, 120 Ralston Avenue, Defiance, OH 43512.	MEID02391	06/14/2006	OH.	
Medical Outsourcing Services LLC, 2400 N Rockton Avenue, Rockford, IL 61103.	211224	06/14/2006	IL.	
Arlington Cancer Center, 906 W. Randol Mill Road, Arlington, TX 76012.	00LK20	06/14/2006	TX.	
Jupiter Medical Center, 2055 Military Trail, Jupiter, FL 33458	100253	06/14/2006	FL.	
Cheyenne Radiology Group and MRI, PC, 2003 Bluegrass Circle, Cheyenne, WY 82009.	W309142	06/14/2006	WY.	
Hunterdon Imaging, PA, 2100 Wescott Drive, MRI Suite, Flemington, NJ 08822.	714119	06/14/2006	NJ.	
Medical Outsourcing Services, LLC, 200 Berteau Avenue, Elmhurst, IL 60126.	211223	06/14/2006	IL.	
Magnolia Regional Center, 611 Alcorn Drive, Corinth, MS 38834	250009	06/14/2006	MS.	
Monroe Clinic, 515 22nd Avenue, Monroe, WI 53566	520028	06/14/2006	WI.	
Jupiter Hematology-Oncology Association, 345 Jupiter Lakes Boulevard, Jupiter, FL 33458.	34922	06/14/2006	FL	Suite 100.
Southwest Regional Cancer Center, 901 West 38th Street, Austin, TX 78705.	0080BY	06/14/2006	TX.	
Positron Imaging Of Austin, 6101 Balcones Drive, Austin, TX 78731.	00538K	06/14/2006	TX.	
Southern Ocean County Hospital, 1140 Route 72 West, Manahawkin, NJ 08050.	310113	06/14/2006	NJ	Radiology.
Medical Outsourcing Services, LLC, 9830 S. Ridgeland Road, Chicago Ridge, IL 60145.	211222	06/14/2006	IL.	
Medical Outsourcing Services, LLC, 430 West Votaw Street, Portland, IN 47374.	223260	06/14/2006	IN.	
Saint Agnes Medical Center, 1303 E. Herndon Avenue, Fresno, CA 93720.	50093	06/14/2006	CA.	

Facility name	Provider No.	Date approved	State	Other
Central Physicians Imaging, 100 Southland Drive, Lexington, KY 40503.	9375001	06/14/2006	KY ...	Suite B.
NEA Medical Center, 3024 Stadium Blvd, Jonesboro, AR 72401	1386699353	06/14/2006	AR.	
Northgate Medical Imaging, LLC, 807 Northgate Boulevard, New Albany, IN 47150.	1205894235	06/14/2006	IN.	
Ball Memorial Hospital, 2401 University Avenue, Muncie, IN 47303.	150089	06/14/2006	IN.	
The MRI Center, 5200 Harroun Road, Sylvania, OH 43560	360074	06/14/2006	OH ..	Flower Hospital.
St. Joseph Regional Health Center, 2801 Franciscan Drive, Bryan, TX 77802.	450011	06/14/2006	TX.	
Steinberg Diagnostic (SDMI), 2850 Siena Heights Drive, Henderson, NV 89052.	WCHCC	06/14/2006	NV.	
Raritan Bay Medical Center, 1 Hospital Plaza, Old Bridge, NJ 08857.	310039	06/14/2006	NJ.	
MRI CTR St. Anne Mercy Hospital, 3404 W Sylvania Avenue, Toledo, OH 43623.	360262	06/14/2006	OH.	
MRI CTR St. Charles Mercy Hospital, 2600 Navarre Avenue, Oregon, OH 43616.	360081	06/14/2006	OH.	
MRI CTR St. Luke's Hospital, 2901 Monclova Road, Maumee, OH 43537.	360090	06/14/2006	OH.	
MRI CTR St. Vincent Medical Center, 2213 Cherry Street, Toledo, OH 43608.	360112	06/14/2006	OH.	
MRI CTR Toledo Hospital, 2142 N Cove Boulevard, Toledo, OH 43606.	360068	06/14/2006	OH.	
McAlester Regional Health Center, One Clark Bass Boulevard, McAlester, OK 74501.	370034	06/14/2006	OK.	
Express Imaging Center, Ltd., 1987 West Fourth Street, Mansfield, OH 44906.	9299151	06/14/2006	OH ..	Suite A.
Mercy Regional Medical Center, 375 East Park Avenue, Durango, CO 81301.	60013	06/14/2006	CO.	
Texas Oncology—Longview Cancer Center PET, 1300 N. Fourth Street, Longviews, TX 75601.	00T35E	06/14/2006	TX.	
UNC Hospitals, 101 Manning Drive, Chapel Hill, NC 27514	3400610	06/14/2006	NC ..	PET Dept Basement W/C Hospital.
DeKalb Medical Center—Diagnostic Imaging Center, 2701 North Decatur Road, Decatur, GA 30033.	110076	06/14/2006	GA.	
Long Island Pet Imaging, 6 Ohio Drive, Lake Success, NY 11042	W4921	06/14/2006	NY ...	Suite 101.
Vanderbilt University Medical Center, 1161 21st Avenue South, Nashville, TN 37232.	3284867	06/14/2006	TN ...	Building 1251 RRB.
Medical Outsourcing Services, LLC, 1800 E. Lakeshore Drive, Decatur, IL 62521.	211224	06/14/2006	IL.	
New York Pet and CTA Imaging Center, 7404 5th Avenue, Brooklyn, NY 11209.	1083680003	06/14/2006	NY.	
Mercy Medical Center—North Iowa, 1000 4th SW., Mason City, IA 50401.	160064	06/14/2006	IA.	
Lawrence and Memorial Hospital, 365 Motauk Avenue, New London, CT 06320.	70007	06/14/2006	CT.	
Superior Medical Diagnostics II, LLC, 235 Franklin Avenue, Nutley, NJ 07110.	68423	06/14/2006	NJ.	
Oncology Specialists, S.C., 7900 N. Milwaukee Avenue, Niles, IL 60714.	587940	06/14/2006	IL	Suite 16.
Hahnemann University Hospital, Broad & Vine, MS300, Philadelphia, PA 19102.	390290	06/14/2006	PA.	
Shrewsbury Diagnostic Imaging, LLC, 1131 Broad Street, Shrewsbury, NJ 07702.	24021	06/14/2006	NJ ...	Suite 110.
Medical Outsourcing Services, LLC, 500 West Court Street, Kankakee, IL 60901.	211224	06/14/2006	IL.	
Forsyth Medical Center, 3333 Silas Creek Parkway, Winston Salem, NC 27103.	3400014	06/14/2006	NC.	
Medical Outsourcing Services, LLC, 500 John Deere Road, Moline, IL 61265.	211224	06/14/2006	IL.	
Medical Outsourcing Services, LLC, 836 W. Wellington Avenue, Chicago, IL 60657.	211222	06/14/2006	IL.	
Medical Outsourcing Services, LLC, 1600 West Walnut, Jacksonville, IL 62650.	211224	06/14/2006	IL.	
Medical Outsourcing Services, LLC, 1600 23rd Street, Bedford, IN 47471.	223260	06/14/2006	IN.	
Medical Outsourcing Services, LLC, 1500 North Ritter Avenue, Indianapolis IN 46219.	223260	06/14/2006	IN.	
Medical Outsourcing Services, LLC, 1221 N. Highland, Aurora, IL 60506.	211223	06/14/2006	IL.	
Medical Outsourcing Services, LLC, 1000 Lincoln Health Center Drive, Mattoon, IL 61938.	211224	06/14/2006	IL.	

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Salinas Valley Memorial Healthcare System, 450 E. Romie Lane, Salinas, CA 93901.	50334	06/14/2006	CA.	
Bridgeport Hospital, 267 Grant Street, Bridgeport, CT 6610	70010	06/14/2006	CT.	
MRIGP, Inc., d.b.a. Advanced Medical Imaging Diamond H., 2490 W 26th Avenue, Suite 20A, Denver, CO 80211.	H8808	06/14/2006	CO.	
Rancho PET Imaging, 5120 Belfort Boulevard, Suite 130, Jacksonville, FL 32256.	40259	06/14/2006	FL.	
Presbyterian Hospital, 200 Hawthorne Lane, Charlotte, NC 28204	560554230	06/14/2006	NC.	
Eisenhower Imaging Center, 39000 Bob Hope Drive, Rancho Mirage, CA 92210.	ZZZ91572Z	06/14/2006	CA.	
Lower Level Lucy Curci Cancer Center, Mississippi Baptist Medical, Center, 501 Marshall StreetJackson, MS 39202.	250102	06/14/2006	MS.	
Texas Oncology—South Texas Cancer Center, 2121 Pease Street, Suite 101, Harlingen, TX 78550.	14041756	06/14/2006	TX	Texas Oncology—South Texas Cancer Center.
Valley Radiologists, Ltd.—Paseo II Office, 5605 W. Eugie Avenue, Suite 110, Glendale, AZ 85304.	WCFHS	06/14/2006	AZ.	
Good Samaritan Hospital, 400 15th Avenue SE, Puyallup, WA 98372.	500079	06/14/2006	WA.	
St. John's Mercy Hospital, 851 5th Street, Washington, MO 63090.	260052	06/14/2006	MO.	
Memorial Hermann The Woodlands OPID, 9200 Pinecroft Drive, Suite 100, The Woodlands, TX 77380.	741152597	07/14/2006	TX.	
St. Luke's Hospital, 232 South Wood's Mill Road, Chesterfield, MO 63017.	260179	07/14/2006	MO.	
Lake Vista Cancer Center, 2790 Lake Vista Drive, Lewisville, TX 75067.	00543K	07/14/2006	TX.	
Palms Imaging Medical Group, Inc., 1901 Outlet Center Drive, Oxnard, CA 93036.	W19564	07/14/2006	CA.	
Houston Medical Imaging, LLC, 3310 Richmond Avenue, Houston, TX 77006.	00137K	07/14/2006	TX.	
Alliance Imaging—West Anaheim Medical Center, 3033 W. Orange Avenue, Anaheim, CA 92804.	TD017	07/14/2006	CA.	
Winthrop PET Imaging Center, 222 Station Plaza North, Suite 140, Mineola, NY 11501.	330167	07/14/2006	NY.	
Greenville Hospital System, University Medical Center, Greenville, SC 29605.	420078	07/14/2006	SC.	
High Field Open MRI, 1895 Jefferson Road, Rices Landing, PA 15357.	7885	07/14/2006	PA.	
PET/CT Center at-St. Anthony's POB, 1201 5th Avenue North, St. Petersburg, FL 33705.	E5753	07/14/2006	FL	Suite 100.
Texas Oncology—Deke Slayton Cancer Center, 501 Medical Center, Webster, TX 77598.	00t40e	07/14/2006	TX.	
Invision North Florida Outpatient Imaging Center, 6605 NW. 9th Boulevard, Gainesville, FL 32609.	E4639	07/14/2006	FL.	
Memorial Hospital of Union County, 500 London Avenue, Marysville, OH 43040.	360092	07/14/2006	OH.	
Texas Oncology/South Texas Cancer Center—McAllen, 1901 S. 2nd Street, McAllen, TX 78503.	00N39J	07/14/2006	TX.	
Baylor Medical Center at Irving, 1901 North MacArthur Boulevard, Irving, TX 75061.	450079	07/14/2006	TX.	
Providence Park Hospital, 47601 Grand River Avenue, Novi, MI 48374.	230019	07/14/2006	MI.	
Texas Oncology—Abilene, 1957 Antilley Road, Abilene, TX 79606.	140414748	07/14/2006	TX.	
St. Anthony Hospital, 1000 North Lee Street, Oklahoma City, OK 73101.	370037	07/14/2006	OK.	
Rice Memorial Hospital, 301 Becker Avenue SW., Willmar, MN 56201.	240088	07/14/2006	MN.	
LDS Hospital Nuclear Medicine, 8th Avenue & C Street, Salt Lake City, UT 84143.	460010	07/14/2006	UT.	
RMG First & Laurel Imaging Center, 2466 First Avenue, San Diego, CA 92101.	W14057	07/14/2006	CA.	
RMG Gardenview Imaging Center, 1200 Gardenview Road, Encinitas, CA 92024.	W14057F	07/14/2006	CA	Suite 110.
Decatur County Memorial Hospital, 720 North Lincoln Street, Greensburg, IN 47240.	150062	07/14/2006	IN.	
Midland Imaging Center, 5001 Andrews Highway, Midland, TX 79703.	00U75H	07/14/2006	TX.	
Advanced Imaging, LLC, 3433 NW. 56th C–10, Oklahoma City, OK 73112.	400522379	07/14/2006	OK.	
University of Iowa Hospitals and Clinics, 200 Hawkins Drive, Iowa City, IA 52242.	160058	07/14/2006	IA.	
AZ Oncology Associates PET/CT & CT Imaging Center, 2070 W. Rudasill Road, Tucson, AZ 85704.	25291	07/14/2006	AZ	Suite 110.

Facility name	Provider No.	Date approved	State	Other
Medical Diagnostic Imaging, 14 Raymond Avenue, Poughkeepsie, NY 12603.	EEN841	07/14/2006	NY.	
Shore Memorial Hospital, 10085 William F. Bernart Circle, Nassawadox, VA 23413.	540560500	07/14/2006	VA.	
Deaconess Hospital, 600 Mary Street, Evansville, IN 47747	150082	07/14/2006	IN.	
Great Neck Imaging, P.C., 907 Northern Boulevard, Great Neck, NY 11021.	1487646311	07/14/2006	NY.	
FMH Rose Hill, 1562 Opossumtown Pike, Frederick, MD 21702 ..	KP72	07/14/2006	MD.	
Oakwood Annapolis Hospital, 33155 Annapolis Road, Wayne, MI 48184.	230142	07/14/2006	MI.	
The Regional Cancer Center, 2500 West 12th Street, Erie, PA 16505.	140052	07/14/2006	PA.	
Meritcare Hospital, 801 North Broadway, Fargo, ND 58122	350011	07/14/2006	ND.	
Community Hospitals and Wellness Centers, 433 W. High Street, Bryan, OH 43506.	360121	07/14/2006	OH.	
Sacred Heart Hospital, 900 W. Clairemont Avenue, Eau Claire, WI 54701.	520013	07/14/2006	WI.	
Via Radiology—Meridian Pavilion, 11011 Meridian Avenue, North #101, Seattle, WA 98133.	8859612	07/14/2006	WA.	
Medical Outsourcing Services, LLC, 2200 Market Street, Charlestown, IN 47111.	223260	07/14/2006	IN.	
Allegheny General Hospital, 320 East North Avenue, Pittsburgh, PA 15232.	60503	07/14/2006	PA ...	Division of Nuclear Medicine.
Texas Oncology—12th Avenue, 1001 W. 12th Avenue, Fort Worth, TX 76104.	00R66C	07/14/2006	TX.	
Southwest Fort Worth Cancer Center, 6500 Harris Parkway, Fort Worth, TX 76132.	00R66C	07/14/2006	TX.	
St. Rita's Medical Center, 730 W. Market Street, Lima, OH 45801	360066	07/14/2006	OH.	
New Mexico Oncology Hematology Consultants, Ltd., 4901 Lang Avenue NE., Albuquerque, NM 87109.	850367056	07/14/2006	NM.	
Emory Eastside Medical Center, 545 Old Norcross Road, Lawrenceville, GA 30045.	110192	07/14/2006	GA ..	Suite 200.
Riverside Regional Medical Center, 500 J. Clyde Morris Boulevard, Newport News, VA 23601.	490052	07/14/2006	VA.	
Connecticut Oncology & Hematology, 220 Kennedy Drive, Torrington, CT 6790.	C00633	07/14/2006	CT.	
Chilton Memorial Hospital, 97 West Parkway, Pompton Plains, NJ 7444.	310017	07/14/2006	NJ.	
Riverside Diagnostic Center Williamsburg, 120 Kings Way, Williamsburg, VA 23188.	490052	07/14/2006	VA.	
Lawrence County MRI & Diagnostic Imaging Center, 2526 Wilmington Road, New Castle, PA 16105.	68617	07/14/2006	PA.	
Joint Township District Memorial Hospital, 200 St. Clair Street, Saint Marys, OH 45885.	360032	07/14/2005	OH.	
Radiation Therapy Regional Centers, 3680 Broadway, Fort Myers, FL 33901.	77215	07/14/2006	FL.	
Graduate Hospital, 1800 Lombard Street, Philadelphia, PA 19146	390285	07/14/2006	PA ...	One Graduate Hospital.
Columbia Diagnostic Center, 1111 Paulison Avenue, Clifton, NJ 07015.	94729	07/14/2006	NJ.	
The Nebraska Medical Center, 4250 Dewey Avenue, Omaha, NE 68113.	280013	07/14/2006	NE.	
Memorial Hermann Memorial City OPID, 925 Gessner Road, Houston, TX 77024.	741152597	07/14/2006	TX.	
Clifton Springs Hospital and Clinic, 2 Coulter Road, Clifton Springs, NY 14432.	330265	07/14/2006	NY.	
Monongalia General Hospital, 1200 J. D. Anderson Drive, Morgantown, WV 26505.	510024	07/14/2006	WV ..	Monongalia General Hospital.
Providence Portland Medical Center, 4805 NE. Glisan Street, Portland, OR 97213.	380061	07/14/2006	OR.	
Highfield Open MRI, INC, 995 GreenTree Road, Pittsburgh, PA 15220.	7885	07/14/2006	PA.	
Providence St. Vincent Medical Center, 9205 SW Barnes Road, Portland, OR 97225.	380004	07/14/2006	OR.	
Conway Regional Imaging Center, 2120 Robinson, Conway, AR 72034.	40029	07/14/2006	AR.	
Martin Memorial Medical Center, 300 Hospital Avenue, Stuart, FL 34994.	100044	07/14/2006	FL.	
Northwest Medical Foundation of Tillamook, 1000 Third Street, Tillamook, OR 97141.	381317	07/14/2006	OR ..	Tillamook County General Hospital.
O'Connor Hospital, 2105 Forest Avenue, San Jose, CA 95128–1471.	50153	07/14/2006	CA.	
Midtown Imaging, LLC—Wellington, 440 N. State Road 7, Wellington, FL 33411.	E9133	07/14/2006	FL.	

Facility name	Provider No.	Date approved	State	Other
Midtown Imaging, LLC—Jupiter, 345 Jupiter Lakes Boulevard, Jupiter, FL 33458.	E9133	07/14/2006	FL	Suite 100.
MMI/Mid Coast Hospital, 51 US Route 1, Scarborough, ME 4074	327079	07/14/2006	ME	Suite 'O'.
Molecular Imaging Institute, 5349 Commerce Boulevard, Crown Point, IN 46307.	192870	07/14/2006	IN.	
RCOA Imaging Services, 11937 US Highway 271, Tyler, TX 75708.	FTN022	07/14/2006	TX.	
MMI/Maine Medical Center, 51 US Route 1, Scarborough, ME 4074.	327079	07/14/2006	ME.	
Radiology Ltd., 4640 East Camp Lowell Drive, Tucson, AZ 85712	WCBBM	07/14/2006	AZ.	
Intermed Oncology Associates, S.C., 6701 159th Street, Tinley Park, IL 60477.	610860	07/14/2006	IL.	
Lakes Radiology, 450 Canisteo Street, Hornell, NY 14843	1710937727	07/14/2006	NY.	
Opelousas PET/CT Imaging Center, 3975 I–49 South Service Road, Suite 100, Opelousas, LA 70570.	5DA11	07/14/2006	LA.	
Florida Cancer Institute—BRK, 7154 Medical Center Drive, Spring Hill, FL 34608.	1427017326	08/07/2006	FL.	
Capital Health System, 446 Belleview Avenue, Trenton, NJ 08618.	310044	08/07/2006	NJ.	
Hudson Valley Diagnostic Imaging, PLLC, 575 Hudson Valley Avenue, New Windsor, NY 12553.	WBH241	08/07/2006	NY.	
St Joseph's Hospital, 3200 Pleasant Valley Road, West Bend, WI 53095.	520063	08/07/2006	WI.	
Atlantic Medical Imaging, 30 East Maryland Avenue, Somers Point, NJ 8244.	101024	08/07/2006	NJ.	
Providence Imaging Center, 3340 Providence Drive, Anchorage, AK 99508.	2085R0202X	08/07/2006	AK.	
Rochester Radiology Associates, PC, 1277 Portland Avenue, Rochester, NY 14621.	199726	08/07/2006	NY.	
Melbourne Internal Medicine Associates, 1132 South Hickory Street, Melbourne, FL 32901.	77167	08/07/2006	FL.	
Highline Imaging, LLC, 275 SW. 160th, Seattle, WA 98166	8801784	08/07/2006	WA.	
Tyler PET, 415 South Fleishel, Tyler, TX 75702	752131429	08/07/2006	TX.	
Lake City Medical Center, 340 NW Commerce Drive, Lake City, FL 32055.	100156	08/07/2006	FL.	
Blount Memorial Hospital, 907 East Lamar Alexander Boulevard, Maryville, TN 37804.	440011	08/07/2006	TN.	
Texas Cancer Center Mesquite, 4700 North Galloway, Mesquite, TX 75150.	R339	08/07/2006	TX.	
Rutland Regional Medical Center Diagnostic Image, 160 Allen Street, Rutland, VT 05701.	470005	08/07/2006	VT.	
MDMED, Inc., 155 Calle Portal, Suite 700, Sierra Vista, AZ 85635.	Z68496	08/07/2006	AZ.	
Atlantic Medical Imaging Wall Township, 2399 North Highway 34, Manasquan, NJ 08736.	101024	08/07/2006	NJ	Ramshorn Executive Centre Building B.
Newport Imaging Center, 455 Old Newport Road Suite 101, Newport Beach, CA 92660.	W10829	08/07/2006	CA.	
Cancer Care and Hematology Specialists(CCHSC), 8915 West Golf Road, Niles, IL 60714–05825.	355030	08/07/2006	IL.	
Hematology Oncology Associates of Illinois (HOAI), 715 West North Avenue, Melrose Park, IL 60160.	218860	08/07/2006	IL.	
Princeton Community Hospital, 122 12th Street Ext, Princeton, WV 24740.	510046	08/07/2006	WV	PO Box 1369.
TRICAT, LLC at Edison, 3830 Park Avenue, Edison, NJ 08820	27193	08/07/2006	NJ	Suite 102.
Olathe Medical Center, 20333 W. 151st Street, Olathe, KS 66061	170049	08/07/2006	KS.	
St. Joseph Hospital, 1140 West La Veta, Orange, CA 92868	50069	08/07/2006	CA	2nd Floor Nuclear Medicine.
Baptist Health Medical Center, 9601 I630, Exit 7, Little Rock, AR 72205–7299.	40114	08/07/2006	AR.	
Florida Cancer Specialists, 3840 Broadway, Fort Myers, FL 33901.	1225064520	08/07/2006	FL.	
Pacca PET Imaging, 5210 Belfort Road, Suite 130, Jacksonville, FL 32256.	37572	08/07/2006	FL.	
National P.E.T. Scan Palm Beach, LLC, 16110 Jog Road, Delray Beach, FL 33484.	1164452405	08/07/2006	FL	Suite 200.
Central Memphis Regional P.E.T. Imaging Center LLC, 1388 Madison Avenue, Memphis, TN 38104.	1295719110	08/07/2006	TN.	
Johnston Memorial Hospital, 351 Court Street NE., Abingdon, VA 24210.	490053	08/07/2006	VA.	
Lenox Hill Hospital, 100 East 77th Street, New York, NY 10021	131624070	08/07/2006	NY.	
Mercy Medical Center, 411 Laurel Street, Suite 2310, Des Moines, IA 50314.	160083	08/07/2006	IA.	
New Orleans Regional PET Center, LLC, 3434 Prytania Street, Suite 120, New Orleans, LA 70115.	1538143474	08/07/2006	LA.	

Facility name	Provider No.	Date approved	State	Other
Indiana Regional Medical Center Pet Imaging, 835 Hospital Road, Indiana, PA 15701.	390173	08/07/2006	PA	PO Box 788.
Mid American-Defiance Clinic, 1400 E. Second Street, Defiance, OH 43512.	ID00809	08/07/2006	OH.	
Total Imaging Robertson, 737 West Brandon Boulevard, Brandon, FL 33511.	k7282	08/07/2006	FL.	
New Tampa Imaging Center, 14302 N. Bruce B. Downs Boulevard, Tampa, FL 33613.	k57209	08/07/2006	FL.	
Summit Imaging, 12037 Cortez Boulevard, Brooksville, FL 34613	40986	08/08/2006	FL.	
University of NM Cancer Research & Treatment Center, 900 Caminodey Salud NE, Albuquerque, NM 87131.	400521103	08/08/2006	NM.	
Alliance Imaging—Los Alamitos Medical Center, 3751 Katella Avenue, Los Alamitos, CA 90720.	TD017	08/08/2006	CA.	
NYU Clinical Cancer Center, Diagnostic Imaging, 160 E. 34th Street, New York, NY 10016.	W1L361	08/08/2006	NY	2nd Floor.
Margaret Mary Community Hospital, 321 Mitchell Avenue, Batesville, IN 47006.	151329	08/08/2006	IN.	
Quantum PET—Apple Hill, 37 Monument Road, York, PA 17403	40635	08/08/2006	PA.	
Memorial Hospital, 1204 N. Mound Street, Nacogdoches, TX 75961.	450508	08/08/2006	TX.	
BMH—DeSoto, 7601 Southcrest Parkway, Southaven, MS 38671	250141	08/08/2006	MS.	
Riverside Medical Center, 300 Bourbonnais Campus, Bourbonnais, IL 60914.	140186	08/08/2006	IL	Riverside Medical Center.
UCSD Center for Molecular Imaging, 11388 Sorrento Valley Road, Suite 100, San Diego, CA 92121.	TG302	08/08/2006	CA.	
Imaging Partners at Valley, LLC, 400 South 43rd Street, Renton, WA 98055.	AB38657	08/08/2006	WA	Olympia Building.
El Paso Cancer Treatment Center, 7848 Gateway East Boulevard, El Paso, TX 79915.	00543K	08/08/2006	TX.	
Desert Radiologists, 3930 S Eastern Avenue, Las Vegas, NV 89119.	VWCCBT	08/08/2006	NV.	
Saint Joseph Hospital, 2900 North Lake Shore Drive, Chicago, IL 60068.	140224	08/08/2006	IL.	
Midstate Medical Center, 435 Lewis Avenue, Meriden, CT 6451	60646715	08/08/2006	VT.	
Brookville Hospital, 100 Hospital Road, Brookville, PA 15825	391312	08/08/2006	PA.	
Suntree Diagnostic Center, 6300 N. Wickham Road, Suite 101, Melbourne, FL 32940.	701	08/08/2006	FL.	
Virginia Mason Medical Center, 1100 Ninth Avenue, Seattle, WA 98101.	500005	08/08/2006	WA.	
Van Wert County Hospital, 1250 South Washington Street, Van Wert, OH 45891.	360071	08/08/2006	OH.	
Manhasset Diagnostic Imaging, PC, 1350 Northern Boulevard, 2nd Floor, Manhasset, NY 11030.	W14841	08/08/2006	NY.	
Southern New Mexico Cancer Center, 150 Road Runner Parkway, Las Cruces, NM 88011.	752131429	08/08/2006	NM.	
Davis Memorial Hospital, Reed Street, Elkins, WV 26241	510030	08/08/2006	WV	Gorman Avenue.
Advocate Good Samaritan Hospital, 3815 Highland Avenue, Downers Grove, IL 60515.	140288	08/08/2006	IL.	
Benefis Healthcare, 1101 26th Street South, Great Falls, MT 59405.	270012	08/08/2006	MT.	
Fort Walton Beach Medical Center, 1032 Mar Walt Drive, Fort Walton Beach, FL 32547.	100223	08/08/2006	FL.	
Blessing Hospital, PO Box #7005, Quincy, IL 62305	140015	08/08/2006	IL.	
Alliance Imaging—Allen County Hospital, 101 South 1st Street, Iola, KS 53808.	130656	08/08/2006	KS.	
Florida Cancer Institute—NPR, 8763 River Crossing Boulevard, New Port Richey, FL 34655.	1427017326	08/08/2006	FL.	
Kimball Medical Center, 8763 River Crossing Boulevard, New Port Richey, FL 34655.	315084	08/08/2006	NJ.	
Radiology Imaging Associates at Heritage, 8926 Woodyard Road, Clinton, MD 20735.	521454775	08/08/2006	MD	Suite 502.
Immanuel Medical Center, 6901 North 72nd Street, Omaha, NE 68122.	280081	08/08/2006	NE.	
North Fork Radiology, 1333 Roanoke Avenue, Riverhead, NY 11901.	w11401	08/08/2006	NY.	
South County PET Imaging, LLC, 10010 Kennerly Road, St. Louis, MO 63128.	93053	08/08/2006	MO.	
Carolinas Hospital System, 805 Pamplico Highway, Florence, SC 29505.	621587267	08/08/2006	SC.	
Radiology Associated of SLO, 522 E. Plaza Drive, Santa Maria, CA 93454.	GR0009774	08/08/2006	CA.	
Florida Cancer Specialists—Port Charlotte, 22395 Edgewater Drive, Port Charlotte, FL 33980.	1225064520	08/08/2006	FL.	

Facility name	Provider No.	Date approved	State	Other
Florida Cancer Specialists—Venice, 901 South Tamiami Trail, Venice, FL 34285.	1225064520	08/08/2006	FL.	
Florida Cancer Specialists—Bradenton, 6001 21st Avenue West, Bradenton, FL 34209.	1225064520	08/08/2006	FL.	
Nebraska Methodist Hospital, 8303 Dodge Street, Omaha, NE 68114.	280040	08/08/2006	NE.	
PET/CT Center of Richardson, 399 Melrose Drive, Richardson, TX 75080.	1740207539	08/08/2006	TX ...	Suite A.
Molecular Imaging at Sequoia Imaging Center, 4949 W. Cypress Avenue, Visalia, CA 93277.	ZZZ27463Z	08/08/2006	CA.	
Central Jersey Radiologists, 2128 Kings Highway, Oakhurst, NJ 7755.	527995	08/08/2006	NJ.	
Claxton-Hepburn Medical Center, 214 King Street, Ogdensburg, NY 13669.	330211	08/08/2006	NY.	
Memorial Hermann Southeast, 11800 Astoria Boulevard, Houston, TX 77089.	741152597	08/08/2006	TX.	
NSMS—Pine Bluff, AR, 4253 Argosy Court, Madison, WI 53714 ..	5f168	08/08/2006	WI.	
Yuma Regional Medical Center, 2400 S. Avenue A, Yuma, AZ 85364.	866007596	08/08/2006	AZ.	
Carle Clinic, 1702 S. Mattis Avenue, Champagne, IL 61820	371188284	08/08/2006	IL.	
North Shore—LIJ Center for Advanced Medicine, 450 Lakeville Road, Lake Success, NY 11042.	330106	08/08/2006	NY ...	North Shore—LIJ Center for Advanced Diagnostic Imaging Center.
McAlester Diagnostic Imaging, 10 South Third Street, McAlester, OK 74501.	1760411540	08/08/2006	OK ..	Suite 100.
California Imaging Institute, 1867 E. Fir, Fresno, CA 93720	ZZZ03565Z	08/08/2006	CA.	
Bon Secours Memorial Regional Medical Center, 8260 Atlee Road, Mechanicsville, VA 23116.	541744931	08/08/2006	VA.	
University of Maryland Medical Center, 22 S. Greene Street, Gudelksy 2nd Floor, Baltimore, MD 21201.	210002	08/08/2006	MD.	
Bixby Medical Center, 818 Riverside Avenue, Adrian, MI 49221 ..	230005	08/08/2006	MI.	
Kern Radiology Medical Group, 2301 Bahamas Drive, Bakersfield, CA 93309.	1720023997	08/08/2006	CA.	
Bon Secours St. Francis Medical Center, 13710 St. Francis Boulevard, Midlothian, VA 23114.	311716973	08/08/2006	VA.	
MMI/Maine General Waterville, 51 US Route 1, Scarborough, ME 04074.	327079	08/08/2006	ME.	
Mount Adams Imaging Center, 3911 Castlevale Road, Yakimaw, WA 98902.	8857843	08/08/2006	WA.	
Carilion Roanoke Memorial Hospital, 2001 Crystal Spring Avenue, Roanoke, VA 24014.	490024	08/08/2006	VA.	
Seton Medical Center; Nuclear Medicine Dept., 1900 Sullivan Avenue, Daly City, CA 94015–2229.	50289	08/08/2006	CA.	
Arnett Imaging Center, 2403 Loy Drive, Lafayette, IN 47909	224390	08/08/2006	IN.	
Advanced Diagnostic Imaging, PC, 1120 Professional Boulevard, Evansville, IN 47630.	639970	08/08/2006	IN.	
Queen of Peace Hospital, 301 Second Street NE., New Prague, MN 56071.	241361	08/08/2006	MN.	
Agnesian Health Care, 430 E. Division Street, Fond du Lac, WI 54935.	520088	08/08/2006	WI.	
ACMH Hospital, One Nolte Drive, Kittanning, PA 16201	390163	08/08/2006	PA.	
Wilshire Oncology Medical Group, Inc., 1280 Corona Pointe Court, Corona, CA 92879.	zzz19568z	08/08/2006	CA.	
United Radiology—Laurel, 14201 Laurel Park Drive, Laurel, MD 20707.	2.01558E+11	08/08/2006	MD.	
Bay Area Medical Center, 3100 Shore Drive, Marinette, WI 54143	520113	08/08/2006	WI.	
Penn State Milton S. Hershey Medical Center, 500 University Drive, Hershey, PA 17033.	251854772	08/08/2006	PA.	
Delta St. Joseph's MRI, LLC, 1617 N. California Street, Stockton, CA 95204.	ZZZ19725Z	08/08/2006	CA.	
United Radiology: Bowie, 16701 Melford Boulevard, Bowie, MD 20715.	2.01558E+11	08/08/2006	MD.	
United Radiology Gaithersburg, 702 Russell Avenue, Gaithersburg, MD 20877.	2.01558E+11	08/08/2006	MD.	
United Radiology Olney, 18120 Hillcrest Drive, Olney, MD 20832	2.01558E+11	08/08/2006	MD.	
FCS/Axcess Diagnosis/Sarasota, 600 N. Cattleman Road, Sarasota, FL 34232.	1225064520	08/08/2006	FL.	
NSMS—Greenville, IL, 4253 Argosy Court, Madison, WI 53714 ...	208196	08/08/2006	WI.	
FCS/Axcess Diagnosis/Venice, 842 Sunset Lake Boulevard, Venice, FL 34292.	1225064520	08/08/2006	FL.	
Leading Edge Radiation, 8715 5th Avenue, Brooklyn, NY 11209	WEM111	09/05/2006	NY.	
Rena Tarbet Cancer Center, 4201 Medical Center Drive, Suite 180, McKinney, TX 75069.	oow753	09/05/2006	TX.	

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McLaughlin & Marte, M.D., LLP., 3850 Tampa Road Suite 202, Palm Harbor, FL 34684.	1003862079	09/05/2006	FL.	
BryanLGH Medical Center, 2300 South 16th Street, Lincoln, NE 68502.	280003	09/05/2006	NE.	
Freehold MR Associates, 691 West Main Street, Freehold, NJ 7728.	405856	09/05/2006	NJ.	
Franciscan Skemp Healthcare, 700 West Avenue South, La Crosse, WI 54601.	520004	09/05/2006	WI.	
Teton Radiology, 2001 S. Woodruff, Suite 17, Idaho Falls, ID 83404.	1371462	09/05/2006	ID.	
Fletcher Allen Health Care, Mobile Pad, Colchester, VT 05446	1659309615	09/05/2006	VT.	
University of Penn Imaging Center, 3600 Market Street, 3rd Floor Silverstein, Philadelphia, PA 19104.	764089	09/05/2006	PA.	
Sitron-Hammel Radiology Group, 4277 Hempstead Turnpike, Suite 200, Bethpage, NY 11714.	W14891	09/05/2006	NY.	
MRI of SLO, 1064 Murray Avenue, San Luis Obispo, CA 93405 ..	1881661361	09/05/2006	CA.	
Lahey Clinic, 41 Mall Road, Burlington, MA 18005	220171	09/05/2006	MA.	
St Joseph Medical Center, 12th Street, Reading, PA 19603	390096	09/05/2006	PA.	
Spartanburg Regional Medical Center, 101 E. Wood Street, Spartanburg, SC 29303.	420007	09/05/2006	SC.	
Aurora Sinai Medical Center, 945 N. 12th Street, Milwaukee, WI 53201.	520064	09/05/2006	WI.	
FHN Memorial Hospital, 1045 W. Stephenson Street, Freeport, IL 61032.	140160	09/05/2006	IL.	
Southwest Washington Medical Center, 400 NE Mother Joseph Place, Vancouver, WA 98668.	500050	09/05/2006	WA.	
St. Lukes Center for Diagnostic Imaging, 6 McBride and Sons Corporate Center Drive, Suite 101, Chesterfield, MO 63005.	47006	09/05/2006	MO.	
The Stamford Health System, Shelbourn Road & West Broad Street, Stamford, CT 06904.	70006	09/05/2006	CT.	
Hagerstown Imaging, LLC, 1150 A Professional Court, Hagerstown, MD 21741.	1518914936	09/05/2006	MD.	
GCM Suburban Imaging, 6420 Rockledge Drive, Suite 3100, Bethesda, MD 20817.	409623	09/05/2006	MD.	
Alliance Imaging—No. Idaho Imaging, 2003 Lincoln Way, Coeur d'Alene, ID 83814.	1790291	09/05/2006	ID.	
HPMA PET Center, 22710 Professional Drive, Suite 104, Kingwood, TX 77339.	0019BY	09/05/2006	TX.	
Parma Community General Hospital, 7007 Powers Boulevard, Parma, OH 44129.	360041	09/05/2006	OH.	
Pacific Shores Medical Group Pet Imaging, 1043 Elm Street #104, Long Beach, CA 90813.	W13494	09/05/2006	CA.	
Clark Memorial Hospital, 1220 Missouri Avenue, Jeffersonville, IN 47130.	15009	09/05/2006	IN.	
Abilene Imaging Center LLC, 750 North 18th Street, Abilene, TX 79601.	FTA070	09/05/2006	TX.	
DuBois Regional Medical Center, 100 Hospital Avenue, DuBois, PA 15801.	390086	09/06/2006	PA.	
Meeker County Memorial Hospital, 612 South Sibley Avenue, Litchfield, MN 55355.	241366	09/06/2006	MN.	
Memorial Health, 4700 Waters Avenue, Savannah, GA 31403	110036	09/06/2006	GA.	
St. Luke's Regional Medical Center, Ltd., 190 E. Bannock Street, Boise, ID 83712.	130006	09/06/2006	ID.	
Radiology Consultants Imaging Center, 400 Avenue K, S.E., Winter Haven, FL 33880.	U3944	09/06/2006	FL.	
Patient Comprehensive Cancer Center, 4352 North Josey Lane, Carrollton, TX 75010.	0083BY	09/06/2006	TX.	
The University of Tennessee Medical Center, 1924 Alcoa Highway, Knoxville, TN 37920.	440015	09/06/2006	TN.	
Radiation Therapy Regional Centers—Naples, 800 Goodlette Road, Suite 110, Naples, FL 34102.	77215	09/06/2006	FL.	
St. Mary's Medical Center, 2900 First Avenue, Huntington, WV 25702.	510007	09/06/2006	WV.	
McKinney Regional Cancer Center, 4601 Medical Center Drive, McKinney, TX 75069.	00711W	09/06/2006	TX.	
WCA Hospital, PO Box 840, Jamestown, NY 14701	330239	09/06/2006	NY.	
Grants Pass Imaging and Diagnostic Center LLC., 1619 NW. Hawthorne, Suite 110, Grants Pass, OR 97526.	1659307973	09/06/2006	OR.	
Baptist Memorial Hospital—Golden Triangle, 2520 5th Street North, Columbus, MS 39705.	250100	09/06/2006	MS.	
Florida Medical Clinic, 13417 US Highway 301, Dade City, FL 33525.	39715	09/06/2006	FL.	
Saint Clare's Hospital, 400 West Blackwell Street, Dover, NJ 07801.	310067	09/06/2006	NJ.	

Facility name	Provider No.	Date approved	State	Other
Radiation Medicine Associates, 2202 South 77 Sun Shine Strip Suite E, Harlingen, TX 78550.	00645N	09/06/2006	TX.	
The Radiology Clinic, L.L.C., 208 McFarland Circle North, Tuscaloosa, AL 35406.	13089	09/06/2006	AL.	
Bay Area Hospital, 1775 Thompson Road, Coos Bay, OR 97420	30090	09/06/2006	OR.	
MMI/St. Mary's Hospital, 51 US Route 1, Scarborough, ME 4074	327079	09/06/2006	ME.	
Gulf Coast Medical Diagnostic Center, 2024 State Avenue, Panama City, FL 32405.	30930	09/06/2006	FL.	
Diagnostic Radiology Systems, Inc., 1010 Medical Center Drive, Powderly, KY 42366.	9366001	09/06/2006	KY.	
Lewis Gale Medical Center, 1900 Electric Road, Salem, VA 24153.	490048	09/06/2006	VI.	
Radiology Diagnostic Center, 1310 Las Tablas Suite 103, Templeton, CA 93465.	W7491	09/06/2006	CA.	
Weslaco Nuclear Imaging Center, 913 S. Airport Drive, Weslaco, TX 78596.	1780796219	09/06/2006	TX.	
Pioneer PET, LLC, 1930 E. Southern Avenue, Tempe, AZ 85282	1265401996	12/05/2006	AZ.	
Kearney Imaging Center, LLC, 3219 Central Avenue, Suite 109, Kearney, NE 68847.	98950	12/05/2006	NE.	
Rose Medical Center, 4567 East 9th Avenue, Denver, CO 80220	841321373	12/05/2006	CO.	
UCSF Medical Center, 185 Berry Street, San Francisco, CA 94107.	50454	12/05/2006	CA.	
Broward General Medical Center, 1500 S. Andrews Avenue, Fort Lauderdale, FL 33316.	100039	12/05/2006	FL.	
St. Paul Radiology, PA/Midwest Radiology, 166 Fourth Street East, St. Paul, MN 55101.	CO2661	12/05/2006	MN.	
Queen of the Valley Hospital, 1000 Trancas Street, Napa, CA 94558.	941243669	12/05/2006	CA.	
Dana-Farber Cancer Institute, 44 Binney Street, Boston, MA 02115.	220162	12/05/2006	MA.	
Holmes Regional Medical Center, 1350 South Hickory Street, Melbourne, FL 32901.	100019	12/05/2006	FL.	
Niagara County PET Center, Niagara Falls, NY 14302	f27482	12/05/2006	NY.	
Augusta Medical Center, 78 Medical Center Drive, Fishersville, VA 22939.	490018	12/05/2006	VA.	
Nevada Cancer Center, 2851 North Tenaya Way, Las Vegas, NV 89128.	VWQBHJ	12/05/2006	NV.	
Wellstar Kennestone Hospital Imaging Center, 340 Kennestone Hospital Boulevard, Marietta, GA 30060.	110035	12/05/2006	GA.	
Ashtabula County Medical Center, 2412 Lake Avenue, Ashtabula, OH 44004.	1285607416	12/05/2006	OH.	
Rowan Regional Medical Center, 514 Corporate Circle, Salisbury, NC 28147.	340015	12/05/2006	NC.	
The Pottsville Hospital and Warne Clinic, 420 South Jackson Street, Pottsville, PA 17901.	390030	12/05/2006	PA.	
Georgetown Memorial Hospital, 606 Blackriver Road, Georgetown, SC 29442.	1982604021	12/05/2006	SC.	
Medical Center of Arlington, 3301 Matlock Road, Arlington, TX 76015.	450675	12/05/2006	TX.	
Valley View Regional Hospital, 430 N Monte Vista, Ada, OK 74820.	370020	12/05/2006	OK.	
Montgomery Medical Services, 644 Maysville Road, Suite 10, Mount Sterling, KY 40353.	9141	12/05/2006	KY.	
Medical Outsourcing Services LLC, 5409 N. Knoxville Avenue, Peoria, IL 61614.	211224	12/05/2006	IL.	
Medical Outsourcing Services LLC, 1300 N. Main Street, Rushville, IN 46173.	223260	12/05/2006	IN.	
Mayo Clinic Arizona, 13400 E. Shea Boulevard, Scottsdale, AZ 85259.	WCTGB	12/05/2006	AZ.	
Door County Memorial Hospital, 323 S. 18th Avenue, Sturgeon Bay, WI 54235.	1093743874	12/05/2006	WI.	
Center for Diagnostic Imaging—Sartell, 166 19th Street So, Sartell, MN 56377.	C01307	12/05/2006	MN.	
South Texas Institute of Cancer, 1205 South 19th Street, Corpus Christi, TX 78405.	0065AZ	12/05/2006	TX.	
Del Sol Medical Center, 10460 Vista Del Sol, El Paso, TX 79925	450646	12/05/2006	TX.	
University Hospital, 818 St. Sebastian Way, Augusta, GA 30901	110028	12/05/2006	GA.	
St. John Health System—Tulsa, OK, 1923 S. Utica, Tulsa, OK 74104.	370114	12/05/2006	OK.	
Allen Memorial Hospital, 1825 Logan Avenue, Waterloo, IA 50703.	160110	12/05/2006	IA.	
Craig General Hospital, 735 North Foreman, Vinita, OK 74301	370065	12/05/2006	OK.	
Vision Imaging of Kingston, 517 Pierce Street, Kingston, PA 18704.	86463	12/05/2006	PA.	

Facility name	Provider No.	Date approved	State	Other
Lake Hospital Mentor Campus, 9485 Mentor Avenue, Mentor, OH 44060.	360098	12/05/2006	OH.	
Excela RCL PET CT Imaging, LLC, 200 Village Drive, Greensburg, PA 15601.	1144260415	12/05/2006	PA.	
Kousay Al-Kourainy, M.D., 5395 Ruffin Road #202, San Diego, CA 92123.	A39783	12/05/2006	CA.	
Memorial Hermann Northwest Hospital, 1635 North Loop West, Houston, TX 77008.	450184	12/05/2006	TX.	
Accu/Site PET/CT Imaging Center, 30 Harrison Street, Johnson City, NY 13790.	DD1474	12/05/2006	NY.	
DDIS—Bond, 9 Bond Street, Brooklyn, NY 11201	687s41	12/05/2006	NY.	
West Valley Radiology Medical Group, 7301 Medical Center Drive, West Hills, CA 91307.	Hw5870A	12/05/2006	CA.	
Westside Diagnostic and Therapeutic Medical Center LLC, 12524 West Washington Boulevard, Los Angeles, CA 90066.	TG472	12/05/2006	CA.	
DDIS—Still, 1783 Stillwell Avenue, Brooklyn, NY 11223	687s41	12/05/2006	NY.	
Alpena Regional Medical Center, 1501 W, Chisholm Street, Alpena, MI 49707.	386000029	12/05/2006	MI.	
Santa Monica Imaging Center, 1245 16Th Street Suite 105, Santa Monica, CA 90404.	1881670248	12/05/2006	CA.	
Mercer County Community Hospital, 800 W. Main Street, Coldwater, OH 45828.	360058	12/05/2006	OH.	
Johnson Memorial Hospital, 1125 W. Jefferson Street, Franklin, IN 46131–2675.	150001	12/05/2006	IN.	
St. Mary's Health Center, 100 St. Mary's Medical Plaza, Jefferson City, MO 65101.	260011	12/05/2006	MO.	
Eastside P.E.T. Center, LLC, 46 Medical Park East Drive, Birmingham, AL 35023.	1619925070	12/05/2006	AL.	
United Regional Health Care System, 1600 8th Street, Wichita Falls, TX 76301.	450010	12/05/2006	TX.	
Denton Regional Medical Center, 3535 S. I–35, Denton, TX 76210.	450634	12/05/2006	TX.	
Canton—Potsdam Hospital, 50 Leroy Street, Potsdam, NY 13676	161012691	12/05/2006	NY.	
St. John Macomb Hospital, 11800 E. 12 Mile, Warren, MI 48093	230195	12/05/2006	MI.	
Cleveland Regional Medical Center, 201 East Grover Street, Shelby, NC 28150.	340021	12/05/2006	NC.	
Bluefield Regional Medical Center, 500 Cherry Street, Bluefield, WV 24701.	510071	12/05/2006	WV.	
Charles Cole Memorial Hospital, 1001 East Second Street, Coudersport, PA 16915.	390246	12/05/2006	PA.	
New Jersey State Open MRI, 155 State Street, Hackensack, NJ 7601.	85238	12/06/2006	NJ.	
Westcoast Radiology, 501 S. Lincoln Ave., Clearwater, FL 33756	E4187	12/06/2006	FL.	
The Iowa Clinic/PETCO LLC, 1221 Pleasant Street, Des Moines, IA 50309.	I5819	12/06/2006	IA.	
Quantum PET—Holy Spirit Hospital, 890 Poplar Church Road, Camp Hill, PA 17011.	40635	12/06/2006	PA.	
Coastal Bend PET Scan, LTD, 1533 5th Street, Corpus Christi, TX 78404.	FTN014	12/06/2006	TX.	
Pottstown Memorial Medical Center, 1600 E. High Street, Pottstown, PA 19464.	390123	12/06/2006	PA.	
UTMB PET/CT Imaging Center, UTMB—Rebecca Sealy Hospital, Galveston, TX 77555–0793.	R518	12/06/2006	TX.	
Diagnostic Imaging Services, LLC, 11110 Medical Campus Road, Suite 204, Hagerstown, MD 21742.	1114982808	12/06/2006	MD.	
North Memorial Medical Center, 3435 West Broadway, Robbinsdale, MN 55422.	1851344907	12/06/2006	MN.	
Hays Medical Center, 2220 Canterbury Drive, Hays, KS 67601 ...	2473	12/06/2006	KS.	
St. Patrick Hospital & Health Sciences Center, 500 West Broadway, Missoula, MT 59802.	1023032588	12/06/2006	MT.	
Park Ridge Hospital, 100 Hospital Drive, Hendersonville, NC 28792.	340023	12/06/2006	NC.	
Fostoria Community Hospital, 610 Plaza Drive, Fostoria, OH 44830.	361318	12/06/2006	OH.	
UMDNJ—University Hospital, 30 Bergen Street, Newark, NJ 7101	221775306	12/06/2006	NJ.	
Metabolic Imaging of Boca, 5458 Town Center Road, Suite 103, Boca Raton, FL 33486.	E5434	12/06/2006	FL.	
Olean Open MRI, 413 North 8th Street, Olean, NY 14760	AA0996	12/06/2006	NY.	
Mercy Memorial Health Center, 1011 14th Avenue NW., Ardmore, OK 73401.	731500629	12/06/2006	OK.	
Pontiac Osteopathic Hospital d.b.a. POH Medical Center, 385 N Lapeer Road, Oxford, MI 48371.	230207	12/06/2006	MI.	
Texas Oncology Ft. Worth, 1450 8th Avenue, Fort Worth, TX 76104.	00R66C	12/06/2006	TX.	

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West Valley Imaging, 3025 S. Rainbow Boulevard, Las Vegas, NV 89146.	WQBDY	12/06/2006	NV.	
Springman Medical Plaza Imaging Center, P. O, Box 4650, Brownsville, TX 78523.	1912973108	12/06/2006	TX.	
EMH Regional Health Care System, 630 East River Street, Elyria, OH 44035.	360145	12/06/2006	OH.	
Denfeld Medical Center, 4702 Grand Avenue, Duluth, MN 55807	C06028	12/06/2006	MN.	
Caldwell Memorial Hospital, 321 Mulberry Street SW., Lenoir, NC 28645.	560554202	12/06/2006	NC.	
Belleville, IL (Swansea), 4253 Argosy Court, Madison, WI 53714	208196	12/06/2006	WI.	
Comprehensive Cancer Centers of Nevada—NW Office, 7445 Peak Drive, Las Vegas, NV 89128.	WCHCX	12/06/2006	NV.	
Wheaton Francisan Healthcare—St. Joseph, 5000 W. Chambers Street, Milwaukee, WI 53210.	520136	12/06/2006	WI.	
United Hospital Center, Rt. 19 South, Clarksburg, WV 26302–1680.	510006	12/06/2006	WV.	
Massena Memorial Hospital, 1 Hospital Dive, Massena, NY 13662.	330223	12/06/2006	NY.	
Redlands Community Hospital, 350 Terracina Boulevard, Redlands, CA 92373.	ZZZ01782Z	12/06/2006	CA.	
The Valley Hospital, 1 Valley Health Plaza, Paramus, NJ 7652	310012	12/06/2006	NJ.	
Advanced Medical Imaging of Toms River, 1430 Hooper Avenue, Toms River, NJ 8753.	447655	12/06/2006	NJ.	
McKenna Memorial Hospital, 598 N. Union Street, New Braunfels, TX 78130.	450059	12/06/2006	TX.	
NSMS—Parkland Farmington, Mo, 4253 Argosy Court, Madison, WI 53714.	208196	12/06/2006	WI.	
Alton Memorial Hospital, 1 Memorial Drive, Alton, IL 62002	14002	12/06/2006	IL.	
Medical City Dallas Hospital, Diagnostic Imaging, Dallas, TX 75230.	20943901	12/06/2006	TX.	
Mercy Medical Center, 301 St Paul Place, Baltimore, MD 21202	210008	12/06/2006	MD.	
St. Joseph's Medical Center, 503 N. 3rd Street, Brainerd, MN 56401.	240075	12/06/2006	MN.	
Covenant Healthcare, 600 Irving Street, Saginaw, MI 48602	1457354318	12/06/2006	MI.	
Little Company of Mary Hospital, 2800 West 95th Street, Evergreen Park, IL 60805.	140179	12/06/2006	IL.	
Marion General Hospital, Progressive Medical Imagine, 830 N Theatre Drive, Marion, IN 46952.	1457354318	12/06/2006	IN.	
Escondido Pulmonary Medical Group, 5395 Ruffin Road, Suite 202, San Diego, CA 92123.	W301	12/06/2006	CA.	
Marshall Medical Center, 1100 Marshall Way, Placerville, CA 95667.	50254	12/06/2006	CA.	
Clermont Radiology, 1804 Oakley Seaver Drive, Clermont, FL 34711.	U5066	12/06/2006	FL.	
Mahoning Valley Imaging Ltd, 7067 Tiffany Boulevard, Youngstown, OH 44514.	1457354318	12/06/2006	OH.	
Southeastern Ohio Regional Medical Center, 1341 Clark Avenue, Cambridge, OH 43725.	1457354318	12/06/2006	OH.	
White County Medical Center, 3214 E. Race Avenue, Searcy, AR 72143.	40014	12/06/2006	AR.	
MED Arts JVIC, 9101 Franklin Square Drive, Baltimore, MD 21237.	1932167178	12/06/2006	MD.	
Memorial Hermann Southwest OPID, 7797 SW Freedway, Houston, TX 77074.	741152597	12/06/2006	TX.	
Twin County Regional Hospital, 200 Hospital Drive, Galax, VA 24333.	1174524094	12/06/2006	VA.	
Marion Ancillary Services LLC, 1040 Delaware Avenue, Marion, OH 43302.	991	12/06/2006	OH.	
Owensboro Medical Health Systems, Breckenridge Diagnostics, Owensboro, KY 42301.	180038	12/06/2006	KY.	
NSMS—Darlington, WI, 209 Limestone Pass, Cottage Grove, WI 53527.	92420	12/06/2006	WI.	
Santa Fe Imaging, LLC, 1640 Hospital Drive, Santa Fe, NM 87505.	400521037	12/06/2006	NM.	
Suncoast Imaging of Port Orange, 1680 Dunlawton Avenue, Port Orange, FL 32127.	40370B	12/06/2006	FL.	
Great Basin Imaging, 2874 N Carson Street, 3rd Floor, Carson City, NV 89706.	WJBDK	12/06/2006	NV.	
St. Francis Hospital & Health Centers, 1201 Hadley Road, Mooresville, IN 46158.	1457354318	12/06/2006	IN.	
Las Colinas Cancer Center, 7415 Las Colinas Boulevard, Irving, TX 75063.	00J062	12/06/2006	TX.	
ADI, 4006 Jonathan Street, Waterloo, IA 50701	I15454	12/06/2006	IA.	

Facility name	Provider No.	Date approved	State	Other
St Francis Hospital & Health Centers South, 8111 S. Emerson, Indianapolis IN 46237.	1457354318	12/06/2006	IN.	

Addendum XIII—Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities

[October Through December 2006]

On October 1, 2003, we issued our decision memorandum on ventricular assist devices for the clinical indication of destination therapy. We determined that ventricular assist devices used as destination therapy are reasonable and necessary only if performed in facilities that have been determined to have the experience and infrastructure to ensure optimal patient outcomes. We established facility standards and an application process. All facilities were required to meet our standards in order to receive coverage for ventricular assist devices implanted as destination therapy.

VAD Destination Therapy Facilities

[The following facilities have met the CMS's facility standards for destination therapy VADs.]

Facility	Provider No.	Date approved	State
Advocate Christ Medical Center, 4440 W 95th Street, Oak Lawn, Illinois	140208	12/17/2003	IL
California Pacific Medical Center, 2333 Buchanan Street, San Francisco, California	050047	03/19/2004	CA
Baptist Memorial Hospital, 6019 Walnut Grove Road, Memphis, Tennessee	440048	04/07/2004	TN
Duke University Medical Center, DUMC Box 3943, Durham, North Carolina	340030	10/31/2003	NC
Fairview-University Medical Center, 2450 Riverside Avenue, Minneapolis, Minnesotta	240080	10/28/2003	MN
Allegheny General Hospital, 320 E North Avenue, Pittsburgh, Pennsylvania	390050	12/10/2003	PA
Barnes-Jewish Hospital, One Barnes-Jewish Hospital Plaza, Saint Louis, Missouri	260032	10/27/2003	MO
Brigham and Women's Hospital, 15 Francis Street, Boston, Massachusetts	220110	01/09/2004	MA
Bryan LGH Medical Center East, 1600 S 48 Street, Lincoln, Nebraska	280003	10/23/2003	NE
Cedars-Sinai Medical Center, 8700 Beverly Boulevard, Los Angeles, California	050625	12/29/2003	CA
Clarian Health Partners, Inc, 1701 N Senate Ave, Indianapolis, Indiana	150056	11/25/2003	IN
Cleveland Clinic, 9500 Euclid Avenue, Cleveland, Ohio	360180	12/03/2003	OH
Hahnemann University Hospital, Broad and Vine Streets, Philadelphia, Pennsylvania	390290	12/22/2003	PA
Hospital of the University of Pennsylvania, 3400 Spruce Street Philadelphia, Pennsylvania	390111	10/28/2003	PA
Henry Ford Hospital 2799 W Grand Boulvard Detroit, Michigan	230053	01/06/2004	MI
Inova Fairfax Hospital, 3300 Gallows Road, Falls Church, Virginia	490063	03/31/2004	VA
Jewish Hospital, 200 Abraham Flexner Way, Louisville, Kentucky	180040	11/10/2003	KY
Jackson Memorial Hospital, 1611 NW 12th Avenue, Miami, Florida	100022	01/12/2004	FL
LDS Hospital, 8th Avenue and C Street, Salt Lake City, Utah	460010	10/23/2003	UT
Johns Hopkins Hospital, 600 N Wolfe Street, Baltimore, Maryland	210009	10/28/2003	MD
Loyola University Medical Center, 2160 S 1st Avenue, Maywood, Illinois	140276	01/30/2004	IL
Lutheran Hospital of Indiana, 7950 W Jefferson Boulevard, Fort Wayne, Indiana	150017	10/29/2003	IN
Massachusetts General Hospital, 55 Fruit Street, Boston, Massachusetts	220071	12/15/2003	MA
Mayo Clinic, 4500 San Pablo Road, Jacksonville, Florida	100151	11/06/2003	FL
Medical City Dallas Hospital, 7777 Forest Lane, Dallas, Texas	450647	12/03/2003	TX
The Methodist Hospital, 6565 Fannin, Houston, Texas	450358	11/03/2003	TX
Montefiore Medical Center, 111 E 210th Street, Bronx, New York	330059	11/14/2003	NY
Methodist Specialty and Transplant Hospital, 8026 Floyd Curl Drive, San Antonio, Texas	450388	11/19/2003	TX
Newark Beth Israel Medical Center, 201 Lyons Avenue, Newark, New Jersey	310002	11/14/2003	NJ
Mount Sinai Medical Center, 1190 5th Avenue, New York, New York	330024	11/25/2003	NY
New York-Presbyterian Hospital, 177 Fort Washington Avenue, New York, New York	330101	10/28/2003	NY
Ohio State University, Columbus, Ohio	360085	11/12/2003	OH
Oregon Health and Sciences University, 3181 SW Sam Jackson Park Road, Portland, Oregon	380009	11/21/2003	OR
OSF St Francis Medical Center, 530 NE Glen Oak Avenue, Peoria, Illinois	140067	11/12/2003	IL
Penn State Milton S Hershey Medical Center, 500 University Drive, Hershey, Pennsylvania	390256	10/29/2003	PA
Rush-Presbyterian-St Luke Medical Center, 1653 W Congress Parkway, Chicago, Illinois	140119	11/14/2003	IL
Sentara Norfolk General Hospital, 600 Gresham Drive, Norfolk, Virginia	490007	11/10/2003	VA
Sacred Heart Medical Center, 101 W 8th Avenue, Spokane, Washington	500054	01/12/2004	WA
Seton Medical Center, 1201 W 38th Street, Austin, Texas	450056	01/13/2004	TX
Shands at the University of Florida, 1600 SW Archer Road, Gainesville, Florida	100113	11/26/2003	FL
Sharp Memorial Hospital, 7901 Frost Street, San Diego, California	050100	12/01/2003	CA
Stanford University Hospital and Clinics, 300 Pasteur Drive, Stanford, California	050441	12/22/2003	CA
St Francis Hospital, 6161 S Yale Avenue, Tulsa, Oklahoma	370091	01/09/2004	OK
St Luke's Medical Center, 2900 W Oklahoma Avenue, Milwaukee, Wisconsin	520138	11/03/2003	WI
St Luke's Episcopal Hospital, 6720 Bertner Avenue, Houston, Texas	450193	10/28/2003	TX
St Vincent Hospital and Health Services, 2001 W 86th Street, Indianapolis, Indiana	150084	01/05/2004	IN
St Paul Medical Center, 5909 Harry Hines Boulevard, Dallas, Texas	450044	12/10/2003	TX
Strong Memorial Hospital, 601 Elmwood Avenue, Rochester, New York	330285	10/29/2003	NY
Tampa General Hospital, 2 Columbia Drive, Tampa, Florida	100128	11/26/2003	FL
Temple University Hospital, 3401 N Broad Street, Philadelphia, Pennsylvania	390027	11/03/2003	PA
Tufts-New England Medical Center, 750 Washington Street, Boston, Massachusetts	220116	11/06/2003	MA
UCLA Medical Center, 10833 Le Conte Ave, Los Angeles, California	050262	12/10/2003	CA
University Medical Center, 1501 N Campbell Avenue, Tucson, Arizonia	030064	10/29/2003	AZ
University of Alabama at Birmingham Health System, 500 22nd Street S, Birmingham, Alabama	010033	10/29/2003	AL
University of Colorado Hospital, 4200 E Ninth Avenue, Denver, Colorado	060024	11/06/2003	CO

VAD DESTINATION THERAPY FACILITIES—Continued

[The following facilities have met the CMS's facility standards for destination therapy VADs.]

Facility	Provider No.	Date approved	State
The University of Chicago Hospitals and Health System, 5841 South Maryland Avenue, Chicago, Illinois.	140088	02/25/2004	IL
University of Iowa Hospitals and Clinics, 200 Hawkins Drive, Iowa City, Iowa	160058	11/12/2003	IA
University of Maryland Medical Center, 22 S Greene Street, Baltimore, Maryland	210002	11/12/2003	MD
University of Michigan Health System, 1500 E Medical Center Drive, Ann Arbor, Michigan	230046	10/27/2003	MI
University of North Carolina Hospitals, 101 Manning Drive, Chapel Hill, North Carolina	340061	05/05/2004	NC
University of Utah Hospital, 50 N Medical Drive, Salt Lake City, Utah	460009	12/22/2003	
University of Virginia Health System, 1215 Lee Street, Charlottesville, Virginia	490009	01/12/2004	VA
University of Washington Medical Center, 1959 NE Pacific Street, Seattle, Washington	500008	01/15/2004	WA
University of Wisconsin Hospitals and Clinics, 600 Highland Avenue, Madison, Wisconsin	520098	12/03/2003	WI
USC University Hospital, 1500 San Pablo, Los Angeles, California	050696	01/09/2004	CA
UPMC Presbyterian, 200 Lothrop Street, Pittsburgh, Pennsylvania	390164	10/23/2003	PA
Virginia Commonwealth University Medical Center, 401 North 12th Street, Richmond, Virginia	490032	04/08/2004	VA
Vanderbilt University Medical Center, 1161 21st Avenue S, Nashville, Tennessee	440039	10/28/2003	TN
Ochsner Clinic Foundation, 1514 Jefferson Highway, New Orleans, Louisiana	190036	06/29/2004	LA

Addendum XIV—Lung Volume Reduction Surgery (LVRS)

[October Through December 2006]

Three types of facilities are eligible for reimbursement for Lung Volume Reduction Surgery (LVRS): National Emphysema Treatment Trial (NETT) approved (Beginning 05/07/2007, these will no longer automatically qualify and can qualify only with the other programs), Credentialed by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) under their Disease Specific Certification Program for LVRS, and Medicare approved for lung transplants. Only the first two types are in the list.

Facility name	Date approved	State	Type of certification
Baylor College of Medicine, Houston, Texas	N/A	TEXAS	NETT
Brigham and Women's Hosptial, Boston, MA	N/A	MASSACHUSETTS	NETT
Cedars-Sinai Medical Center, Los Angeles, CA	N/A	CALIFORNIA	NETT
Chapman Medical Center, Orange, CA	N/A	CALIFORNIA	NETT
Cleveland Clinic Foundation, Cleveland, OH	N/A	OHIO	NETT
Columbia University, New York, NY	N/A	NEW YORK	NETT
Duke University Medical Center, Durham, NC	N/A	NORTH CAROLINA	NETT
Johns Hopkins Hospital, Baltimore, MD	N/A	MARYLAND	NETT
Kaiser Foundation Hospital—Riverside 10800 Magnolia Avenue, Riverside, CA 92505.	09/20/2006	CALIFORNIA	JCAHO
Long Island Jewish Medical Center, New Hyde Park, NY	N/A	NEW YORK	NETT
Mayo Clinic, Rochester, MN	N/A	MINNESOTA	NETT
Memorial Medical Center, 701 North First Street, Springfield, IL 62781–0001.	12/13/2006	ILLINOIS	JCAHO
National Jewish Medical Center, Denver, CO	N/A	COLORADO	NETT
The Ohio State University Hospital, Room 168, Doan Hall, Columbus, OH.	N/A	OHIO	JCAHO
Ohio State University Medical Center, Columbus, OH	N/A	OHIO	NETT
Saint Louis University, Saint Louis, MO	N/A	MISSOURI	NETT
Temple University Hospital, Philadelphia, PA	N/A	PENNSYLVANIA	NETT
UCLA Medical Center, Los Angeles, CA	N/A	CALIFORNIA	NETT
University of California, San Diego, San Diego, CA	N/A	CALIFORNIA	NETT
University of Maryland Medical Center, Baltimore, MD	N/A	MARYLAND	NETT
University of Michigan Medical Center, Ann Arbor, MI	N/A	MICHIGAN	NETT
University of Pennsylvania, Philadelphia, PA	NA	PENNSYLVANIA	NETT
University of Pittsburgh, Pittsburgh, PA	N/A	PENNSYLVANIA	NETT
University of Washington, Seattle, WA	N/A	WASHINGTON	NETT
Washington University/Barnes Hospital, Saint Louis, MO	N/A	MISSOURI	NETT

Addendum XV—Medicare-Approved Bariatric Surgery Facilities

On February 21, 2006, we issued our decision memorandum on bariatric surgery procedures. We determined that bariatric surgical procedures are reasonable and necessary for Medicare beneficiaries who have a body-mass index (BMI) greater than or equal to 35, have at least one co-morbidity related to obesity, and have been previously unsuccessful with medical treatment for obesity.

This decision also stipulated that covered bariatric surgery procedures are reasonable and necessary only when performed at facilities that are: (1) certified by the American College of Surgeons (ACS) as a Level 1 Bariatric Surgery Center (program standards and requirements in effect on February 15, 2006); or (2) certified by the American Society for Bariatric Surgery (ASBS) as a Bariatric Surgery Center of Excellence (BSCOE) (program standards and requirements in effect on February 15, 2006).

Addendum XV—Medicare-Approved Bariatric Surgery Facilities

The following facilities have met our minimum facility standards for bariatric surgery and have been certified by American College of Surgeons or American Society for Bariatric Surgery.

Facility name	Provider No.	Date approved	State	Other information
Crestwood Medical Center, One Hospital Drive, Huntsville, AL 35801.	N/A	02/24/2006	AL.	
Methodist Hospital of Southern California, 300 West Huntington Drive, Arcadia, CA 91007.	N/A	2/24/2006	CA.	
Scottsdale Healthcare Shea Campus, 900 E. Shea Boulevard, Scottsdale, AR 85260.	N/A	02/24/2006	AZ.	
Mills-Peninsula Health Services, 1783 El Camino Real, Burlingame, CA 94010.	N/A	2/24/2006	CA.	
Mercy San Juan Medical Center, Carmichael, California	N/A	02/24/2006	CA.	
Orange Coast Memorial Medical Center, 9920 Talbert Avenue, Fountain Valley, CA 92708.	N/A	02/24/2006	CA.	
Eastern Maine Medical Center Northeast, Surgery PA, 417 State Street #330 Bangor, ME 04401.	N/A	02/24/2006	ME.	
Tri-City Regional Medical Center, 21530 Pioneer Boulevard, Hawaiian Gardens, CA 90716.	N/A	02/24/2006	CA.	
Scripps Memorial, 9888 Genesee Avenue, La Jolla, CA 92037	N/A	02/24/2006	CA.	
Community Hospital, Monterey Peninsula, 23625 Holman Highway, Monterey, CA 93940.	N/A	02/24/2006	CA.	
Scripps Mercy Hospital, 4077 Fifth Avenue, San Diego, CA 92103	N/A	02/24/2006	CA.	
Huntington Memorial Hospital, 100 W. California Boulevard, Pasadena, CA 91105.	N/A	02/24/2006	CA.	
California Pacific Medical Center, 2333 Buchanan Street, San Francisco, CA 94115.	N/A	02/24/2006	CA.	
Greater Baltimore Medical Center, 6701 N. Charles Street, Baltimore, MD 21204.	N/A	02/24/2006	MD.	
Southwest Healthcare System, 36485 Inland Valley Drive, Wildomar, CA 92595.	N/A	02/24/2006	CA.	
Sinai Hospital of Baltimore, 2401 W. Belvedere Avenue, Baltimore, MD 21215.	N/A	02/24/2006	MD.	
Spectrum Health Blodgett Campus, 1840 Wealthy Street SE, Grand Rapids, MI 49506.	N/A	02/24/2006	MI.	
Unity Hospital, 550 Osborne Road NE, Fridley, MN 55432	N/A	02/24/2006	MN.	
Abbott Northwestern Hospital, 800 E. 28th Street, Minneapolis, MN 55407.	N/A	02/24/2006	MN.	
Hennepin County Medical Center, 701 Park Avenue, Minneapolis, MN 55415.	N/A	02/24/2006	MN.	
University of Minnesota Medical Center, Fairview, 420 Delaware Street NE #B435 Minneapolis, MN 55455.	N/A	02/24/2006	MN.	
St. Joseph's Area Health Services, 600 Pleasant Avenue, Park Rapids, MN 56470.	N/A	02/24/2006	MN.	
Methodist Hospital, 6500 Excelsior Boulevard, Saint Louis Park, MN 55426.	N/A	02/24/2006	MN.	
United Hospital, 333 North Smith Avenue, Saint Paul, MN 55102 ..	N/A	02/24/2006	MN.	
Penrose-St. Francis Health Services, 825 E. Pikes Peak Avenue, Colorado Springs, Colorado 80917.	N/A	02/24/2006	CO.	
Baptist Memorial Hospital, North Mississippi, 2301 South Lamar Boulevard, Oxford, MS 38655.	N/A	02/24/2006	MS.	
Presbyterian-St. Luke's Medical Center, 1719 E. 19th Avenue, Denver, Colorado 80218.	N/A	02/24/2006	CO.	
Rose Medical Center, 4545 E. 9th Avenue, #470 Denver, Colorado 80220.	N/A	02/24/2006	CO.	
SSM DePaul Health Center, 12303 DePaul Avenue, Bridgeton, MO 63044.	N/A	02/24/2006	MO.	
Poudre Valley Hospital, 1024 S Lemay Avenue, Fort Collins, Colorado 80524.	N/A	02/24/2006	CO.	
North Vista Hospital, 1409 E. Lake Mead Boulevard, North Las Vegas, NV 89101.	N/A	02/24/2006	NV.	
North Colorado Medical Center, 1801 16th Street, Greeley, Colorado 80631.	N/A	02/24/2006	CO.	
Danbury Hospital, 24 Hospital Avenue, Danbury, Connecticut 06810.	N/A	02/24/2006	CT.	
Saint Mary's Regional Medical Center, 234 W. 6th Street, Reno, NV 89503.	N/A	02/24/2006	NV.	
AtlantiCare Regional Medical Center, 2500 English Creek Avenue, Egg Harbor Township, NJ 08234.	N/A	02/24/2006	NJ.	
Middlesex Hospital, 28 Crescent Street, Middletown, CT 06457	N/A	02/24/2006	CT.	
Hospital of Saint Raphael, 1450 Chapel Street, New Haven, CT 06511.	N/A	02/24/2006	CT.	

Facility name	Provider No.	Date approved	State	Other information
Florida Hospital Celebration Health, 400 Celebration Place, Kissimmee, FL 34747.	N/A	02/24/2006	FL.	
Holy Cross Hospital, 4725 N. Federal Highway, Fort Lauderdale, FL 33308.	N/A	02/24/2006	FL.	
Jupiter Medical Center, 1210 S. Old Dixie Highway, Jupiter, FL 33458.	N/A	02/24/2006	FL.	
Florida Medical Center, 4850 W. Oakland Boulevard, Lauderdale Lakes, FL 33313.	N/A	02/24/2006	FL.	
Mercy Hospital Miami, 3663 South Miami Avenue, Miami, FL 33133.	N/A	02/24/2006	FL.	
Saint Barnabas Medical Center, 94 Old Short Hills Road, Livingston, NJ 07039.	N/A	02/24/2006	NJ.	
Ocala Regional Medical Center, 1431 SW 1st Street, Ocala, FL 34474.	N/A	02/24/2006	FL.	
Princeton HealthCare System, 253 Witherspoon Street, Princeton, NJ 08540.	N/A	02/24/2006	NJ.	
Palms of Pasadena Hospital, 1501 Pasadena Avenue, St. Petersburg, FL 33707.	N/A	02/24/2006	FL.	
Cleveland Clinic Hospital-Weston, 3100 Weston Road, Weston, FL 33331.	N/A	02/24/2006	FL.	
Arnot Ogden Medical Center, 600 Fitch Street, Elmira, NY 14905 ..	N/A	02/24/2006	NY.	
Lutheran Medical Center, 150 55th Street, Brooklyn, NY 11220	29D361	02/24/2006	NY.	
New York Methodist Hospital, 506 Sixyh Street, Brooklyn, NY 11215.	N/A	02/24/2006	NY.	
Emory Dunwoody Medical Center, 4575 N. Shallowford Road, Atlanta, GA 30338.	N/A	02/24/2006	GA.	
Atlanta Medical Center, 303 Parkway Drive NE, Atlanta, GA 30312	N/A	02/24/2006	GA.	
Sisters of Charity Hospital, 2130 Main Street, Buffalo, NY 14214 ...	N/A	02/24/2006	NY.	
Sound Shore Medical Center of Westchester, 16 Guion Place # Joyce New Rochelle, NY 10801.	N/A	02/24/2006	NY.	
South Nassau Communities Hospital, 1 Healthy Way, Oceanside, NY 11572.	N/A	02/24/2006	NY.	
Hamilton Medical Center, 1200 Memorial Drive, Dalton, GA 30720	N/A	02/24/2006	GA.	
Northeast Georgia Health System, Inc., 743 Spring Street NE, Gainesville, GA 30501.	N/A	02/24/2006	GA.	
Bon Secours Community Hospital, 160 E. Main Street, Port Jervis, NY 12771.	N/A	02/24/2006	NY.	
Wellstar Health Systems, 677 Church Street NE, Marietta, GA 30060.	N/A	02/24/2006	GA.	
Northwestern Memorial Hospital, 215 E. Huron Street, #4–710U Chicago, IL 60611.	N/A	02/24/2006	IL.	
Staten Island University Hospital, 475 Seaview Avenue, Staten Island, NY 10305.	N/A	02/24/2006	NY.	
White Plains Hospital Center, 190 E. Post Road, White Plains, NY 10601.	N/A	02/24/2006	NY.	
NorthEast Medical Center, 920 Church Street N. #302E, Concord, NC 28025.	N/A	02/24/2006	NC.	
Alexian Brothers Medical Center, 800 Biesterfield Road, Elk Grove Village, IL 60007.	N/A	02/24/2006	IL.	
Cape Fear Valley Health System, 1638 Owen Drive, Fayetteville, NC 28304.	N/A	02/24/2006	NC.	
University of Chicago Hospitals, 5841 S. Maryland Avenue, Chicago, IL 60637.	N/A	02/24/2006	IL.	
Frye Regional Medical Center, 420 N. Center Street, Hickory, NC 28601.	N/A	02/24/2006	NC.	
Little Company of Mary, 2800 W. 95th Street, Evergreen Park, IL 60805.	N/A	02/24/2006	IL.	
New Hanover Regional Medical Center, 2131 S. 17th Street, Wilmington, NC 28401.	N/A	02/24/2006	NC.	
Good Samaritan Hospital, 375 Dixmyth Avenue, Cincinnati, OH 45220.	N/A	02/24/2006	OH.	
King's Daughters Medical Center, 617 23rd Street Ashland, KY 41101.	N/A	02/24/2006	KY.	
St. Vincent Charity Hospital, 2322 E. 22nd Street #220, Cleveland, OH 44115.	N/A	02/24/2006	OH.	
The Ohio State University Hospital, 410 W 10th Avenue, #5305 Columbus, OH 43210.	N/A	02/24/2006	OH.	
Southwest Medical Center, 2810 Ambassador Caffery Parkway, Lafayette, LA 70506.	N/A	02/24/2006	LA.	
Saint Joseph East Center for Weight Loss, 160 N. Eagle Creek Drive, #201 Lexington, KY 40509.	N/A	02/24/2006	KY.	
American Bariatric Institute at Doctors' Hospital, 1130 Louisiana Avenue, Shreveport, LA 71101.	N/A	02/24/2006	LA.	
Grandview Medical Center, 405 Grand Avenue, Dayton, OH 45405	N/A	02/24/2006	OH.	

Facility name	Provider No.	Date approved	State	Other information
Legacy Good Samaritan Hospital and Medical Center, 1015 NW 22nd Avenue, Portland, OR 97210.	N/A	02/24/2006	OR.	
Christus Schumpert Health System, 1 Saint Mary Place, Shreveport, LA 71101.	N/A	02/24/2006	LA.	
UPMC Horizon 110 North Main Street, Greenville, PA 16125	N/A	02/24/2006	PA.	
Geisinger Medical Center, 100 N. Academy Avenue #2160 Danville, PA 17822.	N/A	02/24/2006	PA.	
UPMC St. Margaret, 815 Freeport Road, Pittsburgh, PA 15215	N/A	02/24/2006	PA.	
York Hospital, 1001 S. George Street #7, York, PA 17403	N/A	02/24/2006	PA.	
Roger Williams Medical Center, 825 Chalkstone Avenue, Providence, RI 02908.	N/A	02/24/2006	RI.	
Medical University of South Carolina, 171 Ashley Avenue, Charleston, SC 29425.	N/A	02/24/2006	SC.	
Lexington Medical Center, 2720 Sunset Boulevard, West Columbia, SC 29169.	N/A	02/24/2006	SC.	
Sioux Valley Hospital, USD Medical Center, 1305 W. 18th Street, Sioux Falls, SD 57105.	N/A	02/24/2006	SD.	
Memorial Hospital, 2525 DeSales Avenue, Chattanooga, TN 37404.	N/A	02/24/2006	TN.	
Parkwest Medical Center, 9352 Park West Boulevard, Knoxville, TN 37923.	N/A	02/24/2006	TN.	
Saint Francis Hospital, 5959 Park Avenue, Memphis, TN 38119	N/A	02/24/2006	TN.	
Theda Clark Medical Center, 200 Theda Clark Medical Plaza, Suite 410, Neenah, WI 54956.	000071445	02/24/2006	WI.	
The Regional Medical Center at Memphis, 877 Jefferson Avenue, Memphis, TN 38103.	N/A	02/24/2006	TN.	
Metabolic Surgery Center at Baptist Hospital, 2011 Church Street, #101 Nashville,TN 37203.	N/A	02/24/2006	TN.	
Centennial Center for the Treatment of Obesity, 2300 Patterson Street, Nashville, TN 37203.	N/A	02/24/2006	TN.	
Froedtert Memorial Lutheran Hospital, 9200 W. Wisconsin Avenue, Milwaukee, WI 53226.	N/A	02/24/2006	WI.	
Columbia-St. Mary's Bariatric Center, 2025 E. Newport Avenue, Milwaukee, WI 53211.	N/A	02/24/2006	WI.	
Aurora Sinai Medical Center, 945 N. 12th Street, Milwaukee, WI 53211.	N/A	02/24/2006	WI.	
Vanderbilt University Medical Center, 1211 22nd Avenue S. Nashville, TN 37232.	N/A	02/24/2006	TN.	
Weight Loss Surgery Program at Baylor, 9101 N. Central Expressway, Suite 370, Dallas, TX 75231.	N/A	02/24/2006	TX.	
Bellin Health, 215 N. Webster Avenue, Green Bay, WI 54301	N/A	02/24/2006	WI.	
Cypress Fairbanks Medical Center Hospital, 10655 Steepletop Drive, Houston, TX 77065.	N/A	02/24/2006	TX.	
Elmbrook Memorial Hospital, 19333 W. North Avenue, Brookfield, WI 53045.	N/A	02/24/2006	WI.	
Memorial Hermann Hospital, 6411 Fannin Street, Houston, TX 77030.	N/A	02/24/2006	TX.	
North Hills Hospital, 4401 Booth Calloway Road, North Richland Hills, TX 76180.	N/A	02/24/2006	TX.	
Methodist Healthcare System, 8109 Fredricksburg Road, San Antonio, TX 78229.	N/A	02/24/2006	TX.	
Citizen's Bariatric Center, 2701 Hospital Avenue, Victoria, TX 77901.	N/A	02/24/2006	TX.	
East Texas Medical Center, 1000 S. Beckham Avenue, Tyler, TX 75701.	N/A	02/24/2006	TX.	
United Regional Health Care System, 1600 10th Street, Wichita Falls, TX 76301.	N/A	02/24/2006	TX.	
Saint Mary's Hospital, 5801 Bremo Road, Richmond, VA 23226	N/A	02/24/2006	VA.	
Sentara Careplex Hospital, 3000 Coliseum Drive, Hampton, VA 23666.	N/A	02/24/2006	VA.	
St. Francis Hospital-Franciscan Health System, 34515 Ninth Avenue S., Federal Way, WA 98003.	N/A	02/24/2006	WA.	
Virginia Commonwealth University Medical Center, Richmond, VA 23284.	N/A	02/24/2006	VA.	
St. Vincent Carmel Hospital, 13430 Old Meridian Street, Suite 168, Carmel, IN 46032.	15–0157	02/21/2006	IN.	
Chapman Medical Center, 2601 East Chapman Avenue, Orange, CA 92646.	05–0745	02/21/2006	CA.	
Evanston Northwestern Hospital, 2650 Ridge Avenue, Suite 1308, Evanston, IL 60201.	140010	01/26/2006	IL.	
Beth Israel Deaconess Medical Center, 330 Brookline Avenue, Boston, MA 02215.	N/A	02/17/2006	MA.	
Tampa General Hospital, 2 Columbia Drive, F145, Tampa, FL 33601.	100128	03/22/2006	FL.	

Facility name	Provider No.	Date approved	State	Other information
Silver Cross Hospital, 1200 Maple Road, Joliet, IL 60432	140213	03/22/2006	IL.	
St. Luke's Medical Center, 1800 E. Van Buren, Suite 307B, Phoenix, AZ 85006.	030037	03/22/2006	AZ.	
Norman Regional Hospital, 901 North Porter, Box 1308, Norman, OK 73070.	370008	03/22/2006	OK.	
University of California, Davis, 2315 Stockton Boulevard, Sacramento, CA 95817.	N/A	04/18/2006	CA.	
Palmetto General Hospital, 2001 West 68th Street, Hialeah, FL 33016.	100187	04/11/2006	FL.	
OSF Saint Francis Medical Center, 530 NE Glen Oak Avenue, Peoria, IL 61637.	140067	04/05/2006	IL.	
Desert Springs Hospital, 2075 East Flamingo, Las Vegas, NV 89119.	290022	04/07/2006	NV.	
Peconic Bay Medical Center, 1300 Roake Avenue, Riverhead, NY 11901.	330107	04/06/2006	NY.	
Palmetto Health Baptist, 1850 Laurel Street, Suite 1A, Columbia, SC 29201.	420086	04/05/2006	SC.	
Spartanburg Regional Healthcare System, 101 East Wood Street, Spartanburg, SC 29303.	420007	03/27/2006	SC.	
Banner Good Samaritan Bariatric Center, 1300 North 12th Street, Suite 610, Phoenix, AZ 85006.	N/A	05/04/2006	AZ.	
Western Pennsylvania Hospital, 4800 Friendship Avenue, Pittsburgh, PA 15224.	N/A	05/01/2006	PA.	
Fairview Southdale Hospital, 6405 France Avenue S., Suite W320, Edina, MN 55435.	N/A	05/17/2006	MN.	
Grandview Medical Center, 405 Grand Avenue, Park Rapids, MN 56470.	N/A	05/17/2006	MN.	
Bothwell Regional Health Center, 601 East 14th Street, Sedalia, MO 65301.	N/A	05/17/2006	MO.	
Durham Regional Hospital, 3643 N. Roxboro Road, Durham, NC 27704.	N/A	05/17/2006	NC.	
Russell County Medical, Carroll and Tate Streets, Leban, VA	N/A	04/27/2006	VA.	
Hurley Medical Center, One Hurley Plaza, Flint, MI 48503–5993 ...	230132	04/14/2006	MI.	
Cedars-Sinai Medical Center, 8700 Beverly Boulevard, Los Angeles, CA 90048.	N/A	06/20/2006	CA.	
Swedish Medical Center, 501 East Hampden Avenue, Englewood, CO 80113.	060034	07/06/2006	CO.	
Georgetown Community Hospital, 1140 Lexington Road, Georgetown, KY 40324.	180101	06/07/2006	KY.	
Cleveland Clnic Foundation, 9500 Euclid Ave. (A80), Cleveland, OH 44195.	360180	05/24/2006	OH.	
St. Agnes Healthcare, 900 Caton Avenue, Baltimore, MD 21229 ...	210011	05/24/2006	MD.	
Sycamore Hospital, 2150 Leiter Road, Miamisburg, OH 45342	360239	05/24/2006	OH.	
Hospital of the University of Pennsylvania, 3400 Spruce Street, 4 Silverstein, Philadelphia, PA 19104.	N/A	07/06/2006	PA.	
Providence Memorial Hospital, 2001 North Oregon Street, El Paso, TX 79902.	450668	06/15/2006	TX.	
Zale Lipshy University Hospital, 5909 Harry Hines Boulevard, Dallas, TX 75390.	450766	06/19/2006	TX.	
New York-Presbyterian Hospital/Columbia University Medical Center, 161 Fort Washington Avenue, Herbert Irving Pavilion, New York, NY 10032.	330101	06/14/2006	NY.	
Oregon Health & Science University, 3181 SW Sam Jackson Park Road, L223A, Portland, OR 97239.	107708, 380009	06/27/2006	OR.	
Sewickley Valley Hospital, 720 Blackburn Road, Sewickley, PA 15143.	15143, 390037	07/13/2006	PA.	
Blount Memorial Hospital, 907 East Lamar Alexander Parkway, Maryville, TN 37801.	440011	07/11/2006	TN.	
Albany Medical Center, 47 New Scotland Avenue, Albany, NY 12208.	330013	06/02/2006	NY.	
Henry Ford Hospital, 2799 West Grand Boulevard, Detroit, MI 48202.	N/A	07/31/2006	MI.	
Mount Sinai Hospital, One Gustave L. Levy Place, 1190 5th Avenue, New York, NY 10029.	330024	07/25/2006	NY.	
Cabell Huntington Hospital, 1340 Hal Greer Boulevard, Huntington, WV 25701.	510055	07/19/2006	WV.	
Community Medical Center—Clovis, 2755 Herndon Avenue, Clovis, CA 93611.	050492	06/26/2006	CA.	
Town & Country Hospital, 6001 Webb Road, Tampa, FL 33615	100255	08/02/2006	FL.	
Vista Surgical Hospital, 9094 Perkins Road, Suite B, Baton Rouge, LA 70810.	230053	07/31/2006	LA.	
New York-Presbyterian Hospital/Weill Cornell Medical Center, 525 East 68th Street, New York, NY 10021.	330101	08/04/2006	NY.	

Facility name	Provider No.	Date approved	State	Other information
Centinela Freeman Regional Medical Center Memorial, 323 Prairie Avenue, Suite 434, Inglewood, CA 90301.	050741	08/07/2006	CA.	
Regional West Medical Center, 4021 Avenue B, Scottsbluff, NE 69361.	280061	08/08/2006	NE.	
NYU Program for Surgical Weight Loss, 530 First Avenue, Suite 10S, New York, NY 10016.	N/A	08/08/2006	NY.	
Mercy Medical Center, 1000 North Village Avenue, Rockville Centre, NY 11570.	N/A	08/10/2006	NY.	
Brigham and Women's Hospital, 75 Francis Street, Boston, MA 02115–6195.	330101	08/14/2006	MA.	
University of Virginia Health System, PO Box 800809, Charlottesville, VA 22908–0809.	490009	07/12/2006	VA.	
St. Vincent's Medical Center, 2800 Main Street, Bridgeport, CT	070028	09/08/2006	CT.	
Norwalk Hospital, 24 Stevens Street, Norwalk, CT 06856	070034	09/07/2006	CT.	
Barnes Jewish Hospital, 4905 Forest Park, Suite 255, St. Louis, MO 63108.	260032	09/06/2006	MO.	
St. Alexius Hospital—NewStart, 3933 South Broadway Street, St. Louis, MO 63118.	260210	09/01/2006	MO.	
Baptist Memorial Hospital Memphis, 6025 Walnut Grove Road, #C1011 Memphis, TN 38120.	440048	09/07/2006	TN.	
North Shore University Hospital at Manhasset, 300 Community Drive, Manhasset, NY 11530.	330106	09/08/2006	NY.	
St. Alexius Hospital, 2639 Miami Street, St. Louis, MO 63118	260210	09/01/2006	MO.	
Our Lady of Lourdes Medical Center, 1600 Haddon Avenue, Camden, NJ 08104.	613039	08/31/2006	NJ.	
FirstHealth Moore Regional Hospital, 155 Memorial Drive, Pinehurst, NC 27374.	340115	09/01/2006	NC.	
St. Catherine of Siena Medical Center, 50 Route 25A, Smithtown, NY 11787.	316495	09/01/2006	NY.	
Inova Fair Oaks Hospital, 3600 Joseph Siewick Drive, Fairfax, VA 22033.	490101	08/31/2006	VA.	
Hamot Medical Center, 201 State Street, Erie, PA 16550	390063	09/01/2006	PA.	
St. Joseph's Hospital, 69 West Exchange, St. Paul, MN 55102	N/A	09/14/2006	MN.	
Faxton-St. Luke's Healthcare, 1656 Champlin Avenue, Utica, NY 13503.	330044	09/14/2006	NY.	
University Hospitals of Cleveland, 11100 Euclid Avenue, Cleveland, OH 44106.	N/A	09/15/2006	OH.	
The Christ Hospital, 2139 Auburn Avenue, Cincinnati, OH 45219 ..	632319	07/17/2006	OH.	
Johns Hopkins Bayview Medical Center, 4940 Eastern Avenue, Baltimore, MD 21224.	210029	09/15/2006	MD.	
Yale-New Haven Hospital, 20 York Street, New Haven, CT 06510	070022	09/20/2006	CT ...	ASBS.
Methodist Dallas Medical Center, PO Box 655999, Dallas, TX 75265–5999.	N/A	02/24/2006	TX ...	Texas Bariatric Center.
UMass Memorial Medical Center-Memorial Campus, 55 Lake Avenue North, Room H1–760, Worcester, MA, 01655.	A22819	07/27/2006	MA.	
Trinity Medical Center, 800 Montclair Road, Birmingham, AL 35213.	010104	10/03/2006	AL ...	ASBS.
St. Mary's Medical Center, 450 Stanyan Street, San Francisco, CA 94117.	050457	10/02/2006	CA ...	ASBS.
St. Lukes's/Roosevelt, 1090 Amsterdam Avenue, New York, NY 10025.	330046	10/11/2006	NY ...	10th Floor ACS
The Western Pennsylvania Hospital, 4727 Friendship Avenue, Pittsburgh, PA 15224.	028672	10/16/2006	PA ...	Suite 140 ACS.
MeritCare Health System, 720 4th Street North, Fargo, ND 58122	350011	10/11/2006	ND ..	ASBS.
St. Luke Hospital, 7380 Turfway Road, Florence, KY 41042	195001	10/18/2006	KY ...	ASBS.
Norton Hospital, 200 East Chestnut Street, Louisville, KY 40202 ...	180088	10/16/2006	KY ...	ASBS.
Port Huron Hospital, 1221 Pine Grove Avenue, Port Huron, MI 48060.	230216	10/16/2006	MI	ASBS.
Harper University Hospital, 3990 John R. Street, Detroit, MI 48201	230104	10/17/2006	MI	ASBS.
Benefis Healthcare, 1101 26th Street South, Great Falls, MT 59405.	270012	10/13/2006	MT ..	ASBS.
Conway Medical Services, 300 Singleton Ridge Road, Conway, SC 29528.	4200491	0/20/2006	SC ...	ASBS.
Twelve Oaks Medical Center Hospital, 4200 Twelve Oaks Drive, Houston, TX 77027.	N/A	10/18/2006	TX ...	ASBS.
Mason General Hospital, 901 Mountain View Drive, Shelton, WA 98584.	l501336	10/13/2006	WA ..	ASBS.
Mobile Infirmary Medical Center, 5 Mobile Infirmary Circle, Mobile, AL 36652.	010113	10/27/2006	AL.	
Alta Bates Medical Center, 350 Hawthorne Avenue, Oakland, CA 94609.	050043	10/23/2006	CA.	
Massachusetts General Hospital, 55 Fruit Street Boston, MA 02114–2696.	220071	10/23/2006	MA ..	N/A.

Facility name	Provider No.	Date approved	State	Other information
Overlook Hospital, Nursing Administration Office, 99 Beauvoir Avenue, Summit, NJ 07902.	310051	11/21/2006	NJ.	
South Jersey Healthcare—Regional Medical Center, 1505 West Sherman Avenue, Vineland, NJ 08360.	310032	11/20/2006	NJ ...	N/A.
Magee Womens Hospital of UPMC, 3000 Halket Street, Pittsburgh, PA 15213.	390114	11/13/2006	PA ...	N/A.
Saint Francis Hospital and Medical Center, 114 Woodland Street, Hartford, CT 06105.	070002	11/15/2006	CT ...	N/A.
Newton-Wellesley Hospital, 2014 Washington Street, Newton, MA 02462.	220101	10/26/2006	MA ..	N/A.
Cleveland Clinic Florida, 3100 Weston Road, Weston, FL 33331–3602.	100289	10/19/2006	FL ...	N/A.
Grinnell Regional Medical Center, 210 Fourth Avenue, Grinnell, IA 50112.	N/A	10/19/2006	IA	Provider Numbers: Hospital: 160147, Surgical Group: 03108.
Saint Francis Hospital, 6465 South Yale Avenue, #900, Tulsa, OK 74136.	372308	10/23/2006	OK ..	N/A.
Baptist Health Medical Center—Little Rock, 9601 I–630, Exit 7, Little Rock, AR 72205.	l040114	12/01/2006	AR ...	N/A
Northwest Medical Center, 2801 North State Road, Exit 7, Margate, FL 33063.	100189	11/30/2006	FL ...	N/A.
Tufts-New England Medical Center, 750 Washington Street, Boston, MA 02111.	220116	11/27/2006	MA ..	N/A.
Allegheny General Hospital, 320 East North Avenue, Fifth Floor, South Tower, Pittsburgh, PA 15212.	390050	11/30/2006	PA ...	
Memorial Hermann Memorial City Hospital, 921 Gessner Road, Houston, TX 77024.	450610	11/27/2006	TX ...	N/A.
Potomac Hospital, 2300 Opitz Boulevard, Woodbridge, VA 22191	490113	11/30/2006	VA ...	N/A.
Mayo Clinic-Saint Mary's Hospital, 200 First Street SW, Rochester, MN 55905.	N/A	10/23/2006	MN ..	SMH: 24–0010, Part B General Medical: CO1384.
Fletcher Allen Health Care, 111 Colchester Avenue, Burlington, VT 05401.	N/A	06/09/2006	VT ...	Hospital: 47003, Group Provider; VN0997.
Community Medical Center—Clovis, 2755 Herndon Avenue, Clovis, CA 93611.	050492	12/07/2006	CA ...	N/A.
St. Luke's Regional Medical Center, 333 North 1st Street, Suite 120, Boise, ID 83702.	130006	12/06/2006	ID	N/A.
Avera McKennan Hospital, 800 East 21st Street, Box 5045, Sioux Falls, SD 57117–5045.	430016	09/25/2006	SD ...	N/A.
Hialeah Hospital, 651 East 25 Street, Hialeah, FL 33013	100053	12/13/2006	FL ...	N/A.
Sts. Mary and Elizabeth Hospital, Bariatric Office, 1850 Bluegrass Avenue, Louisville, KY 40215.	180040	12/15/2006	KY ...	
Pomerado Hospital, 15615 Pomerado Road, Poway, CA 92064	050636	12/18/2006	CA ...	N/A.
Women and Children's Hospital, 4200 Nelson Road, Lake Charles, LA 70605.	190201	12/19/2006	LA ...	N/A.
Southcoast Hospitals Group—Tobey Hospital, 43 High Street, Wareham, MA 02571.	220074	12/21/2006	MA ..	N/A.
Medcenter One, Inc., 300 North 7th Street, Bismarck, ND 58501 ...	350015	12/19/2006	ND ..	N/A.
Bon Secours Surgical Weight Loss-Maryview Medical Center, 3636 High Street, Portsmouth, VA 23707.	490017	12/18/2006	VA ...	N/A.
Mount Carmel West Hospital, 793 West State Street, Columbus, OH 43222.	360035	12/20/2006	OH ..	N/A.
University of Wisconsin Hospital & Clinics, 600 Highland Avenue, Madison, WI 53792.	520098	12/19/2006	WI ...	N/A.
Meriter Hospital, 202 South Park Street, Madison, WI 53715	520089	12/19/2006	WI ...	N/A.
Mercy General Health Partners, 1500 Sherman Boulevard, Muskegon, MI 49444.	230004	12/26/2006	MI	N/A.
Mountainside Hospital, 1 Bay Avenue, Montclair, NJ 07042	310054	12/26/2006	NJ ...	N/A.
Carilion Roanoke Memorial Hospital, 1906 Belleview Avenue, Roanoke, VA 24014.	N/A	12/26/2006	VA ...	N/A.
University of Alabama at Birmingham Hospital, 1530 3rd Avenue, South Kracke Building 404, Birmingham, AL 35294–0016.	010033	12/07/2006	AL ...	N/A.
Fountain Valley Regional Hospital, 17100 Euclid Street, Fountain Valley, CA 92708.	050570	09/27/2006	CA ...	N/A.
Hackensack University Medical Center, 30 Prospect Avenue, Hackensack, NJ 07601.	310001	12/08/2006	NJ ...	N/A.
Park Plaza Hospital, 1313 Hermann Drive, Houston, TX 77004	450659	01/09/2007	TX ...	N/A.
Renaissance Hospital Houston, 2807 Little York Road, Houston, TX 77093.	450795	01/12/2007	TX ...	N/A.
Highland Hospital, 1000 South Avenue, Rochester, NY 14620	330164	08/30/2006	NY ...	N/A.
Penn State Milton S.3 Hershey Medical Center, 500 University Drive, Hershey, PA 17033.	90256	01/18/2007	PA ...	N/A.
Sentara Norfolk General Hospital, 600 Gresham Drive, Norfolk, VA 23507.	4900073	09/29/2006	VA ...	N/A.

Facility name	Provider No.	Date approved	State	Other information
University of Washington Medical Center, 1959 NE Pacific Street, PO Box 356151, Seattle, WA 98195–6151.	1326002049	12/05/2006	WA ..	N/A.
Maine Medical Center, 22 Bramhall Street, Portland, ME 04102	200009	11/06/2006	ME ..	N/A.
Shawnee Mission Medical Center, 9100 West 74th Street, Shawnee Mission, KS 66204.	170104	01/24/2007	KS ...	N/A.
Sacred Heart Medical Center, 101 West 8th Avenue, Spokane, WA 99220.	500054	02/05/2007	WA ..	N/A.
Ochsner Clinic Foundation, 1514 Jefferson Highway, New Orleans, LA 70121.	190036	02/06/2007	LA ...	N/A.
Sacred Heart Hospital, 421 Chew Street, Allentown, PA 18102	390197	02/07/2007	PA ...	N/A.
Northwest Specialty Hospital, 1593 East Polston Avenue, Post Falls, ID 83854.	130066	02/07/2007	ID	N/A.
Alvarado Hospital, Alvarado Surgical Weight-Loss Program, 6655 Alvarado Road, San Diego, CA 92120.	050583	01/26/2007	CA ...	N/A.
St. Francis Hospital, 7th and Clayton Streets, Wilmington, DE 19805.	080003	01/29/2007	DE ...	N/A.
Cleveland Clinic, 9500 Euclid Avenue, (H18), Cleveland, OH 44195.	360180	12/01/2006	OH ..	N/A.
Geisinger Medical Center, 100 North Academy Avenue, Danville, PA 17822.	390006	01/26/2007	PA ...	N/A.
Gundersen Lutheran Medical Center, 1900 South Avenue, La Crosse, WI 54601.	520087	02/13/2007	WI ...	N/A.
Rio Grande Regional Hospital, 101 East Ridge Road, McAllen, TX 78503.	450711	02/12/2007	TX ...	N/A.
Shady Grove Adventist Hospital, 9901 Medical Center Drive, Rockville, MD 20850.	210057	02/19/2007	MD ..	N/A.
Pitt County Memorial Hospital, 2100 Stantonsburg Road, Greenville, NC 27835.	340040	02/20/2007	NC ..	N/A.
Kettering MedicalCenter, 3535 Southern Boulevard, Kettering, OH 45429.	360079	02/16/2007	OH ..	N/A.

[FR Doc. 07–1414 Filed 3–23–07; 8:45 am]

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Federal Register

Friday,
March 30, 2007

Part IV

Postal Service

39 CFR Part 111

New Standards for Domestic Mailing Services; Final Rule

POSTAL SERVICE

39 CFR Part 111

New Standards for Domestic Mailing Services

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: In this final rule the Postal Service provides new mailing standards to support most of the pricing change recommended by the Postal Regulatory Commission and approved by the Governors of the United States Postal Service. We will implement most of the new prices on May 14, 2007. We will implement new prices and mailing standards for Periodicals mail on July 15, 2007.

Our pricing change includes a new ''forever stamp'' to make future price changes more convenient for consumers. The forever stamp will always equal the First-Class Mail single piece 1-ounce letter price. We also offer new shape-based prices for First-Class Mail, with lower rates for letter-size pieces over 1 ounce. We make the Priority Mail flat-rate boxes a permanent product offering, and we add a new 1-pound price for Express Mail.

For commercial mailers we offer new sorting options to reduce the number of trays in a mailing of letter-size pieces. We also offer new scheme preparations to give mailers access to lower rates and to better align flat-size mail preparation with mail processing. We add a new automated Address Change Service option to reduce the costs associated with undeliverable-as-addressed mail. First-Class Mail parcel mailers have new barcode options, and we provide new opportunities for mailers to combine Standard Mail Not Flat-Machinable pieces, Standard Mail parcels, and Package Services parcels in the same mailing.

EFFECTIVE DATE: 12:01 a.m. on May 14, 2007.

FOR FURTHER INFORMATION CONTACT: Joel Walker, 202–268–7261.

SUPPLEMENTARY INFORMATION: The Postal Service's request in Docket No. R2006–1 included mail classification changes, new pricing structures, and price changes for most domestic mailing services. This final rule provides the revisions to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM) that we will adopt to implement most of the R2006–1 pricing changes. We summarize major changes since our February proposal by class of mail and extra service, update our summary of the entire proposal, and update our mailing standards. We provide all of the new prices in the ''Rates and Fees Reference'' at the end of this notice.

You can find this final rule, as well as our earlier proposals, at *http://www.usps.com/ratecase*. We also provide helpful information for mailers, including frequently asked questions, press releases, and *Mailers Companion* and *MailPro* articles related to the pricing change.

Background

The Postal Service Board of Governors set May 14, 2007, as the implementation date for the new prices and related changes for all classes of mail and extra services, with the exception of Periodicals mail, which we will implement on July 15, 2007. The Board chose these dates on the basis of our financial obligations, in light of operational and administrative considerations, while also considering the impact of the changes on mailers and consumers. We note that while we are implementing all of the Commission's recommended rates, the Governors are asking the Commission to reconsider three issues: the prices for Standard Mail flats, the application of the Nonmachinable Surcharge for First-Class Mail letters, and the price for the Priority Mail flat-rate box. The Governors are concerned about the short-term effect that some prices for Standard Mail Regular flats might have on catalog mailers, and that the Commission failed to provide appropriate cost-based incentives in these other two rate designs. The Governors are asking the Commission to reconsider their recommendations and respond as quickly as possible.

We are delaying implementation of our new prices for all Periodicals mail to provide adequate time to adjust Postal Service systems, to enable an effective and orderly transition in postal operations, and to give postal acceptance employees and mailers more time to prepare for the complex structure recommended by the Postal Regulatory Commission. The Commission recommended Outside-County piece, bundle, and container rates that vary based on machinability, presort level, and entry. We will publish a **Federal Register** proposal explaining the changes and asking for your comments. We encourage all Periodicals mailers to review the Commission's recommendation, which includes significant changes to the container rate structure, at *http://www.prc.gov* (under ''Opinions and Decisions''). As we explained in our previous **Federal Register** proposals, Periodicals mailers will have new incentives to use efficient containers, and the revised copalletization standards further encourage more publishers to combine mailings. We also added, and the Commission recommended, new prices for the nonadvertising portion of a mailing to give mailers of high-editorial-content publications access to lower, destination entry rates.

Overall our new prices reflect changes in operations and the marketplace and will enhance efficiency, offer more choices, and ensure that all types of mail cover their costs. We include incentives to create mailpieces compatible with our processing systems and to deposit flats and parcels closer to where they are delivered.

Our prices recognize that each shape of mailpiece—letter, flat, and parcel—has substantially different processing costs that need to be covered. Our prices make clear distinctions between shapes and recognize that shape affects processing and delivery efficiency. For example, in First-Class Mail, a 2-ounce letter will cost $0.58; a 2-ounce flat, $0.97; and a 2-ounce parcel, $1.30. These prices reflect the differences in costs associated with processing and delivering each type of mailpiece, as well as the higher value of larger pieces.

Our new price incentives provide opportunities to mitigate the impact of price increases. For the 2-ounce example above, if the contents of a First-Class Mail flat are folded and placed into a letter-size envelope, the mailer would save 39 cents. If a parcel is reconfigured as a flat, the mailer would save 33 cents.

To make future price changes more convenient, customers may purchase ''forever stamps.'' The forever stamp will always equal the First-Class Mail single piece 1-ounce letter price, without the addition of extra postage. While the forever stamp is intended to be used for single-piece 1-ounce First-Class Mail letters, we will allow the use of forever stamps on other single-piece-rate items.

Our prices for Standard Mail letters are consistent with our past pricing strategies. For example, this strategy sets the Enhanced Carrier Route (ECR) basic letter rate higher than the regular 5-digit automation letter rates and encourages automation-compatible letter mail eligible for the ECR basic letter rate to migrate to the automation letter rate.

To better align mail preparation with our processing capabilities and to maximize access to lower rates for mailers, we are implementing scheme preparation in many of our mail preparation standards. We have made changes to our flat-size mailing standards to ensure that the prices for

flats and parcels better cover their costs and that pieces eligible for flat-size prices can be processed on our automated flat sorting machines (AFSM 100s) and handled efficiently at delivery.

The standards for automation flats are now more closely aligned with the processing capabilities of the AFSM 100, the preferred machine for flats processing and the workhorse for flats distribution in processing plants. The processing capabilities of the AFSM 100 are vastly superior to those of the Upgraded Flats Sorting Machine (UFSM 1000). The throughput of the AFSM 100 (17,000 pieces per hour) is much higher than the throughput of the UFSM 1000 (a mere 5,000 pieces per hour). There are no plans to purchase new UFSM 1000s, and we are removing them from many plants. We also believe that our new standards for Standard Mail will be appropriate for pieces weighing up to 16 ounces when processed and delivered in the future flats sequencing environment.

To be consistent with the processing capabilities of the AFSM 100, the length of a flat will continue to be the longest dimension, but for bound or folded pieces claimed at automation rates, the edge perpendicular to the bound or folded edge may not exceed 12 inches. We also revised the deflection test for automation-rate flats with bound or folded edges to allow them to be tested by placing the bound or final folded edge perpendicular to the edge of the flat surface. This method better accommodates pieces with bound edges as the shorter dimension.

We set a 5-inch by 6-inch minimum for automation flats because smaller pieces cannot be efficiently processed and present handling problems at delivery. However, these pieces may qualify for letter rates or nonautomation flats rates, depending on mailpiece characteristics.

Our standards further stipulate that rigid pieces do not qualify for flat prices. Rigid pieces are not easily processed on our AFSM 100 flat-sorting equipment—often resulting in manual processing or processing on less-efficient flats equipment—and are not generally handled as flats by carriers at delivery. In addition, rigid pieces cannot be processed and delivered efficiently in the future flats sequencing environment. Our new flexibility test is a simple, effective, and efficient way to test the flexibility of pieces presented at our thousands of acceptance locations, to determine whether such pieces can be processed on our AFSM 100s and handled as flats by carriers. To alleviate concerns about postal employees administering the test inconsistently, we will allow customers to perform this test on their own pieces, with a postal employee observing and validating the test. Understanding that the characteristics of mailpieces evolve over time, we will test pieces that fall outside of the flexibility standards as necessary and continually re-evaluate our standards to accommodate new processing and delivery capabilities.

The flexibility test specifies that pieces must not be in boxes because boxes and boxlike pieces do not process well on our AFSM 100 and are not handled efficiently during delivery. We clarified the flexibility test by stating that pieces must be tested first with the longest side parallel to the edge of the surface. If the piece can pass this test and does not contain a rigid insert, further testing is unnecessary. We are confident that our acceptance employees can recognize pieces that could present a flexibility problem and will properly administer the test but, as we noted above, we also will allow customers to test their own pieces while we observe. We will provide illustrations for the flexibility test as well as the test for deflection in the DMM and other publications.

We will apply the uniform thickness standard to all flat-size mail but will allow a ¼-inch variation in thickness. Our standards for determining uniform thickness exclude the outer edges of the mailpiece as follows:

''Flat-size mailpieces must be uniformly thick so that any bumps, protrusions, or other irregularities do not cause more than ¼-inch variance in thickness. Exclude the outside edges of a mailpiece (1 inch from the edge) when determining variance in thickness. Mailers must secure nonpaper contents to prevent shifting of more than 2 inches within the mailpiece.''

The exclusion of pieces over ¾ inch thick from automation flats is consistent with processing capabilities on our AFSM 100s and our automatic inductions systems. Many pieces that are thicker than ¾ inch and currently qualify for Standard Mail automation flats rates are boxes or rigid pieces. Few Standard Mail pieces that are flexible printed material are both over ¾ inch and under 16 ounces, which is the maximum weight for Standard Mail.

We do not require nonautomation flats to meet all automation standards. Pieces that meet the general size and physical characteristics for all flats in proposed DMM 301.1.0 but are too flimsy, are not barcoded, or use polywrap that is not approved are eligible for nonautomation flats rates. Small pieces (for example, pieces 4 inches high by 4 inches long) that are over ¼ inch thick also are eligible for nonautomation flats rates.[1]

NFM pieces are rigid, parcel-like pieces and large pieces (more than 15 inches long or more than ¾ inch thick) that currently qualify for Standard Mail automation flats rates based solely on the UFSM 1000 criteria. However, these pieces are rarely processed on the UFSM 1000 or other flats sorting equipment, and are seldom delivered as flats—they are usually processed either manually or in the parcel mailstream. Therefore, the current prices of these pieces are not adequate to cover their processing and delivery costs.[2] The NFM subcategory gives mailers the option to mail qualifying pieces at the lower, NFM rates, rather than at the higher, parcel rates. The standards allow mailers to choose on the basis of rates, preparation, and postage payment how to mail qualifying pieces under the categories of Standard Mail.

Our preparation and labeling standards for NFMs will direct them to the processing facilities that can efficiently handle them, based on actual operations and mailflows. The preparation and destination options for NFMs weighing 6 ounces or more mirror those of Standard Mail machinable parcels, because they are both efficiently processed at bulk mail centers (BMCs). The preparation and destination options for NFMs under 6 ounces mirror those of Standard Mail irregular parcels, which are efficiently processed at area distribution centers (ADCs).[3]

The NFM subcategory of Standard Mail was developed according to statutory standards and procedures. The NFM category and prices were recommended by the Postal Regulatory Commission and approved by the Board of Governors. The standards are consistent with the Postal Service's authority, under statute and the Domestic Mail Classification Schedule, to align classifications and rates with mail processing and delivery operations.

[1] The distinctions between ''nonautomation'' and ''nonmachinable,'' as they relate to Not Flat-Machinable (NFM) pieces, as well as the operations related to NFMs, were discussed on the record in Docket No. R2006–1 (in the reply brief of the United States Postal Service, Docket No. R2006–1, at 202).

[2] The cost and operational justifications supporting the NFM subcategory were discussed on the record in Docket No. R2006–1 (in the initial brief of the United States Postal Service, Docket No. R2006–1, at 279, on December 21, 2006; and in the reply brief of the United States Postal Service, Docket No. R2006–1, at 199–201, on January 4, 2007).

[3] The Postal Regulatory Commission clarified the rate schedule to ensure that pieces sorted to the BMC will pay the same rates as pieces sorted to the ADC (in PRC Op. R2006–1, at 259, n. 183, on February 26, 2007).

Mailers may still design and package their mailpieces as they do today and pay NFM or parcel rates. We will continue to accept these pieces for processing and delivery.

We have given mailers time to adjust their mailpiece design, software programming, or production processes to avoid NFM or parcel prices if they choose to make a change. From our September 2006 proposal, we have consistently encouraged mailers to redesign their packaging to avoid rigid or box-like mailpieces, and we have consulted with many mailers who intended to design pieces that could be mailable at flats prices. We realize that not every piece can be redesigned as an automation flat, but many mailers do have repackaging options and have modified their mailpieces to meet the standards for automation flats. We further note that we have openly and often communicated our intention to move parcel-like pieces out of the automation flats category in this pricing change, as well as in earlier rate testimony, because we handle these pieces as parcels in processing and delivery and incur the costs associated with parcels.[4]

We also have been working closely with presort software vendors to ensure presort software will be available for the May 14, 2007, implementation. To ensure our employees and our customers are prepared, we initiated training and communication programs nationwide. We will separately provide training for customers across the country at local postal and mailer facilities and at local Postal Customer Council events. We will publish updated manuals and other mailing tools for customers on our Postal Explorer Web site at *pe.usps.com*.

We published our policy for plant-verified drop shipment (PVDS) mail in the DMM Advisory on February 1. The procedures are the same as those we used in the past. PVDS mailings verified and paid for before the implementation date, using the current rates, will be accepted at destination entry postal facilities up to 15 days after May 14, when presented with appropriate verification and payment documentation. PVDS mailings may be verified and paid for beginning 30 days prior to May 14, using the new rates, provided the shipments are not deposited at destination entry postal facilities until May 14, or later, when presented with appropriate verification and payment documentation. We will follow our established procedures for other mailing exceptions, as we have in past rate cases.

In response to mailers' requests, we will publish decision trees, diagrams, and other supporting material to clarify physical standards and other mailing criteria. We agree that illustrations and diagrams add clarity to written standards, and we are developing supporting material for use in the DMM Advisory, the Quick Service Guides, and the DMM. We are also updating the business postage rate calculator on Postal Explorer (*pe.usps.com*) with new graphics and navigation features to make it even easier to use.

Changes Since the February Proposal

First-Class Mail Changes

The rate for machinable First-Class Mail letters that weigh 1 ounce or less is $0.41 and the card rate is $0.26. The cost for each additional ounce decreases to $0.17 for First-Class Mail single-piece and presorted letters, flats, and parcels. The additional-ounce rate for automation First-Class Mail letters is $0.125 and the additional-ounce rate for automation First-Class Mail flats is $0.17.

Letter-size First-Class Mail pieces weighing 1 ounce or less that have any of the nonmachinable characteristics in DMM 201.2.1 are subject to a $0.17 nonmachinable surcharge. Nonmachinable letters over 1 ounce are charged the First-Class Mail letter rates based on weight. We retained the 3.3-ounce (0.2063-pound) maximum weight for Presorted First-Class Mail machinable letters to be consistent with Standard Mail. Pieces over 3.3 ounces must be prepared as nonmachinable letters.

Standard Mail Changes

We revised DMM 243.5.4 to clarify that there is no 3-digit scheme sort for origin/entry 3-digit trays for Standard Mail machinable letters. To be consistent with the Postal Regulatory Commissions' recommended decision, we revised DMM 246.5.2 to clarify that letter-size mailpieces, regardless of the rate paid, are not eligible for a destination delivery unit rate. We also clarify that rigid letter-size pieces up to 3.3 ounces may be mailed at the nonmachinable letter rates.

The Postal Regulatory Commission also recommended we set enhanced carrier route (ECR) basic letter rates lower than ECR basic flats rates and require all ECR letters not meeting automation requirements to be charged the ECR flats rates. Therefore, we revised DMM 243.6.1.2 and 243.6.3 to require ECRLOT letters paid for at the ECR basic letter rate to meet address matching and coding standards and to be delivery-point barcoded and automation-compatible. We also revised DMM 243.6.1.3 to allow letters paid for at ECR basic letter rates to weigh up to 3.5 ounces, consistent with our standards for pieces paid for at high-density and saturation letter rates.

For flat-size mail, we revised DMM 301.1.5, *Uniform Thickness*, to clarify that nonpaper contents smaller than the mailing container must not shift more than 2 inches. We did not intend the standard to apply to inserts such as paper envelopes and other thin paper inserts.

Several mailers asked us to lower the minimum weight for certain types of machinable parcels, and we planned to revise these standards in a separate rulemaking. However, due to the substantially lower rates recommended by the PRC for machinable parcels at the 5-digit level, we decided to revise the standards as part of this final rule. Our new standards allow certain size pieces weighing at least 3.5 ounces to be mailed as machinable parcels. Based on extensive testing of these types of pieces and several years of processing and handling them, we are confident that we can process and deliver them as efficiently as we do similar parcels 6 ounces and over. This change allows mailers to prepare a wider range of machinable parcels separately or together with other machinable parcels.

Periodicals Changes

We clarified the definition of ''length'' and ''height'' for automation flats by consolidating the definitions for all flat-size mail into revised DMM 301.1.2. We clarified the alternative criteria for Periodicals automation flats in 707.25.3 to specify that the flexibility and deflection tests in 301.1.4 and 301.3.2.4 do not apply to these pieces, and that the standards for uniform thickness and exterior format in 301.3.6 do apply.

As we stated above, we will delay implementation of the new prices for Periodicals mail. We will publish a **Federal Register** proposal explaining the standards, and we will invite your comments on all aspects of the Periodicals proposal.

Priority Mail Changes

The USPS-produced flat-rate envelope is charged the 1-pound price, $9.15 under the Commission's recommended decision, regardless of weight or destination. The Postal Service originally proposed a lower rate, and the

[4] The ongoing dialogue between the Postal Service and mailers regarding this issue was discussed on the record in Docket No. R2006–1 (in the rebuttal testimony of Marc D. McCrery (USPS–RT–14), Docket No. R2006–1, at 8–11, on November 20, 2006).

Board of Governors is asking the Commission to reconsider the $9.15 price.

Other Changes

As a result of the recommended decision, we will not make changes to the pricing structure for Confirm. We will continue to offer Silver and Gold subscriptions as well as Platinum subscriptions with unlimited scans. New fees apply to new subscriptions or for renewal of existing subscriptions after May 14, 2007.

We revised DMM 609 with additional information about the indemnity claims process.

Summary by Class of Mail

Summary of First-Class Mail

Our new prices are based on the shape of mail and differences in the relative costs, with separate prices for letters, flats, and parcels. As shape becomes a more important price element, weight becomes less important, and we reduce prices for letter-size pieces over 1 ounce and flat-size pieces over 7 ounces.

The single-piece 1-ounce First-Class Mail letter price increases $0.02, to $0.41, and the single-piece card price also increases $0.02, to $0.26. The additional-ounce price decreases $0.07 to $0.17.

Our new forever stamp makes future price changes more convenient for consumers. The postage value of the forever stamp equals the First-Class Mail single-piece 1-ounce letter rate at any time in the future, without the addition of extra postage. Initially we will sell the forever stamp at the new 41-cent rate.

The nonmachinable surcharge increases to $0.17 and applies to 1-ounce letter-size mailpieces with any of the nonmachinable characteristics. Nonmachinable letters over 1 ounce are charged the letter rates, based on weight. The maximum weight for letters is 3.5 ounces.

The additional-ounce price for automation letters decreases from $0.237 to $0.125. We maintain the 150-piece minimum for automation First-Class Mail letters and cards. Sort levels are 5-digit/scheme, 3-digit/scheme, 3-digit origin, AADC, and mixed AADC. We offer simplified letter mail preparation for machinable letters, requiring mailers to sort only to the origin 3-digit, AADC, and mixed AADC levels. We eliminate the automation carrier route preparation and rates.

To help reduce the number of ''air trays'' (partially filled trays) and the overall costs of handling mail in letter trays, we offer a reduced—overflow tray option for automation letters. In addition, to encourage more full trays, we change our definition of a ''full letter tray'' to one in which the pieces fill the length of the tray between 85 percent and 100 percent.

To ensure automated processing of flat-size mail, we require all flats to be rectangular. The physical standards for automation flats are the criteria for AFSM 100 pieces, with new standards for flexibility. We also lessen and simplify the deflection standard.

The structure for presorted parcels includes new workshare prices. The rate levels are 5-digit, 3-digit, ADC, and single piece. To simplify the preparation of First-Class Mail parcels, we make the preparation of 5-digit/scheme sacks optional. We require at least 10 pounds of parcels for 5-digit/scheme sacks, 3-digit sacks, and ADC sacks. Remaining pieces sorted to mixed ADC sacks are charged the single-piece First-Class Mail parcel prices.

Barcodes facilitate processing on the Automated Package Processing System (APPS), and we give mailers the option of applying either a 5-digit UCC/EAN Code 128 or a POSTNET barcode on presorted parcels. Unless prepared in 5-digit/scheme containers or paid for at the single-piece rates, a $0.05 surcharge applies to all parcels that are not barcoded, or that weigh less than 2 ounces, and to irregularly shaped parcels such as triangles, tubes, rolls, and similar pieces.

Summary of Standard Mail

Our prices encourage mail that is compatible with our operations and drop shipped closer to its destination. As in First-Class Mail, Standard Mail pricing has greater recognition of shape and reduced reliance on weight.

Letters

Automation letter sort levels are 5-digit/scheme, 3-digit/scheme, AADC, and mixed AADC. Mailers also have the option to prepare 3-digit/scheme origin/entry trays for automation letters. We offer a simplified preparation and require mailers of machinable letters to sort only to the AADC and mixed AADC levels, with optional sorting to 3-digit origin/entry trays.

ECR letters up to 3 ounces that are barcoded and automation-compatible are sorted in full trays according to new preparation standards. Mailers sort and bundle ECR letters that are not barcoded or not automation-compatible, or that are over 3 ounces, according to current preparation standards. Mailers sort and bundle mailings that contain pieces both over and under 3 ounces according to current preparation standards.

We replace the nonmachinable surcharge with a separate rate structure for nonmachinable letters up to 3.3 ounces. Nonmachinable letter sort levels are 5-digit, 3-digit, ADC, and mixed ADC, for which there are separate rates. Mailers have the option to prepare 3-digit origin/entry trays. Nonmachinable letters over 3.3 ounces are charged the Not Flat-Machinable (NFM) rates or, if barcoded and meeting other requirements, an automation flat-size rate.

Destination delivery unit (DDU) entry rates are not available for ECR letter-size pieces, and mailers cannot pay ECR flat-size rates and claim the DDU discount for automation-compatible letters drop shipped to DDUs. Destination sectional center facility (DSCF) entry rates are allowed for DDU entry of some ECR letters, including letters with simplified addresses and locally entered mailings of 2,500 pieces or less. We eliminate ECR automation basic rates. ECRLOT letters paid for at the basic letter rate must meet address matching and coding standards and must be delivery-point barcoded and automation-compatible.

To help reduce the costs of handling mail in letter trays, we offer a reduced—overflow tray option for automation letters. In addition, to encourage fuller trays, we change our definition of a ''full letter tray'' to one in which the pieces fill the length of the tray between 85 percent and 100 percent.

Flats

The physical standards for automation flats retain most of the criteria for AFSM 100 pieces, with new standards for flexibility that exclude boxes and box-like pieces. We added a rectangular requirement and a uniform thickness standard for all flats. The new uniform thickness standard allows up to a ¼-inch variation in thickness. These changes ensure that pieces paid for at automation flats rates can be processed in automated operations and delivered as flats. We also lessen the deflection standard and allow bound or folded pieces to be tested differently than enveloped pieces.

We increase the maximum size for carrier route flats so that the same maximum size applies to all flats, regardless of the rate paid.

Not Flat-Machinable Pieces

Our prices include a new Not Flat-Machinable (NFM) subcategory for rigid flat-size pieces and for large pieces that are currently automation-compatible only by meeting UFSM 1000 standards. This subcategory provides mailers a

lower-than-parcel rate option for pieces that do not meet the new standards for flats. We do not allow bundling for most NFMs, and mailers may prepare pieces in 5-digit/scheme, 3-digit, ADC/BMC, and mixed ADC/BMC containers. We allow 5-digit bundles of five or more NFMs when the mail is prepared on pallets. We offer a DDU entry rate for NFMs sorted to 5-digit destinations when drop shipped directly to the DDU. There is no minimum for NFMs drop shipped to DDUs. Unless prepared in 5-digit/scheme containers, a $0.05 surcharge applies to all NFMs that are not barcoded.

Parcels

We eliminate the residual shape surcharge for Standard Mail parcels. We no longer offer a $0.03 machinable barcode discount. Instead, parcel prices include a requirement for barcodes. Unless prepared in 5-digit/scheme containers, a $0.05 surcharge applies to all parcels that are not barcoded.

We remove the bundling requirement for all Standard Mail irregular parcels except ECR parcels. We reduce the required minimum quantity of irregular parcels in sacks to 10 pounds per sack. We allow mailers the option of using POSTNET barcodes or parcel barcodes on Standard Mail irregular parcels.

We encourage mailers to commingle machinable parcels, irregular parcels, and NFMs when they are able to combine them in 5-digit/scheme containers. We allow mailers to combine NFMs under 6 ounces with irregular parcels in 3-digit, ADC, and mixed ADC containers. We also allow mailers to combine NFMs weighing 6 ounces or more with machinable parcels in BMC/ASF and mixed BMC containers. We allow mailers to combine Standard Mail parcels, NFMs, machinable Parcel Select, and Bound Printed Matter parcels when prepared in 3-digit containers to certain ZIP Codes and entered at designated SCFs.

Our new standards in 401.1.0 allow certain size pieces weighing at least 3.5 ounces to be mailed as machinable parcels. This change allows mailers to prepare a wider range of machinable parcels separately or together with other machinable parcels.

We offer a DDU entry rate for parcels sorted to 5-digit/scheme destinations when drop shipped directly to the DDU. There is no minimum for the amount of parcels drop shipped to a DDU.

Customized MarketMail

Rates for Customized *MarketMail* equal the 5-digit nonentry rate for Not Flat-Machinable pieces, and mailers are still required to drop ship Customized *MarketMail* pieces to DDUs.

Detached Address Labels

Our prices include a new $0.015 charge for detached address labels with ECR pieces. Mailers who prepare mail with addresses on their mailpieces could avoid the new charge.

Pallets

We reduce certain destination pallet minimums to 100 pounds of bundles or sacks of nonletter mail or 12 linear feet of trays on pallets.

Summary of Periodicals

As we stated above, we will delay implementation of our new prices for Periodicals mail. We will publish a separate **Federal Register** proposal explaining the standards for Periodicals mail resulting from the Postal Regulatory Commission's recommended decision, and asking for your comments.

To encourage fuller letter trays, we change our definition of a ''full letter tray'' to one in which the pieces fill the length of the tray between 85 percent and 100 percent. We reduce certain destination pallet minimums to 100 pounds of bundles or sacks of nonletter mail or 12 linear feet of trays on pallets.

Summary of Package Services

Package Services includes Parcel Post, Bound Printed Matter, Media Mail, and Library Mail. Our standards simplify Package Services offerings and encourage more efficient handling of parcels.

Parcel Post

Currently, we charge parcels weighing less than 15 pounds and measuring more than 84 inches in combined length and girth the 15-pound rates (''balloon rate''). Under the new standards, we charge parcels weighing less than 20 pounds and measuring more than 84 inches in combined length and girth the 20-pound rates.

We incorporate the current $0.03 barcode discount available for machinable Parcel Select destination bulk mail center (DBMC) entry mail into the price, and we require a barcode. Nonbarcoded machinable pieces are charged the applicable Intra-BMC/ASF rate.

We do not change the mail preparation standards for Parcel Select.

Bound Printed Matter

We rename single-piece Bound Printed Matter ''nonpresorted'' Bound Printed Matter, and we eliminate it as a retail option. Customers can still use PC Postage or apply meter postage or adhesive stamps to nonpresorted BPM and deposit these pieces in a collection box, at the retail counter, or with their letter carrier. For flat-size pieces, we increase the $0.08 discount from the parcel price to $0.16. We do not change the $0.03 per piece POSTNET barcode discount for flat-size mail and the $0.03 per piece parcel barcode discount for machinable parcels.

To reduce sacks, we require 5-digit/scheme and 3-digit/scheme bundles and 5-digit/scheme sacks for presorted flat-size Bound Printed Matter. We require 5-digit/scheme sacks for machinable and irregular parcels.

Media Mail and Library Mail

To reduce sacks, we require 5-digit/scheme and 3-digit/scheme bundles and 5-digit/scheme sacks for presorted flat-size Media Mail and Library Mail. We require 5-digit/scheme sacks for machinable and irregular parcels.

Pallets

We reduce certain destination pallet minimums to 100 pounds of bundles or sacks of nonletter mail.

Summary of Priority Mail

We continue to offer convenience in Priority Mail. The USPS-produced flat-rate envelope is still charged the 1-pound price, regardless of weight or destination. USPS-produced flat-rate boxes will become a permanent offering. Prices for all Priority Mail pieces weighing over 23 pounds decrease for all zones, many by as much as 20 percent.

Previously, we charged the 15-pound rates (''balloon rate'') for Priority Mail pieces weighing less than 15 pounds and measuring more than 84 inches in combined length and girth. Under the new standards, we charge the 20-pound rates (the new ''balloon rate'') for Priority Mail pieces weighing less than 20 pounds and measuring more than 84 inches in combined length and girth. We apply the new balloon rate only to pieces addressed for local delivery or to zones 1–4.

Priority Mail pieces that exceed 1 cubic foot and are addressed to zones 5–8 are subject to a new dimensional-weight price under 123.1.4. We rate postage for these pieces at the greater of their actual weight or their dimensional weight. In general, if a piece is relatively light for its size, it may be subject to a dimensional-weight price. We calculate dimensional weight using one of two formulas, one for rectangular and one for nonrectangular pieces.

USPS-supplied containers containing mailings of other classes of mail under Priority Mail Open and Distribute are

not subject to dimensional weight pricing.

Summary of Express Mail

Express Mail pieces often contain material that ranges from a half-pound to 2 pounds. Previously, these pieces paid the 2-pound price. To keep Express Mail a viable alternative for mailers, we add a new 1-pound price. The flat-rate envelope continues to be charged the half-pound price, regardless of weight.

Summary of Extra Services

Our proposal keeps insured mail reliable, easy, and affordable. All insured pieces will have a barcoded label and receive a delivery scan. We will not require a signature at delivery for insured items with an indemnity of $200 or less. We also update the standards for filing an indemnity claim.

We provide new prices for Bulk Parcel Return Service, Business Reply Mail, Certificate of Mailing, Certified Mail, Collect on Delivery, Delivery Confirmation, Bulk Insurance, Express Mail Insurance, Merchandise Return Service, Money Orders, Parcel Airlift, Parcel Return Service, Registered Mail, Restricted Delivery, Return Receipt, Return Receipt for Merchandise, Signature Confirmation, and Special Handling.

Summary of Other Services

Our new standards seek to modernize our services, improve address quality, and reduce undeliverable-as-addressed mail.

We decrease the price for Address Change Service electronic option for First-Class Mail from $0.21 to $0.06. We increase the price for all other classes of mail from $0.21 to $0.25. We decrease the price for manual Address Correction Service for all classes of mail from $0.75 to $0.50. For manual notifications received by electronic and automated ACS customers, we decrease the prices to match electronic notification prices, $0.06 for First-Class Mail and $0.25 for other classes.

A new automated option for Address Change Service for First-Class Mail letters provides the first two notices at no charge, and additional notices for $0.05 each. For Standard Mail letters, the first two notices are $0.02 each, and additional notices are $0.15 each. This new option requires mailers to use the Intelligent Mail barcode.

The Postal Regulatory Commission recommended that we implement a new service to charge for the actual number of Standard Mail pieces forwarded and returned. This service would use electronic data to give mailers an alternative to the current process that charges a weighted rate for the returned pieces only (the weighted rate is intended to cover the postage for the forwarded pieces also). The new service would be available for Address Change Service pieces using the electronic option, or the new automated option using the Intelligent Mail barcode. This service will be available to customers through an approval process that ensures individual customer and postal systems can adapt to the new payment system.

We no longer offer on-site meter services. We eliminate the fees associated with on-site meter service, meter resetting, examination, and checking meters in and out of service.

Individual post office box holders at different locations may experience varying price changes as we continue to align prices with our costs for each location. Our new prices also realign the Caller Service fees based on location.

We provide new prices for Address Sequencing Service, Confirm, Mailing List Service, Permit Imprint, Pickup on Demand service, Premium Forwarding Service, Shipper Paid Forwarding, Stamped Cards, Stamped Envelopes, and all annual and quarterly mailing fees.

We provide the updated DMM standards, and how they are applied for each type of mail, below.

We adopt the following amendments to Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR Part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

100 Retail Mail: Letters, Cards, Flats, and Parcels

101 Physical Standards

1.0 Physical Standards for Letters

1.1 Dimensional Standards for Letters

Letter-size mail is:

* * * * *

[Renumber item c as item d. Insert new item c as follows:]

c. Not more than 3.5 ounces.

* * * * *

1.2 Nonmachinable Criteria

A letter-size piece is nonmachinable (see 6.4) if it has one or more of the following characteristics (see 601.1.4 to determine the length, height, top, and bottom of a mailpiece):

[Renumber items a through i as items b through j. Insert new item a as follows:]

a. Is over 3.5 ounces.

* * * * *

2.0 Physical Standards for Flats

2.1 General Definition

Flat-size mail is:

* * * * *

[Renumber item c as new item f. Insert new items c through e as follows:]

c. Flexible (see 2.2).

d. Rectangular.

e. Uniformly thick (see 2.3).

* * * * *

[Insert new 2.2 through 2.4 as follows:]

2.2 Minimum Flexibility Criteria for Flat-Size Pieces

Flat-size pieces must be flexible. Boxes and box-like pieces—with or without hinges, gaps, or breaks that allow the piece to bend—are not flats. Tight envelopes that are completely filled to form box-like pieces are not flats. Test flats as follows:

a. All flats:

1. Place the piece with the length parallel to the edge of a flat surface and extend the piece halfway off the surface.

2. Press down on the piece at a point 1 inch from the outer edge, in the center of the piece's length, exerting steady pressure.

3. The piece is *not* flexible if it cannot bend at least 1 inch vertically without being damaged.

4. The piece *is* flexible if it can bend at least 1 inch vertically without being damaged and it does not contain a rigid insert. No further testing is necessary.

5. Test the piece according to 2.2b or 2.2c below if it can bend at least 1 inch vertically without being damaged and it contains a rigid insert.

b. Flats 10 inches or longer that pass the test in 2.2a and contain a rigid insert:

1. Place the piece with the length perpendicular to the edge of a flat surface and extend the piece 5 inches off the surface.

2. Press down on the piece at a point 1 inch from the outer edge, in the center of the piece's width, exerting steady pressure.

3. Turn the piece around and repeat steps 1 and 2. The piece is flexible if both ends can bend at least 2 inches vertically without being damaged.

c. Flats less than 10 inches long that pass the test in 2.2a and contain a rigid insert:

1. Place the piece with the length perpendicular to the edge of a flat surface and extend the piece one-half of its length off the surface.

2. Press down on the piece at a point 1 inch from the outer edge, in the center of the piece's width, exerting steady pressure.

3. Turn the piece around and repeat steps 1 and 2. The piece is flexible if both ends can bend at least 1 inch vertically without being damaged.

2.3 Uniform Thickness

Flat-size mailpieces must be uniformly thick so that any bumps, protrusions, or other irregularities do not cause more than ¼-inch variance in thickness. Exclude the outside edges of a mailpiece (1 inch from the edge) when determining variance in thickness. Mailers must secure nonpaper contents to prevent shifting of more than 2 inches within the mailpiece.

2.4 Flat-Size Pieces Not Eligible for Flat-Size Rates

Mailpieces that do not meet the standards in 2.1 through 2.3 are not eligible for flat-size rates and must be paid for at the applicable parcel rates.

* * * * *

5.0 Additional Physical Standards for Priority Mail

* * * * *

5.2 Two or More Packages

[Revise 5.2 as follows:]

With the exception of USPS-produced Priority Mail flat-rate envelopes or boxes, two or more packages may be mailed as a single parcel if they are about the same size or shape, are securely wrapped or fastened together, and do not exceed the weight or size limits.

* * * * *

6.0 Additional Physical Standards for First-Class Mail

* * * * *

6.4 Nonmachinable Pieces

6.4.1 Nonmachinable Letters

[Revise 6.4.1 as follows:]

Letter-size pieces (except card-rate pieces) that weigh 1 ounce or less and meet one or more of the nonmachinable characteristics in 1.2 are subject to the nonmachinable surcharge (see 133.1.11). Nonmachinable letters over 1 ounce are charged the First-Class Mail letter rate based on weight.

[Revise heading and text of 6.4.2 as follows:]

6.4.2 Nonmachinable Flats

Flat-size pieces that do not meet the standards in 2.0 are subject to the applicable postage for a parcel-size piece, based on weight.

* * * * *

[Delete 8.0, Additional Physical Standards for Bound Printed Matter. Renumber 9.0 and 10.0 as new 8.0 and 9.0.]

* * * * *

102 Elements on the Face of a Mailpiece

* * * * *

3.0 Placement and Content of Mail Markings

* * * * *

[Revise heading of 3.3 as follows:]

3.3 Mail Markings

[Revise first sentence of 3.3 as follows:]

Mailers must print the basic required Package Services subclass marking—''Parcel Post'' or ''PP,'' ''Media Mail,'' or ''Library Mail''—on each piece claimed at the respective rate.* * *

* * * * *

110 Retail Mail: Express Mail

113 Rates and Eligibility

1.0 Express Mail Rates and Fees

* * * * *

1.2 Express Mail Rate Application

[Revise 1.2 as follows:]

Except under 1.4, *Flat-Rate Envelope,* Express Mail items are charged the 0.5-pound rate for items up to 0.5 pound. Items over 0.5 pound are rounded up to the next whole pound. For example, if a piece weighs 0.25 pound, the weight (postage) increment is 0.5 pound; if a piece weighs 0.75 pound, the weight (postage) increment is 1 pound; if a piece weighs 1.2 pounds, the weight (postage) increment is 2 pounds.

* * * * *

120 Retail Mail: Priority Mail

123 Rates and Eligibility

1.0 Priority Mail Rates and Fees

* * * * *

1.2 Priority Mail Rate Application

[Revise 1.2 as follows:]

Except under 1.3, 1.4, and 1.5, Priority Mail rates are charged per pound; any fraction of a pound is rounded up to the next whole pound. For example, if a piece weighs 1.2 pounds, the weight (postage) increment is 2 pounds. The minimum postage amount per addressed piece is the 1-pound rate. The Priority Mail rate up to 1 pound is based on weight only; rates for pieces weighing more than 1 pound are based on weight and zone. Other charges may apply. See Exhibit 1.3, *Priority Mail Rates.*

[Revise the heading and text of 1.3 as follows:]

1.3 Minimum Rate for Parcels to Zones 1–4

Parcels addressed for delivery to Zones 1–4 (including Local) that weigh less than 20 pounds but measure more than 84 inches (but not more than 108 inches) in combined length and girth are charged the applicable zone rate for a 20-pound parcel (balloon rate).

[Delete 1.6 and 1.7; renumber 1.4 and 1.5 as new 1.6 and 1.7. Insert new 1.4 and 1.5 as follows:]

1.4 Dimensional Weight Rate for Low-Density Parcels to Zones 5–8

Postage for parcels addressed for delivery to Zones 5–8 and exceeding 1 cubic foot (1,728 cubic inches) is based on the actual weight or the dimensional weight (as calculated in 1.4.1 or 1.4.2), whichever is greater.

1.4.1 Determining Dimensional Weight for Rectangular Parcels

Follow these steps to determine the dimensional weight for a rectangular parcel:

a. Measure the length, width, and height in inches. Round off (see 604.7.0) each measurement to the nearest whole inch.

b. Multiply the length by the width by the height.

c. If the result exceeds 1,728 cubic inches, divide the result by 194 and round up (see 604.7.0) to the next whole number to determine the dimensional weight in pounds.

1.4.2 Determining Dimensional Weight for Nonrectangular Parcels

Follow these steps to determine the dimensional weight for a nonrectangular parcel:

a. Measure the length, width, and height in inches at their extreme dimensions. Round off (see 604.7.0) each measurement to the nearest whole inch.

b. Multiply the length by the width by the height.

c. Multiply the result by an adjustment factor of 0.785.

d. If the final result exceeds 1,728 cubic inches, divide the result by 194

and round up (see 604.7.0) to the next whole number to determine the dimensional weight in pounds.

e. If the dimensional weight exceeds 70 pounds, the parcel pays the 70-pound rate.

1.5 Flat-Rate Boxes and Envelopes

Any amount of material may be mailed in a USPS-produced Priority Mail flat-rate box or flat-rate envelope. When sealing a flat-rate box or flat-rate envelope, the container flaps must be able to close within the normal folds. Tape may be applied to the flaps and seams to reinforce the container, provided the design of the container is not enlarged by opening the sides and the container is not reconstructed in any way.

1.5.1 Flat-Rate Boxes—Rate and Eligibility

Each USPS-produced Priority Mail flat-rate box is charged $9.15, regardless of the actual weight of the piece or its destination. Only USPS-produced flat-rate boxes are eligible for the flat-rate box rate.

1.5.2 Flat-Rate Envelopes—Rate and Eligibility

Each USPS-produced Priority Mail flat-rate envelope is charged $4.60, regardless of the actual weight of the piece or its destination. Only USPS-produced flat-rate envelopes are eligible for the flat-rate envelope rate.

* * * * *

130 Retail Mail: First-Class Mail

133 Rates and Eligibility

1.0 First-Class Mail Rates and Fees

1.1 First-Class Mail Single-Piece Rate Application

The single-piece rates for First-Class Mail are applied as follows:

* * * * *

[Revise the weight limit in item b as follows:]

b. The letter rate applies to letter-size pieces that meet the standards in 101.1.1 and weigh 3.5 ounces or less, and that are not eligible for and claimed at the card rate.

[Insert new items c and d as follows:]

c. The flat rate applies to flat-size pieces that meet the standards in 101.2.1.

d. The parcel rate applies to parcel-size pieces under 101.3.0 and to flat-size pieces that do not meet the standards in 101.2.0.

* * * * *

[Renumber 1.7, Rates for Keys and Identification Devices, as new 1.9. Restructure the rate tables in 1.5 and 1.6 into new 1.5 through 1.7 for separate letter, flat, and parcel rates.]

1.8 Keys and Identification Devices

[Revise 1.8 to remove references to the nonmachinable surcharge in the first three sentences as follows:]

Keys and identification devices (such as identification cards and uncovered identification tags) that weigh 13 ounces or less are returned at the applicable single-piece First-Class Mail parcel rate plus the fee. Keys and identification devices that weigh more than 13 ounces but not more than 1 pound are returned at the 1-pound Priority Mail rate plus the fee. Keys and identification devices weighing more than 1 pound but not more than 2 pounds are mailed at the 2-pound Priority Mail rate for zone 4 plus the fee. * * *

* * * * *

[Renumber 1.9 through 1.11 as new 1.10 through 1.12.]

1.11 Applicability of Nonmachinable Surcharge

[Revise renumbered 1.11 as follows:]

The nonmachinable surcharge applies to letter-size pieces that weigh 1 ounce or less and meet one or more of the nonmachinable characteristics in 101.1.2. Pieces mailed at the card rate are not subject to the nonmachinable surcharge.

* * * * *

2.0 Basic Eligibility Standards for First-Class Mail

2.1 Description of Service

* * * * *

2.1.2 Rate Options

[Revise 2.1.2 to add shape-based reference as follows:]

First-Class Mail offers shape-based single-piece rates in 1.0.

* * * * *

150 Retail Mail: Parcel Post

153 Rates and Eligibility

1.0 Parcel Post Rates and Fees

1.1 Rate Eligibility

There are two Parcel Post retail rate categories: Intra-BMC and Inter-BMC. Intra-BMC and Inter-BMC Parcel Post rates are calculated based on the zone to which the parcel is addressed and the weight of the parcel. Requirements for Parcel Post rates and discounts are as follows:

* * * * *

[Revise item d as follows:]

d. Parcels that weigh less than 20 pounds but measure more than 84 inches (but not more than 108 inches) in combined length and girth are charged the applicable rate for a 20-pound parcel (balloon rate).

* * * * *

1.7 Inter-BMC/ASF Machinable Parcel Post

[Revise 1.7 as follows:]

For barcode discount, deduct $0.03 per parcel (50-piece minimum). Parcels that weigh less than 20 pounds but measure more than 84 inches (but not more than 108 inches) in combined length and girth are charged the applicable rate for a 20-pound parcel (balloon rate).

1.8 Inter-BMC/ASF Nonmachinable Parcel Post

[Revise 1.8 as follows:]

Rates include the $3.89 nonmachinable surcharge. Regardless of weight, a parcel with any of the characteristics in 101.7.2, *Nonmachinable Parcel Post Standards,* must be charged the rate listed in Exhibit 1.9. Parcels that weigh less than 20 pounds but measure more than 84 inches (but not more than 108 inches) in combined length and girth are charged the applicable rate for a 20-pound parcel (balloon rate). The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

* * * * *

1.10 Local and Intra-BMC/ASF Machinable Parcel Post

[Revise 1.10 as follows:]

Rates for parcels that originate and destinate in the same BMC service area are in Exhibit 1.12, *Local and Intra-BMC/ASF Machinable and Nonmachinable Parcel Post Rates.* For barcode discount, deduct $0.03 per parcel (50-piece minimum). Parcels that weigh less than 20 pounds but measure more than 84 inches (but not more than 108 inches) in combined length and girth are charged the applicable rate for a 20-pound parcel (balloon rate). Regardless of weight, a parcel with any of the characteristics in 101.7.2 must be charged the rate for a nonmachinable parcel in 1.11.

1.11 Local and Intra-BMC/ASF Nonmachinable Parcel Post

[Revise 1.11 as follows:]

Rates include the $2.87 nonmachinable surcharge. Regardless of weight, a parcel with any of the characteristics in 101.7.2, *Nonmachinable Parcel Post Standards,* must be charged the rates in Exhibit 1.12. Parcels that weigh less than 20 pounds but measure more than 84 inches (but not more than 108 inches)

in combined length and girth are charged the applicable rate for a 20-pound parcel (balloon rate). The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

* * * * *

[Delete Chapter 160, Retail Mail: Bound Printed Matter, *in its entirety. These standards are incorporated into chapters 360 and 460.]*

* * * * *

200 Discount Mail: Letters and Cards

201 Physical Standards

1.0 Physical Standards for Machinable Letters and Cards

1.1 Physical Standards for Machinable Letters

* * * * *

1.1.2 Weight Standards for Machinable Letters

[Revise 1.1.2 to change the maximum weight for First-Class Mail machinable letters to 3.5 ounces as follows:]

The maximum weight for Presorted First-Class Mail machinable letters is 3.3 ounces (0.2063 pound). The maximum weight for Standard Mail machinable letters is 3.3 ounces (0.2063 pound).

* * * * *

2.0 Physical Standards for Nonmachinable Letters

2.1 Criteria for Nonmachinable Letters

A letter-size piece is nonmachinable if it has one or more of the following characteristics (see 601.1.4 to determine the length, height, top, and bottom of a mailpiece):

[Renumber items a through i as items b through j. Insert new item a as follows:]

a. Is over 3.3 ounces, unless prepared as an automation-rate letter.

* * * * *

[Delete 2.2.2, Nonmachinable Surcharge—Letter-Size Pieces. *Renumber 2.2.1 as new 2.2 and revise as follows:]*

2.2 Additional Criteria for First-Class Mail Nonmachinable Letters

Letter-size pieces (except card-rate pieces) that weigh 1 ounce or less and meet one or more of the nonmachinable characteristics in 2.1 are subject to the nonmachinable surcharge (see 133.1.10). Nonmachinable letters over 1 ounce and up to 3.5 ounces are charged the First-Class Mail letter rates based on weight. All letter-size pieces over 3.5 ounces are prepared as letters and charged the flat-size rates.

[Delete 2.3.2, Nonmachinable Surcharge Not Applied. *Renumber 2.3.1 as new 2.3 and revise as follows:]*

2.3 Additional Criteria for Standard Mail Nonmachinable Letters

The nonmachinable rates in 243.1.5 apply to Standard Mail letter-size pieces that weigh 3.3 ounces or less and have one or more of the nonmachinable characteristics in 2.1.

3.0 Physical Standards for Automation Letters and Cards

* * * * *

3.3 Weight Standards for First-Class Mail Automation Letters and Cards

[Revise 3.3 to change the weight limit as follows:]

Maximum weight for First-Class Mail automation letters is 3.5 ounces (0.2188 pound). See 3.13.4 for pieces heavier than 3 ounces.

3.4 Weight Standards for Standard Mail Automation Letters

[Revise 3.4 to remove the reference to automation carrier route mail as follows:]

Maximum weight for Standard Mail mailed at automation and Enhanced Carrier Route is 3.5 ounces (0.2188 pound). See 3.13.4 for pieces heavier than 3 ounces.

* * * * *

202 Elements on the Face of a Mailpiece

* * * * *

3.0 Placement and Content of Mail Markings

* * * * *

3.3 Placement of Mail Markings

* * * * *

[Revise item b, item b3, and item c to delete ''AUTOCR.'']

3.4 Exceptions to Markings

Exceptions are as follows:

[Revise item a to remove references to carrier route mail as follows:]

a. Automation Letters. First-Class Mail and Standard Mail letters do not require an ''AUTO'' marking if they bear a DPBC or an Intelligent Mail barcode with a delivery point routing code in the address block or on an insert visible through a window. First-Class Mail letters not marked ''AUTO'' must bear both the ''Presorted'' or ''PRSRT'' and ''First-Class'' markings. Standard Mail letters not marked ''AUTO'' must bear the appropriate basic marking in 3.3a.

[Revise item b as follows:]

b. Manifest Mailings. The basic marking must appear in the postage area on each piece as required in 3.3a. The two-letter rate category code required in the keyline on manifest mailing pieces prepared under 705.2.0, *Manifest Mailing System,* meets the requirement for other rate markings.

* * * * *

230 Discount Letters and Cards: First-Class Mail

233 Rates and Eligibility

1.0 Rates and Fees for First-Class Mail

1.1 Rate Application

[Revise 1.1 to add ''letter'' as follows:]

Postage is based on the letter rate that applies to the weight of each addressed piece.

1.2 Rate Computation for First-Class Mail Letters

[Revise the first sentence in 1.2 to add ''letter'' as follows:]

First-Class Mail letter rates are charged per ounce or fraction thereof; any fraction of an ounce is considered a whole ounce. For example, if a piece weighs 1.2 ounces, the weight (postage) increment is 2 ounces. The minimum postage per addressed piece is that for a piece weighing 1 ounce.

* * * * *

[Delete 1.13, Carrier Route Automation Cards, *and 1.14,* Carrier Route Automation Letters. *Renumber 1.15 through 1.19 as new 1.13 through 1.17.]*

* * * * *

3.0 Basic Standards for First-Class Mail Letters

3.1 Description of Service

* * * * *

3.1.2 Rate Options

[*Revise 3.1.2 as follows:]*

First-Class Mail letters offer shape-based single-piece rates in 133.1.0 and discounted rates in 1.0 for presorted mailings of 500 or more pieces that weigh 3.5 ounces or less.

* * * * *

3.3 Additional Basic Standards for First-Class Mail

[*Revise introductory text in 3.3 as follows:]*

All pieces of presorted First-Class Mail letters must:

* * * * *

[*Revise the weight in item b as follows:]*

b. Weigh 3.5 ounces or less.

* * * * *

4.0 Additional Eligibility Standards for Nonautomation First-Class Mail Letters

* * * * *

4.3 Nonmachinable Surcharge for Letter-Size Pieces

[*Revise 4.3 as follows:]*

The nonmachinable surcharge in 1.14 applies to letter-size pieces (except card-rate pieces) that weigh 1 ounce or less and meet one or more of the nonmachinable characteristics in 201.2.1. Nonmachinable letters over 1 ounce are charged the First-Class Mail letter rate based on weight.

[*Revise heading of 5.0 to delete ''Carrier Route'' as follows:]*

5.0 Additional Eligibility Standards for Automation Rate First-Class Mail Letters

[*Revise heading of 5.1 as follows:]*

5.1 Basic Standards for Automation First-Class Mail Letters

All pieces in a First-Class Mail automation rate mailing must:

* * * * *

[*Delete item d2. Move text in item d1 into item d as follows.]*

d. Bear a delivery address that includes the correct ZIP Code, ZIP+4 code, or numeric equivalent to the delivery point barcode (DPBC) and that meets the address matching and coding standards in 5.6, *Address Standards for Barcoded Pieces,* and 708.3.0, *Coding Accuracy Support System (CASS).*

* * * * *

[*Delete 5.2,* Carrier Route Accuracy, *and renumber 5.3 and 5.4 as new 5.2 and 5.3.]*

* * * * *

5.2 Maximum Weight for Automation Letters

[*Revise renumbered 5.2 to change maximum weight from 3.3 to 3.5 ounces as follows:]*

Maximum weight for First-Class Mail automation letters is 3.5 ounces (0.2188 pound) (see 201.3.13.4, *Heavy Letter Mail,* for pieces heavier than 3 ounces).

5.3 Rate Application—Automation Cards and Letters

Automation rates apply to each piece that is sorted under 235.6.0 into the corresponding qualifying groups:

[*Delete item a. Renumber items b through e as new items a through d and revise as follows:]*

a. Groups of 150 or more pieces in 5-digit/scheme trays qualify for the 5-digit rate. Preparation to qualify for the 5-digit rate is optional. Pieces placed in full 3-digit/scheme trays in lieu of 5-digit/scheme overflow trays under 235.6.6 are eligible for the 5-digit rates.

b. Groups of 150 or more pieces in 3-digit/scheme trays qualify for the 3-digit rate. Pieces placed in full AADC trays in lieu of 3-digit/scheme overflow trays under 235.6.6 are eligible for the 3-digit rates.

c. Groups of fewer than 150 pieces in origin 3-digit/scheme trays and all pieces in AADC trays qualify for the AADC rate. Pieces placed in mixed AADC trays in lieu of AADC overflow trays under 235.6.6 are eligible for the AADC rates.

d. Pieces in mixed AADC trays qualify for the mixed AADC rate, except for pieces prepared under 5.3c.

* * * * *

[*Delete 5.5 and renumber 5.6 and 5.7 as new 5.4 and 5.5.]*

* * * * *

[*Delete renumbered 5.4.7,* Rural and Highway Contract Routes. *Renumber 5.4.8 as new 5.4.7.]*

* * * * *

235 Mail Preparation

1.0 General Definition of Terms

* * * * *

1.2 Definitions of Mailings

Mailings are defined as:

[*Revise the second sentence in item a to remove ''automation carrier route'' as follows:]*

a. * * * Generally, automation and nonautomation letters must be prepared as separate mailings.* * *

* * * * *

1.3 Terms for Presort Levels

Terms used for presort levels are defined as follows:

[*Delete item a and renumber items b through k as new items a through j.]*

* * * * *

1.4 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[*Revise item b as follows:]*

b. *A full letter tray* is one in which faced, upright pieces fill the length of the tray between 85% and 100% full.

* * * * *

[*Revise the last sentence in item e to delete 5-digit scheme trays as an option and to require 5-digit/scheme sorting to qualify for the 5-digit rate as follows:]*

e. * * * When standards require 5-digit/scheme sorting, mailers must prepare all possible 5-digit/scheme trays, then prepare all possible 5-digit trays.

[*Revise item f by adding a new last sentence as follows:]*

f. * * * When standards require 3-digit/scheme sorting, mailers must prepare all possible 3-digit/scheme trays, then prepare all possible 3-digit trays.

* * * * *

2.0 Bundles

* * * * *

2.3 Preparing Bundles

Cards and letter-size pieces are subject to these bundling standards:

[*Revise item a as follows:]*

a. The maximum thickness for bundles is 6 inches.

* * * * *

[*Delete item d and renumber items e and f as new items d and e.]*

* * * * *

2.8 Labeling Bundles

[*Revise the first sentence in the introductory text to delete the reference to carrier route bundles as follows:]*

Unless excepted by standard, the presort level of each bundle must be identified either with an optional endorsement line under 708.7.0 or with a barcoded pressure-sensitive bundle label. On letter-size mail (including card-size pieces), the bundle label must be placed in the lower left corner of the address side of the top piece in the bundle. Bundle labels must not be obscured by banding or shrinkwrap. The following colors and presort characters apply to bundle labels:

* * * * *

[*Delete 2.9,* Use of Carrier Route Information Lines, *and 2.10,* Facing Slips—All Carrier Route Mail.]

* * * * *

4.0 Tray Labels

* * * * *

4.4 Line 2 (Content Line)

Line 2 (content line) must meet these standards:

* * * * *

b. *Codes:* The codes shown below must be used as appropriate on Line 2 of tray labels.

[*Revise the table in item 4.4b to delete the entries for ''Carrier Route,'' ''Carrier Routes,'' ''General Delivery Unit,'' ''Highway Contract Route,'' ''Post Office Box Section,'' and ''Rural Route.'']*

* * * * *

5.0 Preparing Nonautomation Letters

* * * * *

[*Delete 5.2,* Manual Only Option, *and renumber 5.3 and 5.4 as new 5.2 and 5.3.]*

5.2 Machinable Preparation

* * * * *

5.2.2 Traying and Labeling

[*Delete item a about labeling the 5-digit tray. Renumber items b through d as new items a through c. Revise renumbered item a to reflect the 3-digit origin tray as follows:]*

* * * * *

a. Separate 3-digit origin trays required for each origin 3-digit ZIP Code; no minimum piece requirement; one less-than-full tray permitted for each origin ZIP Code; labeling:

1. Line 1: L002, Column A.
2. Line 2: ''FCM LTR 3D MACH.''

* * * * *

5.3 Nonmachinable Preparation

5.3.1 Nonmachinable Bundling

[*Delete the second-to-last sentence in the introductory text to remove the ''manual only'' option as follows:]*

Except as provided in 2.5, *Exception to Bundle Preparation—Full Single-Sort-Level Trays,* bundling is required before traying. A bundle must be prepared when the quantity of addressed pieces for a required presort level reaches a minimum of 10 pieces. Smaller volumes are not permitted except for mixed ADC bundles. Preparation sequence, bundle size, and labeling:

* * * * *

6.0 Preparing Automation Rate Letters

* * * * *

6.2 Mailings

The requirements for mailings are as follows:

* * * * *

[*Revise item b as follows:]*

b. First-Class Mail. A single automation rate First-Class Mail mailing may include pieces prepared at 5-digit, 3-digit, AADC, and mixed AADC rates.

* * * * *

6.3 Marking

[Revise 6.3 to delete the carrier route references as follows:]

All automation rate pieces must be marked under 202.3.0, *Placement and Content of Mail Markings,* and 202.4.0, *Endorsement Placement.* Pieces claimed at an automation rate must bear the appropriate class marking and, except as provided in 202.3.0, *Placement and Content of Mail Markings,* and 202.4.0, *Endorsement Placement,* ''AUTO.'' Pieces not claimed at an automation rate must not bear ''AUTO'' unless single-piece rate postage is affixed or the corrective single-piece rate marking (''SNGLP'' or ''Single-Piece'') is applied.

6.4 General Preparation

[Revise 6.4 as follows:]

Grouping, bundling, and labeling are not generally required or permitted, except bundling is required in any mailing consisting entirely of card-size pieces and for pieces in overflow and less-than-full trays, and grouping is required under 6.6.

* * * * *

[Delete 6.6 and 6.7. Renumber 6.8 through 6.10 as new 6.6 through 6.8.]

6.6 Tray Preparation

[Add introductory statement about overflow trays to 6.6 as follows:]

Instead of preparing overflow trays with fewer than 150 pieces, mailers may include these pieces in the next tray level when a tray of 150 or more pieces can be made. Mailers must note these trays on standardized documentation (see 708.1.2). Pieces that are placed in the next tray level must be grouped by destination and placed in the front of that tray. Mailers may use this option selectively for 3-digit and AADC ZIP Codes. This option does not apply to origin/entry 3-digit/scheme trays. Preparation sequence, tray size, and Line 1 labeling:

[Delete items a through c and renumber items d through g as new items a through d. Revise renumbered item a as follows:]

a. 5-digit/scheme (see 1.4e): optional, but required for 5-digit rate (150-piece minimum); overflow allowed.

1. For 5-digit scheme trays, use destination shown in the current USPS City State Product.

2. For 5-digit trays, use city, state, and 5-digit ZIP Code destination on pieces (see 4.0 for overseas military mail).

* * * * *

6.7 Tray Line 2

Line 2: ''FCM LTR'' and:

[Delete items a through c and renumber items d through i as new items a through f as follows:]

a. 5-digit scheme: ''BC 5D SCHEME.''

b. 5-digit: ''5D BC.''

c. 3-digit scheme: ''BC 3D SCHEME'' and, if applicable, as shown in L002, Column B, followed by the letter ''A,'' ''B,'' or ''C.''

d. 3-digit: ''3D BC.''

e. AADC: ''AADC BC.''

f. Mixed AADC: ''BC WKG.''

* * * * *

240 Discount Letters and Cards: Standard Mail

243 Rates and Eligibility

1.0 Rates and Fees for Standard Mail

* * * * *

[Delete 1.5, Nonmachinable Surcharge. *Renumber 1.6 and 1.7 as new 1.5 and 1.6.]*

* * * * *

1.6 Computing Postage for Standard Mail

* * * * *

1.6.8 Discount for Heavy Automation Letters

[Revise renumbered 1.6.8 to delete the second-to-last sentence, about automation ECR.]

* * * * *

[Delete renumbered 1.6.10, Discount for Heavy ECR Basic Automation Letters.]

* * * * *

3.0 Basic Standards for Standard Mail Letters

* * * * *

3.2 Defining Characteristics

3.2.1 Mailpiece Weight

[Revise 3.2.1 as follows:]

All Standard Mail pieces must weigh less than 16 ounces. The following weight limits also apply to pieces mailed at Standard Mail letter rates:

a. Pieces mailed at machinable and nonmachinable letter rates may weigh up to 3.3 ounces. Letter-size pieces weighing more than 3.3 ounces and prepared as nonmachinable letters are mailable at Not Flat-Machinable rates (see 443) and must be marked ''Not Flat-Machinable'' or ''NFM'' according to 402.2.0, unless they are barcoded and eligible to be mailed as automation flats under 301.3.0.

b. Pieces mailed at automation letter rates or Enhanced Carrier Route rates may weigh up to 3.5 ounces.

* * * * *

3.3 Additional Basic Standards for Standard Mail

Each Standard Mail mailing is subject to these general standards:

* * * * *

[Revise item e to add a reference to 3.8.1 as follows:]

e. Each piece must bear the addressee's name and delivery address, including the correct ZIP Code or ZIP+4 code (see 3.8.1), unless an alternative addressing format is used subject to 602.3.0. Detached address labels may be used subject to 602.4.0.

* * * * *

4.0 Rate Eligibility for Standard Mail

* * * * *

4.2 Minimum Per Piece Rates

The minimum per piece rates (the minimum postage that must be paid for each piece) apply as follows:

* * * * *

b. In applying the minimum per piece rates, a mailpiece is categorized as a letter based on whether the piece meets the letter-size standard in 201.1.1.1, without regard to placement of the address on the piece, except under these conditions:

[Revise item b1 to delete ''(nonletter)'' as follows:]

1. If the piece meets both the definition of a letter in 201.1.1.1 and the definition of an automation flat in 301.3.0, the piece may be prepared and entered at an automation flat rate.

* * * * *

[Revise item b3 by changing the base rate for Customized MarketMail *as follows:]*

3. Pieces mailed as Customized *MarketMail* under 705.1.0 must be charged the Regular or Nonprofit Standard Mail 5-digit nonentry rates for Not Flat-Machinable pieces and must not exceed 3.3 ounces.

[Revise item c to delete the last sentence, about DDU rates.]

* * * * *

[Delete 4.4, Residual Shape Surcharge.]

[Replace ''presorted'' with ''nonautomation'' throughout 5.0.]

5.0 Additional Eligibility Standards for Nonautomation Standard Mail Letters

* * * * *

[Revise heading and text of 5.4 to refer to new AADC and mixed AADC rates, instead of basic rates, as follows:]

5.4 Machinable Rate Application

Machinable letters are subject only to AADC and mixed AADC rates.

5.4.1 AADC Rate

The AADC rate applies to qualifying letter-size machinable pieces (see 201.1.0, *Physical Standards for Machinable Letters and Cards*) placed in origin/entry 3-digit trays, to quantities of 150 or more pieces prepared in AADC trays for a single AADC, and to pieces placed in mixed AADC trays in lieu of overflow AADC trays.

5.4.2 Mixed AADC Rate

The mixed AADC rate applies to qualifying letter-size machinable pieces that the mailer prepares in mixed AADC trays, except for pieces placed in mixed AADC trays in lieu of overflow AADC trays (see 245.5.3.2).

[Delete 5.5 and 5.6. Insert new 5.5 as follows:]

5.5 Nonmachinable Rate Application

Nonmachinable rates in 1.0 apply only to Standard Mail letter-size pieces (including card-size pieces) weighing 3.3 ounces or less that have one or more of the nonmachinable characteristics in 201.2.1. Except for Enhanced Carrier Route letter-size pieces, nonmachinable letter-size pieces weighing more than 3.3 ounces are subject to Not Flat-Machinable rates (see 443) unless they are barcoded and eligible to be mailed as automation flats under 301.3.0. Nonmachinable Enhanced Carrier Route letter-size pieces over 3.3 ounces are subject to the Enhanced Carrier Route flats rates.

5.5.1 5-Digit Rate

The 5-digit rate applies to letter-size pieces subject to the nonmachinable rates (see 5.5) prepared in quantities of 150 or more pieces for a 5-digit ZIP Code and presented in 5-digit trays under 245.5.0.

5.5.2 3-Digit Rate

The 3-digit rate applies to letter-size pieces subject to the nonmachinable rates (see 5.5) prepared in quantities of 150 or more pieces for a 3-digit ZIP Code and presented in 3-digit trays under 245.5.0.

5.5.3 ADC Rate

The ADC rate applies to letter-size pieces subject to the nonmachinable rates (see 5.5) placed in 3-digit origin/entry trays and to pieces prepared in quantities of 150 or more for an ADC and presented in ADC trays under 245.5.0.

5.5.4 Mixed ADC Rate

The mixed ADC rate applies to letter-size pieces that are subject to the nonmachinable rates and prepared in mixed ADC trays.

[Revise heading of 6.0 as follows:]

6.0 Additional Eligibility Standards for Enhanced Carrier Route Standard Mail Letters

6.1 General Enhanced Carrier Route Standards

6.1.1 Optional Preparation

* * * * *

[Revise 6.1.1 to delete the last sentence, about automation basic carrier route.]

6.1.2 Basic Eligibility Standards

All pieces in an Enhanced Carrier Route or Nonprofit Enhanced Carrier Route Standard Mail mailing must:

* * * * *

[Revise item b to delete the second sentence, about automation basic carrier route, as follows:]

b. Be part of a single mailing of at least 200 pieces or 50 pounds of pieces of Enhanced Carrier Route Standard Mail. ECR and Nonprofit ECR mailings must meet separate minimum volumes.

* * * * *

d. Bear a delivery address that includes the correct ZIP Code, ZIP+4 code, or numeric equivalent to the delivery point barcode (DPBC) and that meets these address quality standards:

* * * * *

[Revise item d2 to require address matching and coding for all ECR letters as follows:]

2. The address matching and coding standards in 7.4, *Address Standards for Barcoded Pieces,* and 708.3.0, *Coding Accuracy Support System (CASS).*

* * * * *

6.1.3 Maximum Weight for Enhanced Carrier Route Letters

[Revise 6.1.3 to specify the maximum weight for all Standard Mail ECR pieces as follows:]

Maximum weight for Standard Mail Enhanced Carrier Route pieces: 3.5 ounces (0.2188 pound) (see 201.3.13.4, *Heavy Letter Mail*, for pieces heavier than 3 ounces).

6.2 Carrier Route Accuracy

6.2.1 Basic Standards

The carrier route accuracy standard is a means of ensuring that the carrier route code correctly matches the delivery address information. For the purposes of this standard, address means a specific address associated with a specific carrier route code. Addresses used on pieces claiming certain rates under 6.2.2 that are subject to the carrier route accuracy standard must meet these requirements:

[Revise item a to delete the last sentence, about ECR automation rate Standard Mail, as follows:]

a. Each address and associated carrier route code used on the mailpieces in a mailing must be updated within 90 days before the mailing date with one of the USPS-approved methods in 3.8.2.

* * * * *

6.3 Basic Rate Enhanced Carrier Route Standards

* * * * *

6.3.2 Basic Rate Eligibility

[Revise 6.3.2 to add the option for groups of 10 or more pieces, and the automation-compatible and barcode requirements, as follows:]

Basic rates apply to each piece sorted under 245.6.0 or 705.8.0 in a full carrier route tray, in a carrier route bundle of 10 or more pieces, or in groups of 10 or more pieces placed in a 5-digit carrier routes or a 3-digit carrier routes tray. Basic rates also apply under these conditions:

a. Basic letter rates apply to each piece that is automation-compatible according to 201.3.0, *Physical Standards for Automation Letters and Cards*, and has an accurate delivery point barcode or Intelligent Mail barcode under 202.5.0, *Barcode Placement*, and 708.4.0, *Barcoding Standards for Letters and Flats.*

b. Pieces that are not automation-compatible or not barcoded are mailable at the basic rate for flat-size pieces.

* * * * *

[*Delete 6.6*, Automation ECR Standards.]

* * * * *

7.0 Eligibility Standards for Automation Rate Standard Mail

* * * * *

7.3 Rate Application for Automation Letters

Automation rates apply to each piece that is sorted under 245.7.0, *Preparing Automation Rate Letters*, into the corresponding qualifying groups:

[Revise items a through d to accommodate an option to overflow trays as follows:]

a. Groups of 150 or more pieces in 5-digit/scheme trays qualify for the 5-digit rate. Preparation to qualify for that rate is optional. Pieces placed in full 3-digit/scheme trays under 245.7.5 in lieu of 5-digit/scheme overflow trays are eligible for 5-digit rates (see 245.7.5).

b. Groups of 150 or more pieces in 3-digit/scheme trays qualify for the 3-digit rate. Pieces placed in full AADC trays under 245.7.5 in lieu of 3-digit/scheme overflow trays are eligible for 3-digit rates (see 245.7.5).

c. Groups of fewer than 150 pieces in origin/entry 3-digit/scheme trays and groups of 150 or more pieces in AADC trays qualify for the AADC rate. Pieces placed in mixed AADC trays under 245.7.5 in lieu of AADC overflow trays also are eligible for AADC rates (see 245.7.5).

d. Pieces in mixed AADC trays qualify for the mixed AADC rate, except for pieces prepared under 7.3c.

* * * * *

245 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.2 Definitions of Mailings

Mailings are defined as:

* * * * *

b. Standard Mail. Except as provided in 243.3.6, *Residual Volume Requirement*, the types of Standard Mail listed below may not be part of the same mailing.

[Delete item b1, about automation ECR. Renumber items b2 through b8 as new items b1 through b7.]

* * * * *

1.4 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[Revise item b as follows:]

b. A *full letter tray* is one in which faced, upright pieces fill the length of the tray between 85% and 100% full.

* * * * *

[Revise the last sentence in item e as follows:]

e. A *5-digit scheme sort for automation letters* yields 5-digit scheme trays for those 5-digit ZIP Codes identified in the USPS City State Product and 5-digit trays for other areas. Mail prepared using 5-digit scheme sort must be entered no later than 90 days after the release date of the City State Product used to obtain the scheme information (see 708.3.0, *Coding Accuracy Support System (CASS)).* The 5-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum volume, with no further separation by 5-digit ZIP Code required. Trays prepared for a 5-digit scheme destination that contain pieces for only one of the schemed 5-digit ZIP Codes are still considered 5-digit scheme sorted and are labeled accordingly. When standards require 5-digit/scheme sort, mailers must prepare all possible 5-digit scheme trays, then prepare all possible 5-digit trays.

[Revise item f to add a new last sentence as follows:]

f. A *3-digit scheme sort* yields 3-digit scheme trays for those 3-digit ZIP Code prefixes listed in L003 and 3-digit trays for other areas. The 3-digit ZIP Code prefixes in each scheme are treated as a single presort destination subject to a single minimum tray volume, with no further separation by 3-digit prefix required. Trays prepared for a 3-digit scheme destination that contain pieces for only one of the schemed 3-digit areas are still considered 3-digit scheme sorted and are labeled accordingly. When standards require 3-digit/scheme sort, mailers must prepare all possible 3-digit scheme trays, then prepare all possible 3-digit trays.

* * * * *

2.0 Bundles

* * * * *

2.3 Preparing Bundles

Cards and letter-size pieces are subject to these bundling standards:

* * * * *

[Revise item c to delete ''and for Standard Mail pieces where the mailer has requested 'manual only' processing'' as follows:]

c. Bundles must be prepared for mail in all less-than-full trays and for nonmachinable Standard Mail.

[Revise item d to delete the second sentence as follows:]

d. Except under 245.6.7, separator cards or tic marks *may* be used instead of bundling for letter-size pieces in full 5-digit carrier routes trays of Enhanced Carrier Route Standard Mail. The cards must be of paper or card stock, at least 0.25 inch higher than the highest pieces in the mailing, and in front of the corresponding groups of mail. The tic mark must be applied during the mailpiece production process and be printed on the top edge of the envelope, to the left of the center line of the envelope.

* * * * *

4.0 Tray Labels

* * * * *

4.9 Barcoded Tray Labels

4.9.1 Basic Standards for Barcoded Tray Labels

* * * * *

Exhibit 4.9.1 Required Barcoded Container Labels

[Revise Exhibit 4.9.1 to require barcoded tray labels for all ECR letters mailed at letter rates, except for pieces with simplified addresses, as follows:]

Rate or type	Processing category
Standard Mail	
* *	* * * *
Enhanced Carrier Route.	Letter-size (barcoded labels not required for letter-size pieces with simplified addresses or paid for at non-letter rates).

[Revise heading of 5.0 as follows:]

5.0 Preparing Nonautomation Letters

* * * * *

5.2 Marking

[Revise 5.2 to delete ''AUTOCR'' in the last sentence.]

* * * * *

[*Delete 5.3*, Manual Only Option. *Renumber 5.4 and 5.5 as new 5.3 and 5.4.*]

5.3 Machinable Preparation

5.3.1 Machinable Bundling

Machinable pieces are not bundled, except for the following (see 2.3):

* * * * *

[Delete item b. Renumber item c as new item b.]

5.3.2 Traying and Labeling

[Replace the first sentence in 5.3.2 with new text and delete items a and b. Renumber items c through e as new items a through c and revise as follows:]

Instead of preparing overflow AADC trays with fewer than 150 pieces, mailers may include these pieces in mixed AADC trays. Preparation sequence, tray size, and labeling:

a. Origin/entry 3-digit (optional, no minimum); labeling: * * *

* * * * *

b. AADC (required); 150-piece minimum (overflow allowed); labeling: * * *

* * * * *

c. Mixed AADC (required); no minimum; labeling: * * *

* * * * *

5.4 Nonmachinable Preparation

5.4.1 Nonmachinable Bundling

[Revise renumbered 5.4.1 to delete the fourth sentence, about manual processing, as follows:]

Except as provided in 2.5, *Exception to Bundle Preparation—Full Single-Sort-Level Trays*, bundling is required before traying. A bundle must be prepared when the quantity of addressed pieces for a required presort level reaches a minimum of 10 pieces. Smaller volumes are not permitted except for mixed ADC bundles. Preparation sequence, bundle size, and labeling:

* * * * *

5.4.2 Traying and Labeling

[Delete item c and renumber items d and e as new items c and d. Revise introductory text and renumbered items a through c as follows:]

Overflow trays are not allowed. Preparation sequence, tray size, and labeling:

a. 5-digit (required); 150-piece minimum; labeling: * * *

* * * * *

b. 3-digit (required); 150-piece minimum (mailers may prepare 3-digit origin/entry trays with as few as 10 pieces per tray); labeling: * * *

* * * * *

c. ADC (required); 150-piece minimum; labeling: * * *

* * * * *

6.0 Preparing Enhanced Carrier Route Letters

6.1 Basic Standards

[Revise 6.1 to delete ''(Enhanced Carrier Route automation rate mailings must be prepared under 7.0)'' in the introductory text as follows:]

All mailings and all pieces in each mailing at Enhanced Carrier Route Standard Mail and Nonprofit Enhanced Carrier Route Standard Mail nonautomation rates are subject to specific preparation standards in 6.0 and to these general standards:

* * * * *

[Revise 6.2 by adding a sentence at the end to require carrier route information lines on certain pieces mailed at ECR rates as follows:]

6.2 Marking

Subject to the marking standards in 202.3.0, *Placement and Content of Mail Markings*, and 202.4.0, *Endorsement Placement*, Enhanced Carrier Route Standard Mail pieces must be marked ''Presorted Standard'' (or ''PRSRT STD''), and Nonprofit Enhanced Carrier Route Standard Mail pieces must be marked ''Nonprofit Organization'' (or ''Nonprofit Org.'' or ''Nonprofit''). All pieces also must be marked ''ECRLOT'' for basic rate, ''ECRWSH'' for high density rate, or ''ECRWSS'' for saturation rate. Pieces in carrier route mailings under 6.7 must bear carrier route information lines under 708.8.0.

* * * * *

6.4 Carrier Route Bundle Preparation

Prepare carrier route bundles of letter-size mail as follows:

[Revise item a as follows:]

a. Mailers must prepare only carrier route bundles, except under 6.7. Carrier route bundles are not permitted in full carrier route trays, except for card-size pieces.

* * * * *

[Revise heading and text of 6.6 as follows:]

6.6 General Traying and Labeling

For all ECR letters over 3 ounces and all ECR letters that are not automation-compatible or delivery-point barcoded, prepare trays as explained below. Also prepare trays as explained below when a mailing contains some pieces over 3 ounces and some pieces up to 3 ounces. For ECR automation-compatible letters that are delivery-point barcoded and weigh up to 3 ounces, prepare trays under 6.7. Preparation sequence, tray size, and labeling:

a. Carrier route: required; full trays only, no overflow.

1. Line 1: city, state, and 5-digit ZIP Code on mail (see 4.0, Tray Labels, for overseas military mail).

2. Line 2: (a) Saturation: ''STD LTR MACH WSS,'' followed by route type and number; (b) High density: ''STD LTR MACH WSH,'' followed by route type and number; (c) Basic: ''STD LTR MACH LOT,'' followed by route type and number.

b. 5-digit carrier routes: required if full tray, optional with minimum one 10-piece bundle.

1. Line 1: city, state, and 5-digit ZIP Code on mail (see 4.0, Tray Labels, for overseas military mail).

2. Line 2: ''STD LTR 5D CR–RT MACH.''

c. 3-digit carrier routes: optional with minimum one 10-piece bundle for each of two or more 5-digit areas.

1. Line 1: city, state, and 3-digit ZIP Code prefix shown in L002, Column A, that corresponds to 3-digit ZIP Code prefix on mail.

2. Line 2: ''STD LTR 3D CR–RT MACH.''

d. For trays containing barcoded automation-compatible letter-size pieces over 3 ounces or nonmachinable letter-size pieces, use these Line 2 label designations in place of ''MACH'':

1. Trays containing barcoded, automation-compatible pieces over 3 ounces: ''BC.''

2. Trays containing nonmachinable pieces: ''MAN.''

3. Trays containing simplified address pieces: ''MAN.''

* * * * *

[*Delete 6.7 and replace with new 6.7 as follows:*]

6.7 Traying and Labeling for Automation-Compatible ECR Letters

Mailers must make full carrier route and 5-digit carrier routes trays, when possible, for automation-compatible, delivery-point barcoded ECR letters that weigh up to 3 ounces. Except for card-size pieces, pieces must not be bundled. Group pieces together by carrier route in 5-digit and 3-digit carrier routes trays. If pieces for one carrier route do not result in a full tray, mailers must combine pieces from at least two routes to make full 5-digit carrier routes trays, grouping pieces together by carrier route. If pieces for multiple carrier routes do not result in a full 5-digit tray, mailers must combine pieces from at least two 5-digit ZIP Codes to make 3-digit carrier routes trays, grouping pieces together by carrier route. If pieces fill more than one tray but do not fill an additional tray,

mailers must place excess pieces in a tray at the next sortation level. Preparation sequence, tray size, and labeling:

a. Carrier route: required; full trays only, no overflow.

1. Line 1: city, state, and 5-digit ZIP Code on mail (see 4.0 for overseas military mail).

2. Line 2: for saturation, ''STD LTR BC WSS,'' followed by route type and number; for high-density, ''STD LTR BC WSH,'' followed by route type and number; for basic, ''STD LTR BC LOT,'' followed by route type and number.

b. 5-digit carrier routes: required; full trays only, no overflow, no bundling.

1. Line 1: city, state, and 5-digit ZIP Code on mail (see 4.0 for overseas military mail).

2. Line 2: ''STD LTR 5D CR–RT BC.''

c. 3-digit carrier routes: required; bundling required in less-than-full trays.

1. Line 1: city, state, and 3-digit ZIP Code prefix shown in L002, Column A, that corresponds to 3-digit ZIP Code prefix on mail.

2. Line 2: ''STD LTR 3D CR–RT BC.''

* * * * *

7.0 Preparing Automation Rate Letters

* * * * *

7.2 Mailings

[Restructure 7.2 to delete the introductory text and item b. Make item a the new text as follows:]

All pieces in a mailing must meet the standards in 201.1.0, *Physical Standards for Machinable Letters and Cards,* and 201.3.0, *Physical Standards for Automation Letters and Cards,* and must be sorted together to the finest extent required for the rate claimed. The definitions of a mailing and permissible combinations are in 1.0, *General Information for Mail Preparation.*

7.3 Marking

[Revise 7.3 to delete references to ''AUTOCR'' as follows:]

All Standard Mail automation rate pieces must be marked under 202.3.0, *Placement and Content of Mail Markings.* Pieces claimed at an automation rate must bear the appropriate class marking and ''AUTO,'' except as provided in 202.3.0. Pieces not claimed at an automation rate must not bear ''AUTO'' unless First-Class single-piece rate postage is affixed or a corrective single-piece rate marking (''Single-Piece'' or ''SNGLP'') is applied.

7.4 General Preparation

[Revise 7.4 to delete carrier route references as follows:]

Grouping, bundling, and labeling are not generally required or permitted, except bundling is required in any mailing consisting entirely of card-size pieces and for pieces in overflow and less-than-full trays, and grouping is required under 7.5.

[Delete 7.5 and 7.6, about carrier route trays and pieces. Renumber 7.7 through 7.9 as new 7.5 through 7.7.]

7.5 Tray Preparation

[Revise renumbered 7.5 to add information about overflow trays as follows:]

Instead of preparing overflow trays with fewer than 150 pieces, mailers may include these pieces in the next tray level when a tray of 150 or more pieces can be made. Mailers must note these trays on standardized documentation (see 708.1.2). Pieces that are placed in the next tray level must be grouped by destination and placed in the front of that tray. Mailers may use this option selectively for 3-digit and AADC ZIP Codes. This option does not apply to origin/entry 3-digit/scheme trays. Preparation sequence, tray size, and Line 1 labeling:

[Delete items a through c, about carrier routes trays. Renumber items d through g as new items a through d. Revise renumbered item a to require 5-digit/scheme trays for rate as follows:]

a. 5-digit/scheme (see 1.4e): optional, but required for 5-digit rate (150-piece minimum); overflow allowed; for Line 1, label as follows:

1. For 5-digit scheme trays, use destination shown in the current USPS City State Product.

2. For 5-digit trays, use city, state, and 5-digit ZIP Code destination on pieces (see 4.0 for overseas military mail).

[Revise renumbered item b to make origin 3-digit trays optional as follows:]

b. 3-digit/scheme; required (150-piece minimum except no minimum for optional origin/entry 3-digit/scheme(s)); overflow allowed; for Line 1, use L002, Column B.

* * * * *

7.6 Tray Line 2

Line 2: ''STD LTR'' and:

[Delete items a through c, about carrier routes. Renumber items d through i as new items a through f and revise as follows:]

a. 5-digit scheme: ''BC 5D SCHEME.''

b. 5-digit: ''5D BC.''

c. 3-digit scheme: ''BC 3D SCHEME'' and, if applicable, as shown in L002, Column B, followed by the letter ''A,'' ''B,'' or ''C.''

d. 3-digit: ''3D BC.''

e. AADC: ''AADC BC.''

f. Mixed AADC: ''BC WKG.''

* * * * *

246 Enter and Deposit

* * * * *

4.0 Destination Sectional Center Facility (DSCF) Entry

* * * * *

4.2 Eligibility

[Revise 4.2 to allow pieces placed in AADC trays in lieu of in 3-digit trays under 245.7.5 to be eligible for DSCF rates as follows:]

Pieces in a mailing that meet the standards in 2.0 and 4.0 are eligible for DSCF rates under either of the following conditions:

a. When deposited at a DSCF (or USPS-designated facility), addressed for delivery within that SCF's service area, and:

1. Placed in a tray labeled to that DSCF.

2. Placed in a tray labeled to the DADC that includes that DSCF under the preparation option in 245.7.5,

3. Placed in a tray labeled to a postal facility within that DSCF's service area.

b. When the pieces are deposited at a DDU, addressed for delivery within that facility's service area, and prepared with simplified addresses under 602.3.2 or when mailers hold a mailing permit at the entry office and deposit only one mailing (of fewer than 2,500 pieces) per day.

* * * * *

5.0 Destination Delivery Unit (DDU) Entry

* * * * *

5.2 Eligibility

[Revise 5.2 to reorganize text and eliminate the DDU entry discount as follows:]

Letter-size mailpieces are not eligible for a destination delivery unit (DDU) discount. Mailers may not pay ECR flat-size rates and claim the DDU discount for letter-size pieces. Mailers may deposit letter-size pieces that meet the standards in 2.0 and 5.0 at a DDU when:

a. Those pieces are addressed for delivery within that facility's service area (enhanced carrier route only).

b. The pieces are placed in properly prepared and labeled carrier route trays or 5-digit carrier routes trays, or on pallets under 705.8.0.

c. The pieces are eligible for and claimed at a carrier route rate.

* * * * *

300 Discount Mail: Flats

301 Physical Standards

1.0 Physical Standards for Flats

1.1 General Definition of Flat-Size Mail

Flat-size mail other than that in 3.0, *Physical Standards for Automation Flats*, is:

* * * * *

[Add an exception for Periodicals mail in item b as follows:]

b. Not more than 15 inches long, or more than 12 inches high, or greater than ¾ inch thick, except for Periodicals mail under 707.25.3.

[Replace items c and d with new items c and d as follows:]

c. Rectangular.

d. Other size or weight standards may apply to mail claimed at certain rates, mail addressed to certain APOs and FPOs, and mail sent by the Department of State to U.S. government personnel abroad.

1.2. Length and Height of Flats

[Revise 1.2 to change the determination of the length and height of flats as follows:]

The *length* of a flat-size mailpiece is the longest dimension. The *height* is the dimension perpendicular to the length.

[Insert new 1.3 through 1.6 as follows:]

1.3 Shape

Each flat-size piece must be rectangular. See 2.0 for additional standards by class of mail.

1.4 Minimum Flexibility for Flat-Size Pieces

Flat-size pieces must be flexible. Boxes and box-like pieces—with or without hinges, gaps, or breaks that allow the piece to bend—are not flats. Tight envelopes that are completely filled to form box-like pieces are not flats. Test flats as follows:

a. All flats:

1. Place the piece with the length parallel to the edge of a flat surface and extend the piece halfway off the surface.

2. Press down on the piece at a point 1 inch from the outer edge, in the center of the piece's length, exerting steady pressure.

3. The piece is *not* flexible if it cannot bend at least 1 inch vertically without being damaged.

4. The piece *is* flexible if it can bend at least 1 inch vertically without being damaged and it does not contain a rigid insert. No further testing is necessary.

5. Test the piece according to 1.4b or 1.4c below if it can bend at least 1 inch vertically without being damaged and it contains a rigid insert.

b. Flats 10 inches or longer that pass the test in 1.4a and contain a rigid insert:

1. Place the piece with the length perpendicular to the edge of a flat surface and extend the piece 5 inches off the surface.

2. Press down on the piece at a point 1 inch from the outer edge, in the center of the piece's width, exerting steady pressure.

3. Turn the piece around and repeat steps 1 and 2. The piece is flexible if both ends can bend at least 2 inches vertically without being damaged.

c. Flats less than 10 inches long that pass the test in 1.4a and contain a rigid insert:

1. Place the piece with the length perpendicular to the edge of a flat surface and extend the piece one-half of its length off the surface.

2. Press down on the piece at a point 1 inch from the outer edge, in the center of the piece's width, exerting steady pressure.

3. Turn the piece around and repeat steps 1 and 2. The piece is flexible if both ends can bend at least 1 inch vertically without being damaged.

1.5 Uniform Thickness

Flat-size mailpieces must be uniformly thick so that any bumps, protrusions, or other irregularities do not cause more than ¼-inch variance in thickness. Exclude the outside edges of a mailpiece (1 inch from the edge) when determining variance in thickness. Mailers must secure nonpaper contents to prevent shifting of more than 2 inches within the mailpiece.

1.6 Flat-Size Pieces Not Eligible for Flat-Size Rates

Mailpieces that do not meet the standards in 1.3 through 1.5 are not eligible for flat-size rates and must be charged the applicable rates as follows:

a. First-Class Mail—parcel rates.

b. Standard Mail—Not Flat-Machinable or parcel rates.

c. Bound Printed Matter—parcel rates.

[Revise the heading of 2.0 to delete ''Presorted.'']

2.0 Physical Standards for Nonautomation Flats

2.1 First-Class Mail

[Revise 2.1 as follows:]

These additional standards apply to First-Class Mail flat-size pieces:

a. First-Class Mail cannot exceed 13 ounces. First-Class Mail weighing more than 13 ounces is Priority Mail.

b. Flat-size pieces that do not meet the standards in 1.3 through 1.5 must be prepared as parcels and must be charged the applicable parcel rate.

2.2 Standard Mail

2.2.1 Basic Physical Standards

[Revise the introductory text as follows:]

These additional standards apply to Standard Mail flat-size pieces:

* * * * *

[Delete item b. Insert new item b as follows:]

b. Flat-size pieces that do not meet the standards in 1.3 through 1.5 must be prepared as parcels or Not Flat-Machinable pieces and must be charged the parcel or Not Flat-Machinable rates (see 401).

[*Delete Exhibit 2.2.1b,* Maximum Dimensions for Standard Mail Flats.]

* * * * *

2.3 Bound Printed Matter

2.3.1 General Standards

[Delete item c. Renumber items a and b as new items b and c. Revise the introductory text and insert new item a as follows:]

These additional standards apply to Bound Printed Matter:

a. Flat-size pieces that do not meet the standards in 1.3 through 1.5 must be prepared as parcels and must be charged the applicable parcel rates.

* * * * *

2.4 Media Mail

2.4.1 General Standards

[Delete item c. Renumber items a and b as new items b and c. Revise the introductory text and insert new item a as follows:]

These additional standards apply to Media Mail:

a. Flat-size pieces that do not meet the standards in 1.3 through 1.5 must be prepared as parcels.

* * * * *

2.5 Library Mail

2.5.1 General Standards

These additional standards apply to Library Mail:

[Delete item c. Renumber items a and b as new items b and c. Revise the introductory text and insert new item a as follows:]

a. Flat-size pieces that do not meet the standards in 1.3 through 1.5 must be prepared as parcels.

* * * * *

3.0 Physical Standards for Automation Flats

3.1 Basic Standards for Automation Flats

[Revise 3.1 as follows:]

Flat-size pieces claimed at automation rates must meet the standards in 3.0, or

707.25.3 for Periodicals mail, and the eligibility standards for the class of mail and rate claimed. Pieces prepared with polywrap film must meet the standards in 3.3.

[Delete 3.2 and renumber 3.3 through 3.9 as new 3.2 through 3.8. Revise heading of renumbered 3.2 as follows:]

3.2 Additional Criteria for Automation Flats

[Revise the heading and text of renumbered 3.2.1 as follows:]

3.2.1 Address Placement on Folded Pieces

Mailers must design folded pieces so that the address is in view when the final folded edge is at the bottom of the piece and any intermediate bound or folded edge is to the right.

3.2.2 Shape and Size

[Revise 3.2.2 to specify the minimum and maximum dimensions as follows:]

Each flat-size piece must be rectangular. The following minimum and maximum dimensions apply to First-Class Mail, Standard Mail, Periodicals (except under 707.25.3), and Bound Printed Matter pieces:

a. Minimum height is 5 inches. Maximum height is 12 inches.

b. Minimum length is 6 inches. Maximum length is 15 inches.

c. For bound or folded pieces, the edge perpendicular to the bound or folded edge may not exceed 12 inches.

d. Minimum thickness is 0.009 inch. Maximum thickness is 0.75 inch.

* * * * *

[Revise heading and text of renumbered 3.2.4, and delete renumbered Exhibit 3.2.4a, to add new standards for deflection as follows:]

3.2.4 Maximum Deflection for Automation Flat-Size Pieces

An automation flat-size mailpiece must be flexible (see 1.4) and must meet maximum deflection standards. Test deflection as follows:

a. For pieces 10 inches or longer:

1. Place the piece with the length perpendicular to the edge of a flat surface and extend the piece 5 inches off the surface. Turn the piece around and repeat the process.

2. The piece is automation-compatible if it does not droop more than 4 inches vertically.

b. For pieces less than 10 inches long:

1. Place the piece with the length perpendicular to the edge of a flat surface and extend the piece one-half of its length off the surface. Turn the piece around and repeat the process.

2. The piece is automation-compatible if it does not droop more than 1 inch less than the extended length. For example, a piece 8 inches long would extend 4 inches off a flat surface. It must not droop more than 3 inches vertically.

c. For pieces with bound or folded edges, perform the test in 3.2.4a or 3.2.4b above by placing the bound or final folded edge perpendicular to the edge of the flat surface.

* * * * *

[Delete renumbered 3.3, Criteria for UFSM 1000 Flats, to remove the standards for UFSM 1000 flats. Further renumber 3.4 through 3.8 as new 3.3 through 3.7.]

3.3 Polywrap Coverings

[Revise heading and text of renumbered 3.3.1 as follows:]

3.3.1 Polywrap Films and Similar Coverings

When mailers use polywrap film or similar material to enclose flat-size mailpieces claimed at automation rates, the material must meet the standards in 3.3. Film approved for use under 3.3.5 must meet the specifications in Exhibit 3.3.1 as follows:

a. Films or similar coverings must meet all six properties in Exhibit 3.3.1.

b. If the address label is affixed to the outside of the polywrap, the haze property (property 2) does not apply.

* * * * *

3.3.2 Wrap Direction and Seam Placement

Wrap direction, seam direction, and seam placement must follow these standards:

[Revise item a and the first sentence in item b as follows:]

a. The wrap direction must be around the longer axis of the mailpiece, with the seam parallel to that axis. The longer axis is always parallel to the length of the mailpiece.

b. The preferred seam placement is on the nonaddressed side of the mailpiece. If the seam is placed on the addressed side, the seam must not cover any part of the delivery address and barcode, postage area, or any required markings or endorsements. Regardless of seam placement, the polywrap over the address area must be a smooth surface to avoid interference with address and barcode readability.

3.3.3 Overhang

[Revise renumbered 3.3.3 to delete item b and restructure the text as follows:]

For purposes of the polywrap standards for overhang (selvage) only, the *top* edge of the mailpiece is one of the two physically longer edges of the piece, regardless of address orientation and whether bound or unbound. Any polywrap overhang (selvage) around the four edges of the mailpiece (top, bottom, and left and right sides) must meet these standards:

a. When the mailpiece contents are totally positioned at the bottom of the polywrap, the overhang must not be more than 0.5 inch at the top of the mailpiece.

b. When the mailpiece contents are totally positioned to the left or to the right side of the polywrap, the overhang must not be more than 1.5 inches on the opposite side.

c. The polywrap covering must not be so tight that it bends the mailpiece.

* * * * *

3.6 Uniformity and Exterior Format

3.6.1 General

[Revise renumbered 3.6.1 to add a reference to 1.5 in the first sentence as follows:]

A flat-size mailpiece prepared and claimed at automation rates must be uniformly thick (see 1.5). Each flat-size mailpiece must have a smooth and regular shape and be free of creases, folds, tears, or other irregularities not compatible with automation equipment. The exterior surface must not have protuberances caused by prohibited closures; attachments (except as provided below); irregularly shaped or distributed contents; or untrimmed excess material from the envelope, wrapper, or sleeve.

* * * * *

[Delete renumbered 3.6.3 (this information was relocated to 1.5). Renumber 3.6.4 as new 3.6.3.]

302 Elements on the Face of a Mailpiece

* * * * *

2.0 Placement and Content of Mail Markings

2.1 First-Class Mail and Standard Mail Markings

2.1.1 Placement

Mailpieces must be marked under the corresponding standards to show the class of service and/or rate paid:

* * * * *

[Revise items b and b3 as follows:]

b. Other Markings. Mailers may place rate-specific markings as follows:

* * * * *

3. If preceded by two asterisks (**), the ''AUTO,'' ''PRESORTED'' (or ''PRSRT''), ''CUSTOMIZED MARKETMAIL'' (or ''CUST MKTMAIL'' or ''CMM''), or ''Single-Piece'' (or ''SNGLP'') markings also may be placed on the line directly above or two lines

above the address in a mailer keyline or a manifest keyline, or it may be placed above the address and below the postage in an MLOCR ink-jet printed date correction/meter drop shipment line.

* * * * *

2.1.2 Exceptions to Markings

Exceptions are as follows:

* * * * *

[Delete ''AUTOCR'' in item b as follows:]

b. Manifest Mailings. The basic marking must appear in the postage area on each piece. The two-letter rate category code required in the keyline on manifest mailing pieces prepared under 705.2.0 meets the requirement for other rate markings.

* * * * *

4.0 Barcode Placement

* * * * *

4.2 Applying One Barcode

[Revise 4.2 to delete the second sentence, about UFSM 1000 mailpieces, as follows:]

On any flat-size mailpiece claimed at an automation rate, the barcode may be anywhere on the address side as long as it is at least 1/8 inch from any edge of the piece. The portion of the surface of the piece on which the barcode is printed must meet the barcode dimensions and spacing requirements in 708.4.2.5, and the reflectance standards in 708.4.4. Address block barcodes are subject to the standards in 4.6a. through 4.6e.

* * * * *

330 Discount Flats: First-Class Mail

333 Rates and Eligibility

1.0 Rates and Fees for First-Class Mail

1.1 Rate Application

[Revise 1.1 as follows:]

Postage is based on the flat-size rate that applies to the weight of each addressed piece.

* * * * *

[Delete 1.9, Nonmachinable Surcharge, and renumber 1.10 through 1.12 as new 1.9 through 1.11.]

* * * * *

4.0 Additional Eligibility Standards for Nonautomation First-Class Mail Flats

* * * * *

[Revise the heading and text of 4.3 as follows:]

4.3 Nonmachinable Flat-Size Pieces

Flat-size pieces that do not meet the standards in 301.1.3 through 301.1.5 must be prepared as flats under 335.5.0 and must be charged the applicable parcel-size rates.

5.0 Additional Eligibility Standards for Automation Rate First-Class Mail Flats

* * * * *

[Delete 5.2 and renumber 5.3 through 5.6 as new 5.2 through 5.5.]

* * * * *

334 Postage Payment and Documentation

* * * * *

2.0 Postage Payment for Presorted Flats

* * * * *

2.2 Affixed Postage for Presorted First-Class Mail

Unless permitted by other standards or by Business Mailer Support, USPS Headquarters, when precanceled postage or meter stamps are used as the postage payment method, only one payment method may be used in a mailing and each piece must bear postage under one of these conditions:

* * * * *

[Revise item b to remove ''nonmachinable surcharge'' as follows:]

b. A precanceled stamp or the full postage at the lowest First-Class Mail 1-ounce rate applicable to the mailing job, and full postage on metered pieces for additional ounce(s) or extra services.

* * * * *

340 Discount Flats: Standard Mail

343 Rates and Eligibility

* * * * *

3.0 Basic Standards for Standard Mail Flats

* * * * *

3.2 Defining Characteristics

[Revise heading and text of 3.2.1 as follows:]

3.2.1 Weight, Shape, Flexibility, and Uniform Thickness

All Standard Mail pieces must weigh less than 16 ounces. Flat-size pieces that do not meet the standards in 301.1.3 through 301.1.5 must be prepared as parcels or Not Flat-Machinable pieces and must be charged parcel or Not Flat-Machinable rates (see 401).

* * * * *

4.0 Rate Eligibility for Standard Mail

* * * * *

4.2 Minimum Per Piece Rates

The minimum per piece rates (the minimum postage that must be paid for each piece) apply as follows:

* * * * *

[Revise introductory text in item b and item b1 as follows:]

b. In applying the minimum per piece rates, a mailpiece is categorized as a letter based on whether the piece meets the letter-size standard in 201.1.0, without regard to placement of the address on the piece, except under these conditions:

1. If the piece meets both the definition of a letter in 201.1.1.1 and the definition of an automation flat in 301.3.0, the piece may be prepared and entered at an automation flat rate.

[Revise item b2 to change the rates for Customized MarketMail to the NFM rates as follows:]

2. Pieces mailed as Customized MarketMail under 705.1.0 must be charged Regular or Nonprofit Standard Mail 5-digit nonentry rates for Not Flat-Machinable pieces and must not exceed 3.3 ounces.

* * * * *

[Revise heading and text of 4.4 as follows:]

4.4 Shape, Flexibility, and Uniform Thickness

Flat-size pieces that do not meet the standards in 301.1.3 through 301.1.5 must be prepared as parcels or Not Flat-Machinable pieces and must be charged parcel or Not Flat-Machinable rates (see 401).

[Revise heading of 5.0 as follows:]

5.0 Additional Eligibility Standards for Nonautomation Standard Mail Flats

* * * * *

[Replace 5.3 and 5.4 with new 5.3 through 5.6 as follows:]

5.3 5-Digit Rates for Flats

The 5-digit rate applies to flat-size pieces:

a. In a 5-digit/scheme bundle of 10 or more pieces, or 15 or more pieces, as applicable; properly placed in a 5-digit/scheme sack containing at least 125 pieces or 15 pounds of pieces.

b. When palletized under 705.8.0 and 705.10.0 through 705.13.0, in a 5-digit/scheme bundle of 10 or more pieces, or 15 or more pieces, as applicable.

c. In a 5-digit bundle of 10 or more pieces, or 15 or more pieces, as applicable; properly placed in a merged 5-digit/scheme or 5-digit sack under 705.10.0.

5.4 3-Digit Rates for Flats

The 3-digit rate applies to flat-size pieces:

a. In a 5-digit/scheme bundle of 10 or more pieces, or 15 or more pieces, as applicable, or in a 3-digit/scheme bundle of 10 or more pieces; properly placed in a 3-digit sack of at least 125 pieces or 15 pounds of pieces.

b. When palletized under 705.8.0 and 705.10.0 through 705.13.0, in a 3-digit/scheme bundle of 10 or more pieces.

5.5 ADC Rates for Flats

ADC rates apply to flat-size pieces:

a. In a 5-digit/scheme, 3-digit/scheme, or ADC bundle of 10 or more pieces properly placed in an ADC sack of at least 125 pieces or 15 pounds of pieces.

b. In an optional 3-digit/scheme origin/entry sack.

c. When palletized under 705.8.0 and 705.10 through 705.13, in an ADC bundle of 10 or more pieces; properly placed on an ADC pallet.

5.6 Mixed ADC Rates for Flats

Mixed ADC rates apply to flat-size pieces in bundles that do not qualify for 5-digit, 3-digit, or ADC rates; placed in mixed ADC sacks or on ASF, BMC, or mixed BMC pallets under 705.8.0.

* * * * *

7.0 Additional Eligibility Standards for Automation Rate Standard Mail Flats

* * * * *

7.2 Rate Application

[Revise 7.2 as follows:]

Automation rates apply to each piece properly sorted into qualifying groups:

a. The 5-digit rate applies to flat-size pieces in a 5-digit/scheme bundle of 10 or more pieces, or 15 or more pieces, as applicable.

b. The 3-digit rate applies to flat-size pieces in a 3-digit/scheme bundle of 10 or more pieces.

c. The ADC rate applies to flat-size pieces in an ADC bundle of 10 or more pieces.

d. The mixed ADC rate applies to flat-size pieces in mixed ADC bundles (no minimum).

* * * * *

345 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.3 Terms for Presort Levels

Terms used for presort levels are defined as follows:

* * * * *

[Revise items c and k as follows:]

c. *5-digit scheme (bundles and sacks) for flats meeting the automation-compatibility standards in 301.3.0:* the ZIP Code in the delivery address on all pieces is one of the 5-digit ZIP Code areas processed by the USPS as a single scheme, as shown in L007.

* * * * *

k. *3-digit scheme bundles for flats meeting the automation-compatibility standards in 301.3.0:* the ZIP Code in the delivery address begins with one of the 3-digit prefixes processed by the USPS as a single scheme, as shown in L008.

* * * * *

1.4 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[Revise item f as follows:]

f. *A 5-digit scheme sort for flats meeting the automation-compatibility standards in 301.3.0* yields 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and 5-digit bundles for other ZIP Codes. When standards require 5-digit/scheme sort, mailers must prepare all possible 5-digit scheme bundles and sacks of flats, then prepare all possible 5-digit bundles and sacks. The 5-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum volume, with no further separation required. Bundles prepared for a 5-digit scheme destination that contain pieces for only one of the schemed 5-digit ZIP Codes are still considered 5-digit scheme sorted and are labeled accordingly. Label mailpieces using an optional endorsement line (OEL) under 708.7.0. Place bundles in appropriate containers using the OEL ''label to'' 5-digit ZIP Code.

* * * * *

[Revise item h by replacing ''Presorted'' with ''nonautomation'' in the first sentence.]

* * * * *

[Revise item n as follows:]

n. *A 3-digit scheme sort for flats meeting the automation-compatibility standards in 301.3.0* yields 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. When standards require 3-digit/scheme sort, mailers must prepare all possible 3-digit scheme bundles of flats, then prepare all possible 3-digit bundles. The 3-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum volume, with no further separation by 3-digit ZIP Code required. Bundles prepared for a 3-digit scheme destination that contain pieces for only one of the schemed 3-digit ZIP Codes are still considered 3-digit scheme sorted and are labeled accordingly. Label mailpieces using an OEL under 708.7.0. Place 3-digit scheme bundles in 3-digit through mixed ADC containers, as applicable, using the OEL ''label to'' 3-digit ZIP Code.

* * * * *

[Revise 5.0 to change ''presorted'' flats to ''nonautomation'' flats throughout.]

5.0 Preparing Nonautomation Flats

5.1 Basic Standards

All mailings and all pieces in each mailing at Regular Standard Mail and Nonprofit Standard Mail nonautomation rates are subject to specific preparation standards in 5.2 through 5.9 and to these general standards (automation rate mailings must be prepared under 7.0):

[Revise item a as follows:]

a. All pieces must be in the flat-size processing category.

[Revise item b to delete ''AUTOCR.''']

* * * * *

5.3 Bundling and Labeling

[Add a new first sentence to 5.3 and revise items a and b as follows:]

Mailings consisting entirely of pieces meeting the automation-compatibility criteria in 301.3.0 must be prepared in 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and in 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008.

Preparation sequence, bundle size, and labeling:

a. 5-digit/scheme (required), see definition in 1.4f:

1. For mailings containing only pieces weighing 5 ounces (0.3125 pound) or less: 15-piece minimum; red Label 5 or OEL.

2. For mailings containing any pieces weighing more than 5 ounces (0.3125 pound): 10-piece minimum; red Label 5 or OEL.

b. 3-digit/scheme (required), see definition in 1.4n; 10-piece minimum; green Label 3 or OEL.

* * * * *

5.7 Sacking and Labeling

Preparation sequence, sack size, and labeling:

[Revise item a as follows:]

a. 5-digit/scheme (required); scheme sort required, only for pieces meeting the automation-compatibility criteria in 301.3.0, see definition in 1.4f; 125-piece or 15-pound minimum; labeling:

1. Line 1: For 5-digit scheme sacks use L007, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code destination on pieces. (See 4.2 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''STD FLT 5D SCH NON BC.'' For 5-digit sacks, ''STD FLTS 5D NON BC.''

* * * * *

[Revise item c as follows:]

c. Origin/entry 3-digits(s) (optional); one-bundle minimum; labeling:

1. Line 1: L002, Column A.

2. Line 2: ''STD FLTS 3D NON BC.''

* * * * *

7.0 Preparing Automation Rate Flats

* * * * *

[Delete 7.4. Renumber 7.5 through 7.9 as new 7.4 through 7.8.]

7.4 Standard Mail Bundle Preparation

7.4.1 Bundling and Labeling

Preparation sequence, bundle size, and labeling:

[Revise item a to require 5-digit/scheme preparation as follows:]

a. 5-digit/scheme (required); see definition in 1.4f:

1. For mailings containing only pieces weighing 5 ounces (0.3125 pound) or less: 15-piece minimum; OEL required.

2. For mailings containing any pieces weighing more than 5 ounces (0.3125 pound): 10-piece minimum; OEL required.

[Delete item b. Renumber item c as new item b and revise to require 3-digit/scheme preparation as follows:]

b. 3-digit/scheme (required); see definition in 1.4n; 10-piece minimum; OEL required.

[Delete item d. Renumber items e and f as new items c and d.]

* * * * *

[Delete renumbered 7.4.2. Renumber 7.4.3 and 7.4.4 as new 7.4.2 and 7.4.3.]

7.4.3 Sacking and Labeling

Preparation sequence, sack size, and labeling:

[Revise item a as follows:]

a. 5-digit/scheme (required); see definition in 1.4f; 125-piece or 15-pound minimum, labeling:

1. Line 1: For 5-digit scheme sacks use L007, Column B. For 5-digit sacks use city, state, and 5-digit ZIP Code on mail (see 4.2 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''STD FLTS 5D SCH BC.'' For 5-digit sacks, ''STD FLTS 5D BC.''

[Delete item b. Renumber items c though f as new items b through e.]

* * * * *

[Delete 7.6. Renumber 7.7 through 7.9 as new 7.6 through 7.8. Revise renumbered 7.6 through 7.8 by replacing ''presorted'' with ''nonautomation'' throughout.]

* * * * *

7.7 Exception '' Automation and Nonautomation Pieces on Pallets

[Replace ''nonletter'' with ''flat-size'' throughout renumbered 7.7.]

* * * * *

360 Discount Flats: Bound Printed Matter

[Incorporate the standards for Bound Printed Matter in 160 into 360. Make revisions throughout to change single-piece Bound Printed Matter to ''nonpresorted'' Bound Printed Matter and make the following additional changes:]

363 Rates and Eligibility

1.0 Rates and Fees for Bound Printed Matter

* * * * *

[Renumber 1.3 through 1.5 as new 1.4 through 1.6. Insert new 1.3 as follows:]

1.3 Nonpresorted Bound Printed Matter Rates

Flat-size pieces that do not meet the standards in 301.1.3 through 301.1.5 must be charged the applicable parcel rate based on weight and zone.

[Revise the heading of renumbered 1.4 as follows:]

1.4 Discount Bound Printed Matter Rates

* * * * *

[Insert new 1.4.3 as follows:]

1.4.3 Shape, Flexibility, and Thickness

Flat-size pieces that do not meet the standards in 301.1.3 through 301.1.5 must be prepared as parcels and must be charged the applicable parcel rate based on weight and zone.

* * * * *

365 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.3 Terms for Presort Levels

Terms used for presort levels are defined as follows:

* * * * *

[Revise items c and h as follows:]

c. *5-digit scheme (bundles and sacks) for flats meeting the automation-compatibility standards in 301.3.0:* the ZIP Code in the delivery address on all pieces is one of the 5-digit ZIP Code areas processed by the USPS as a single scheme, as shown in L007.

* * * * *

h. *3-digit scheme bundles for flats meeting the automation-compatibility standards in 301.3.0:* the ZIP Code in the delivery address begins with one of the 3-digit prefixes processed by the USPS as a single scheme, as shown in L008.

* * * * *

1.4 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[Revise item c for 5-digit scheme sort as follows:]

c. *A 5-digit scheme sort for flats meeting the automation-compatibility standards* in 301.3.0 yields 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and 5-digit bundles for other ZIP Codes. When standards require 5-digit/scheme sort, mailers must prepare all possible 5-digit scheme bundles and sacks of flats before preparing 5-digit bundles and sacks. The 5-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum volume, with no further separation required. Bundles prepared for a 5-digit scheme destination that contain pieces for only one of the schemed 5-digit ZIP Codes are still considered 5-digit scheme sorted and are labeled accordingly. Label mailpieces using an OEL under 708.7.0. Place bundles in appropriate containers using the OEL ''label to'' 5-digit ZIP Code.

* * * * *

[Revise item g for 3-digit scheme sort as follows:]

g. *A 3-digit scheme sort for flats meeting the automation-compatibility standards in 301.3.0* yields 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. When standards require 3-digit/scheme sort, mailers must prepare all possible 3-digit scheme bundles of flats before preparing 3-digit bundles. The 3-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum volume, with no further separation by 3-digit ZIP Code required. Bundles prepared for a 3-digit scheme destination that contain pieces for only one of the schemed 3-digit ZIP Codes are still considered 3-digit scheme sorted and are labeled accordingly. Mailpieces must be labeled using an OEL under 708.7.0. Three-digit scheme bundles are placed in 3-digit through mixed ADC containers, as applicable, using the OEL ''label to'' 3-digit ZIP Code.

* * * * *

5.0 Preparing Presorted Flats

* * * * *

5.2 Bundling

* * * * *

5.2.2 Bundling and Labeling

[Add a new first sentence to 5.2.2 as follows:]

For mailings consisting entirely of pieces meeting the automation-compatibility criteria in 301.3.0, pieces must be prepared in 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and in 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. Preparation sequence and labeling:

[Revise item a to require 5-digit schemes as follows:]

a. 5-digit/scheme (required); red Label 5 or OEL. See definition in 1.4e.

[Revise item b to require 3-digit schemes as follows:]

b. 3-digit/scheme (required); green Label 3 or OEL. See definition in 1.4g.

5.3 Sacking

* * * * *

5.3.5 Sacking and Labeling

Preparation sequence and labeling:

[Revise item a as follows:]

a. 5-digit/scheme (required); see 1.4e; scheme sort required, only for pieces meeting the automation-compatibility criteria in 301.3.0; minimum 20 addressed pieces; labeling:

1. Line 1: For 5-digit scheme sacks, use L007, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.5 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''PSVC FLT 5D SCH NBC.'' For 5-digit sacks, ''PSVC FLTS 5D NON BC.''

* * * * *

7.0 Preparing Barcoded Flats

* * * * *

7.3 Bundling

* * * * *

7.3.2 Bundle Preparation

Bundles must be prepared and labeled in the following sequence:

[Delete items b and d. Renumber item c as item b and items e and f as items c and d. Revise item a and new item b to make 5-digit and 3-digit schemes required as follows:]

a. 5-digit/scheme: (required); see definition in 1.4e; minimum 10 pieces or 10 pounds, maximum weight 20 pounds; OEL required.

b. 3-digit/scheme (required); see definition in 1.4g; minimum 10 pieces or 10 pounds, maximum weight 20 pounds; OEL required.

* * * * *

7.3.3 Scheme Bundle Preparation

[Revise 7.3.3 as follows:]

See 1.4c and 1.4g for additional standards for pieces prepared in scheme bundles.

7.4 Sacking

7.4.1 Sack Preparation and Labeling

Preparation sequence, sack size, and labeling:

[Revise item a as follows:]

a. 5-digit/scheme (see 1.4e) (required), minimum 20 addressed pieces; labeling:

1. Line 1: For 5-digit scheme sacks, use L007, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.2 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''PSVC FLTS 5D SCH BC.'' For 5-digit sacks, ''PSVC FLTS 5D BC.''

[Delete item b and renumber items c through f as new items b through e.]

* * * * *

366 Enter and Deposit

1.0 Presenting a Mailing

[Revise the heading of 1.1 as follows:]

1.1 Verification and Entry—Presorted, Carrier Route, Destination Entry, and Barcoded Mailings

* * * * *

[Renumber 1.2 through 1.5 as new 1.3 through 1.6. Insert new 1.2 as follows:]

1.2 Verification and Entry—Nonpresorted Mailings

Nonpresorted rate Bound Printed Matter is not offered at post offices, branches, or stations or through Postal Service carriers, except under 1.2c and 1.2d. Mailers must deposit Nonpresorted Bound Printed Matter as follows:

a. At the time and place specified by the postmaster at the office of mailing.

b. For metered mail, at other than the licensing post office only as permitted under 705.18.0, *Metered Mail Drop Shipment.*

c. For permit imprint mail, only at the post office where the permit is held (see 604.5.0).

d. At any post office, branch, or station or with a Postal Service carrier, if the correct postage is applied, including postage for any extra service elected.

* * * * *

370 Discount Flats: Media Mail

373 Rates and Eligibility

1.0 Rates and Fees for Media Mail

* * * * *

[Renumber 1.3 through 1.5 as new 1.4 through 1.6. Insert new 1.3 as follows:]

1.3 Shape, Flexibility, and Thickness

Flat-size pieces that do not meet the standards in 301.1.3 through 301.1.5 must be prepared as parcels.

* * * * *

375 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.3 Terms for Presort Levels

Terms used for presort levels are defined as follows:

* * * * *

[Renumber item b as new item c. Insert new item b for 5-digit scheme sort as follows:]

b. *5-digit scheme (bundles and sacks) for flats meeting the automation-compatibility standards in 301.3.0:* The ZIP Code in the delivery address on all pieces begins with one of the 5-digit ZIP Code ranges processed by the USPS as a single scheme, as shown in L007.

* * * * *

[Renumber items d and f as new items e and g. Insert new item d for 3-digit scheme sort as follows:]

d. *3-digit scheme bundles for flats meeting the automation-compatibility standards in 301.3.0:* The ZIP Code in the delivery address on all pieces begins with one of the 3-digit ZIP Code ranges processed by the USPS as a single scheme, as shown in L008.

* * * * *

1.4 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[Renumber items c through f as new items e through h. Insert new items c and d for 5-digit and 3-digit scheme sorts as follows:]

c. A *5-digit scheme sort* for flats weighing up to 20 ounces and meeting the automation-compatibility standards in 301.3.0 yields 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and 5-digit bundles for other ZIP Codes. When standards require 5-digit/scheme sort, mailers must prepare all possible 5-digit scheme bundles and sacks of flats before preparing 5-digit bundles and sacks. The 5-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum volume, with no further separation required. Bundles prepared for a 5-digit scheme destination that contain pieces for only one of the schemed 5-digit ZIP Codes are still considered 5-digit scheme sorted and are labeled accordingly. Label mailpieces using an OEL under 708.7.0. Place bundles in appropriate containers using the OEL ''label to'' 5-digit ZIP Code.

d. A *3-digit scheme sort* for flats weighing up to 20 ounces and meeting the automation-compatibility standards

in 301.3.0 yields 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. When standards require 3-digit/scheme sort, mailers must prepare all possible 3-digit scheme bundles of flats before preparing 3-digit bundles. The 3-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum volume, with no further separation by 3-digit ZIP Code required. Bundles prepared for a 3-digit scheme destination that contain pieces for only one of the schemed 3-digit ZIP Codes are still considered 3-digit scheme sorted and are labeled accordingly. Mailpieces must be labeled using an OEL under 708.7.0. Place 3-digit scheme bundles in 3-digit through mixed ADC containers, as applicable, using the OEL ''label to'' 3-digit ZIP Code.

* * * * *

[Revise heading of 5.0 as follows:]

5.0 Preparing Presorted Flats

* * * * *

5.2 Bundling

* * * * *

5.2.2 Bundling and Labeling

[Add a new first sentence to 5.2.2 as follows:]

For mailings consisting entirely of pieces meeting the automation-compatibility criteria in 301.3.0, pieces must be prepared in 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and in 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. Preparation sequence, bundle size, and labeling:

[Revise items a and b to make 5-digit and 3-digit schemes required as follows:]

a. 5-digit/scheme (optional, but required for 5-digit rate); red Label 5 or OEL. See definition in 1.4c.

b. 3-digit/scheme (required); green Label 3 or OEL. See definition in 1.4d.

* * * * *

5.3 Sacking

* * * * *

5.3.2 Sacking and Labeling

Preparation sequence, sack size, and labeling:

[Revise item a as follows:]

a. 5-digit/scheme (optional, but required for 5-digit rate); see 1.4c; scheme sort required, only for pieces meeting the automation-compatibility criteria in 301.3.0; minimum 10 addressed pieces; labeling:

1. Line 1: For 5-digit scheme sacks, use L007, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.5 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''PSVC FLT 5D SCH NBC.'' For 5-digit sacks, ''PSVC FLT 5D NBC.''

* * * * *

380 Discount Flats: Library Mail

383 Rates and Eligibility

1.0 Rates and Fees for Library Mail

* * * * *

[Renumber 1.3 through 1.5 as new 1.4 through 1.6. Insert new 1.3 as follows:]

1.3 Shape, Flexibility, and Thickness

Flat-size pieces that do not meet the standards in 301.1.3 through 301.1.5 must be prepared as parcels.

* * * * *

385 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.3 Terms for Presort Levels

Terms used for presort levels are defined as follows:

* * * * *

[Renumber item b as new item c. Insert new item b for 5-digit scheme sort as follows:]

b. *5-digit scheme (bundles and sacks) for flats meeting the automation-compatibility standards in 301.3.0:* the ZIP Code in the delivery address on all pieces begins with one of the 5-digit ZIP Code ranges processed by the USPS as a single scheme, as shown in L007.

* * * * *

[Renumber items d and f as new items e and g. Insert new item d for 3-digit scheme sort as follows:]

d. *3-digit scheme bundles for flats meeting the automation-compatibility standards in 301.3.0:* the ZIP Code in the delivery address on all pieces begins with one of the 3-digit ZIP Code ranges processed by the USPS as a single scheme, as shown in L008.

* * * * *

1.4 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[Renumber items c through f as new items e through h. Insert new items c and d for 5-digit and 3-digit scheme sorts as follows:]

c. A *5-digit scheme sort* for flats weighing up to 20 ounces and meeting the automation-compatibility standards in 301.3.0 yields 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and 5-digit bundles for other ZIP Codes. When standards require 5-digit/scheme sort, mailers must prepare all possible 5-digit scheme bundles and sacks of flats before preparing 5-digit bundles and sacks. The 5-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum volume, with no further separation required. Bundles prepared for a 5-digit scheme destination that contain pieces for only one of the schemed 5-digit ZIP Codes are still considered 5-digit scheme sorted and are labeled accordingly. Label mailpieces using an OEL under 708.7.0. Place bundles in appropriate containers using the OEL ''label to'' 5-digit ZIP Code.

d. A *3-digit scheme sort* for flats weighing up to 20 ounces and meeting the automation-compatibility standards in 301.3.0 yields 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. When standards require 3-digit/scheme sort, mailers must prepare all possible 3-digit scheme bundles of flats before preparing 3-digit bundles. The 3-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum volume, with no further separation by 3-digit ZIP Code required. Bundles prepared for a 3-digit scheme destination that contain pieces for only one of the schemed 3-digit ZIP Codes are still considered 3-digit scheme sorted and are labeled accordingly. Mailpieces must be labeled using an OEL under 708.7.0. Place 3-digit scheme bundles in 3-digit through mixed ADC containers, as applicable, using the OEL ''label to'' 3-digit ZIP Code.

* * * * *

[Revise heading of 5.0 as follows:]

5.0 Preparing Presorted Flats

* * * * *

5.2 Bundling

* * * * *

5.2.2 Bundling and Labeling

[Add a new first sentence to 5.2.2 as follows:]

For mailings consisting entirely of pieces meeting the automation-compatibility criteria in 301.3.0, pieces must be prepared in 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and in 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. Preparation sequence, bundle size, and labeling:

[Revise items a and b as follows to make 5-digit and 3-digit schemes required:]

a. 5-digit scheme (optional, but required for 5-digit rate); red Label 5 or OEL. See definition in 1.4c.

b. 3-digit scheme (required); green Label 3 or OEL. See definition in 1.4d.

5.3 Sacking

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5.3.2 Sacking and Labeling

Preparation sequence, sack size, and labeling:

[Revise item a as follows:]

a. 5-digit/scheme (optional, but required for 5-digit rate); see 1.4c; scheme sort required, only for pieces meeting the automation-compatibility criteria in 301.3.0; minimum 10 addressed pieces; labeling:

1. Line 1: For 5-digit scheme sacks, use L007, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.5 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''PSVC FLT 5D SCH NBC.'' For 5-digit sacks, ''PSVC FLT 5D NBC.''

* * * * *

400 Discount Mail: Parcels

401 Physical Standards

1.0 Physical Standards for Parcels

[Revise the heading of 1.1 as follows:]

1.1 Processing Categories

[Revise the first sentence of 1.1 as follows:]

USPS categorizes parcels into one of three mail processing categories: machinable, irregular, or outside parcel. These categories are based on the physical dimensions of the piece, regardless of the placement (orientation) of the delivery address on the piece.

* * * * *

1.5 Machinable Parcels

1.5.1 Criteria

A machinable parcel is any piece that is (see Exhibit 1.5.1, Machinable Parcel Dimensions):

[Revise item a as follows:]

a. Not less than 6 inches long, 3 inches high, ¼ inch thick, and 6 ounces in weight, except under 1.5.2. A mailpiece exactly ¼ inch thick is subject to the 3½-inch height minimum under 601.1.0.

* * * * *

[Renumber 1.5.2 through 1.5.4 as new 1.5.3 through 1.5.5. Insert new 1.5.2 to allow lower-weight machinable parcels as follows:]

1.5.2 Criteria for Lightweight Parcels

A machinable parcel may weigh less than 6 ounces (but not less than 3.5 ounces) if it meets all of the following conditions:

a. The mailpiece is rectangular and able to maintain its integrity during mail processing (see 601.3.0).

b. The mailpiece bears a parcel barcode, printed and placed according to 708.5.0.

c. Mailpieces weighing at least 3.5 ounces but less than 5 ounces must be a paperboard or fiberboard box within the following dimensions:

1. At least 1.5 inches thick and no more than 3 inches thick.

2. At least 6 inches long and no more than 7 inches long.

3. At least 3.5 inches high and no more than 5 inches high.

d. Mailpieces weighing at least 5 ounces but less than 6 ounces must be within the following dimensions:

1. More than ¾ inch thick and no more than 6 inches thick.

2. At least 6 inches long and no more than 12 inches long.

3. At least 3½ inches high and no more than 9 inches high.

* * * * *

[Delete renumbered 1.5.5, Exclusions.]

2.0 Additional Physical Standards by Class of Mail

2.1 First-Class Mail Parcels

* * * * *

[Delete 2.1.2 and replace with new 2.1.2 as follows:]

2.1.2 Surcharge

Unless prepared in 5-digit/scheme containers or paid for at a single-piece rate, presorted parcels are subject to a $0.05 surcharge if any of the following characteristics apply:

a. The parcels weigh less than 2 ounces.

b. The parcels do not bear a UCC/EAN Code 128 or POSTNET barcode.

c. The parcels are irregularly shaped, such as rolls, tubes, and triangles.

[Revise the heading of 2.2 as follows:]

2.2 Standard Mail Parcels and Not Flat-Machinable Pieces

[Revise heading and text of 2.2.1 as follows:]

2.2.1 Additional Physical Standards

Each piece must weigh less than 16 ounces.

[Revise heading and text of 2.2.2 as follows:]

2.2.2 Not Flat-Machinable Pieces

Categorize Standard Mail with the following characteristics as Not Flat-Machinable pieces (unless mailed as parcels):

a. Not Flat-Machinable pieces are rigid, with the following dimensions:

1. At least 4 inches high, but not more than 12 inches high.

2. At least 4 inches long, but not more than 15¾ inches long.

3. At least 0.009 thick, but not more than 1¼ inches thick. (Pieces less than 5 inches long must be over ¼ inch thick.)

b. Flexible pieces that are at least 4 inches high, but not more than 12 inches high, with either of the following dimensions:

1. Over 15 inches long, but not more than 15¾ inches long.

2. Over ¾ inches thick, but not more than 1¼ inches thick.

[Delete 2.2.3 and replace with new 2.2.3 as follows:]

2.2.3 Surcharge

Unless prepared in carrier route or 5-digit/scheme containers, Standard Mail parcels and Not Flat-Machinable pieces are subject to a $0.05 surcharge if:

a. The machinable parcels do not bear a UCC/EAN Code 128 barcode (see 708.5.0) or the irregular parcels do not bear a UCC/EAN Code 128 barcode (see 708.5.0) or POSTNET barcode (see 708.4.0).

b. The Not Flat-Machinable pieces weigh 6 ounces or more and do not bear a UCC/EAN Code 128 barcode (see 708.5.0).

c. The Not Flat-Machinable pieces weigh less than 6 ounces and do not bear a UCC/EAN Code 128 barcode (see 708.5.0) or POSTNET barcode (see 708.4.0).

2.3 Parcel Post

2.3.1 General Standards

These standards apply to Parcel Post:

* * * * *

[Revise item b as follows:]

b. An item weighing less than 20 pounds but measuring more than 84 inches (but not more than 108 inches) in combined length and girth is charged the rate for a 20-pound parcel for the zone to which it is addressed (balloon rate).

* * * * *

2.3.2 Nonmachinable Parcel Post

Mailpieces described in this section that are mailed at the Inter-BMC/ASF Parcel Post, Intra-BMC/ASF Parcel Post, DSCF Parcel Select, or DBMC Parcel Select rates are subject to the applicable nonmachinable surcharge in 453.1.0 unless the applicable special handling fee is paid. An oversized parcel as described in 2.3.1a is not subject to the nonmachinable surcharge. Mailpieces are nonmachinable if they meet any of the following criteria:

* * * * *

[Revise item c as follows:]

c. A parcel that weighs less than 6 ounces or more than 35 pounds, except under 1.5.2 for lightweight parcels.

* * * * *

402 Elements on the Face of a Mailpiece

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2.0 Placement and Content of Markings

2.1 First-Class Mail and Standard Mail Markings

2.1.1 Placement

Markings must be placed as follows:

* * * * *

[Renumber item c as new item d. Insert new item c as follows:]

c. Mark each Not Flat-Machinable piece ''Not Flat-Machinable'' or ''NFM,'' either by including the marking in the optional endorsement line or by placing the marking immediately to the left of or below the postage area.

* * * * *

4.0 General Barcode Placement

[Revise heading of 4.1 as follows:]

4.1 UCC/EAN Code 128 Barcode Location

* * * * *

[Revise heading of 4.2 as follows:]

4.2 Clear Zone for UCC/EAN Code 128 Barcode

* * * * *

[Add new 4.3 for POSTNET barcodes as follows:]

4.3 POSTNET Barcodes

First-Class Mail parcels, Standard Mail irregular parcels, and Not Flat-Machinable pieces less than 6 ounces may bear POSTNET barcodes instead of UCC/EAN Code 128 barcodes. Pieces bearing POSTNET barcodes are not eligible to be mailed using eVS. Place POSTNET barcodes on First-Class Mail parcels, Standard Mail irregular parcels, or Not Flat-Machinable pieces under 4.3.1 through 4.3.3.

4.3.1 General Placement of POSTNET Barcodes

On any First-Class Mail parcel, any Standard Mail irregular parcel, or Standard Mail Not Flat-Machinable piece under 6 ounces, the POSTNET barcode may be anywhere on the address side as long as it is at least 1/8 inch from any edge of the piece. POSTNET barcodes must be printed according to 708.4.0. Address block barcodes are subject to the standards in 4.3.2.

4.3.2 POSTNET Barcode in Address Block

When the POSTNET barcode is included as part of the address block:

a. Place the barcode in one of these positions:

1. Above the address line containing the recipient's name.

2. Below the city, state, and ZIP Code line.

3. Above or below the keyline information.

4. Above or below the optional endorsement line.

b. Do not print the barcode anywhere between the address line containing the recipient's name and the city, state, and ZIP Code line.

c. Allow at least 1/25 inch clearance between the barcode and any information line above or below it. Do not separate the barcode more than 5/8 inch from the top or bottom line of the address block. Allow at least 1/8 inch clearance between the leftmost and rightmost bars and any adjacent printing.

d. If a window envelope is used, allow at least 1/8 inch clearance between the leftmost and rightmost bars and any printing or window edge, and at least 1/25 inch between the barcode and the top and bottom window edges. These clearances must be maintained during the insert's range of movement in the envelope. Covers for address block windows are subject to 4.3.3.

e. If an address label is used, allow a clear space of at least 1/8 inch between the barcode and the left and right edges of the address label, and at least 1/25 inch between the barcode and the top and bottom edges of the address label.

4.3.3 Window Cover

A window cover over the address block must be a nontinted clear or transparent material (e.g., cellophane or polystyrene) that permits the barcode and its background, as viewed through the window material, to meet the reflectance standards in 708.4.4. The edges of the window cover must be securely glued to the envelope.

430 Discount Parcels: First-Class Mail

433 Rates and Eligibility

1.0 Rates and Fees for First-Class Mail

* * * * *

[Revise 1.4 to change heading and text describing the surcharge as follows:]

1.4 Surcharge

Unless prepared in 5-digit/scheme sacks or paid for at the single-piece rates, presorted parcels are subject to a $0.05 surcharge if any of the following characteristics apply:

a. The parcels weigh less than 2 ounces.

b. The parcels do not bear a UCC/EAN Code 128 or POSTNET barcode, under 708.0, for the ZIP Code of the delivery address.

c. The parcels are irregularly shaped, such as rolls, tubes, and triangles.

* * * * *

[Delete 3.4, Nonmachinable Surcharge for Parcel-Size Pieces. Renumber 3.5 through 3.7 as new 3.4 through 3.6.]

* * * * *

[Insert new 4.0 to describe Presorted parcel rates as follows:]

4.0 Rate Eligibility for Presorted First-Class Mail Parcels

4.1 5-Digit Rate

The 5-digit rate applies to presorted parcels in a 5-digit/scheme sack containing at least 10 pounds of parcels.

4.2 3-Digit Rate

The 3-digit rate applies to presorted parcels in a 3-digit sack containing at least 10 pounds of parcels.

4.3 ADC Rate

The ADC rate applies to presorted parcels in a 3-digit origin sack (no minimum), and to parcels in an ADC sack containing at least 10 pounds of parcels.

4.4 Single-Piece Rate

The single-piece rate applies to presorted parcels in a mixed ADC sack, with no minimum volume requirement.

434 Postage Payment and Documentation

* * * * *

2.0 Postage Payment for Presorted Parcels

* * * * *

2.2 Affixed Postage for Presorted First-Class Mail

Unless permitted by other standards or by Business Mailer Support, USPS Headquarters, when precanceled postage or meter stamps are used as the postage payment method, only one payment method may be used in a mailing and each piece must bear postage under one of these conditions:

* * * * *

[Revise item b to remove ''nonmachinable'' as follows:]

b. A precanceled stamp or the full postage at the lowest First-Class Mail 1-ounce rate applicable to the mailing job, and full postage on metered pieces for additional ounce(s), surcharge, or extra services.

* * * * *

435 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.2 Definition of Mailings

[Delete item b. Combine item a and introductory text as follows:]

A ''mailing'' is defined as a group of pieces within the same class of mail and

the same processing category that may be sorted together and/or presented under a single minimum volume mailing requirement under the applicable standards. Generally, types of mail that follow different flows through the postal processing system must be prepared as a separate mailing.

1.3 Terms for Presort Levels

Terms used for presort levels are defined as follows:

[Renumber items a through e as new items b through f. Insert new item a as follows:]

a. *5-digit scheme for First-Class Mail parcels:* the ZIP Code in the delivery address on all pieces begins with one of the 5-digit ZIP Code ranges processed by the USPS as a single scheme, as shown in L606.

* * * * *

1.4 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[Revise item d as follows:]

d. *The required quantity* (for example, ''required at 10 pieces'') means that the unit must be prepared for the corresponding presort level whenever the specified quantity of mail is reached or exceeded. Smaller quantities may be prepared only if permitted by the standards for each rate.

* * * * *

[Delete item g. Renumber item h as new item g and revise as follows:]

g. A *''logical'' presort destination* represents the total number of pieces in a mailing that are eligible for a specific presort level based on the required sortation, but which might not be contained in a single container (sack or pallet) due to applicable preparation requirements or the size of the individual pieces.

[Delete 2.0, Bundles, and renumber 3.0 through 5.0 as new 2.0 through 4.0.]

* * * * *

3.0 Sack Labels

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3.4 Line 2 (Content Line)

Line 2 (content line) must meet these standards:

* * * * *

b. *Codes:* The codes shown below must be used as appropriate on Line 2 of sack labels.

[Revise the table in renumbered 3.4 to delete the entries for ''General Delivery Unit,'' ''Highway Contract Route,'' ''Post Office Box Section,'' and ''Rural Route.'']

* * * * *

[Revise the heading of renumbered 4.0 as follows:]

4.0 Preparing Presorted Parcels

* * * * *

[Revise heading and text of 4.3 to remove bundling requirement as follows:]

4.3 Bundling

Bundling is not permitted.

4.4 Sacking and Labeling

Preparation sequence, sack size, and labeling:

[Revise item a as follows:]

a. 5-digit/scheme optional, but required for 5-digit rate (see definition in 1.3a); 10-pound minimum, labeling:

1. Line 1: For 5-digit scheme sacks use L606, Column B. For 5-digit sacks use city, state, and 5-digit ZIP Code on mail (see 4.3c for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''FCM PARCELS 5D SCH.'' For 5-digit sacks, ''FCM PARCELS 5D.''

* * * * *

440 Discount Parcels: Standard Mail

443 Rates and Eligibility

* * * * *

4.0 Rate Eligibility for Standard Mail

4.1 General Information

[Revise 4.1 to delete reference to barcode discount and reorganize text as follows:]

All Standard Mail rates are discounted rates. These rates apply to mailings meeting the basic standards in 2.0 through 4.0 and the corresponding standards for presorted rates under 5.0 or Enhanced Carrier Route rates under 6.0. Destination entry discount rates are available under 446.2.0 through 446.5.0 in *Enter and Deposit*. Pieces are subject to either a single minimum per piece rate or a combined piece/pound rate, depending on the weight of the individual pieces in the mailing under 4.2 or 4.3. Only organizations authorized by the USPS under 703.1.0 may mail at Nonprofit rates.

4.2 Minimum Per Piece Rates

The minimum per piece rates (the minimum postage that must be paid for each piece) apply as follows:

* * * * *

[Revise item b to delete the text that does not apply to parcels as follows:]

b. In applying the minimum per piece rates, a mailpiece is categorized as a parcel based on the standards in 401, *Physical Standards.*

[Revise item c to delete the text that does not apply to parcels and to add 5-digit rate mail as eligible for DDU rates as follows:]

c. Individual Rates. There are separate minimum per piece rates for each subclass (Regular, Enhanced Carrier Route, Nonprofit, and Nonprofit Enhanced Carrier Route) and within each subclass for the level of presort within each mailing. Mailers may claim discounted rates for destination entry mailings under 446.2.0 through 446.5.0 in *Enter and Deposit.* DDU rates are available for parcels and Not Flat-Machinable pieces entered only at 5-digit, Enhanced Carrier Route, or Nonprofit Enhanced Carrier Route rates. See 1.0, *Rates and Fees for Standard Mail*, for individual per piece rates.

* * * * *

[Revise the heading and text of 4.4 as follows:]

4.4 Surcharge

Unless prepared in carrier route (irregular parcels only) or 5-digit/scheme containers, Standard Mail parcels and Not Flat-Machinable pieces are subject to a $0.05 surcharge if:

a. The pieces placed in containers other than 5-digit/scheme containers do not contain the appropriate barcodes in 4.4b through 4.4d.

b. The machinable parcels do not bear a UCC/EAN Code 128 barcode, under 708.5.0, for the ZIP Code of the delivery address.

c. The Not Flat-Machinable pieces weigh 6 ounces or more and do not bear a UCC/EAN Code 128 barcode, under 708.5.0, for the ZIP Code of the delivery address.

d. The irregular parcels weigh less than 16 ounces, or the Not Flat-Machinable pieces weigh less than 6 ounces, and those pieces do not bear a UCC/EAN Code 128 or POSTNET barcode, under 708.0, for the ZIP Code of the delivery address.

[Delete 4.5 and renumber 4.6 as new 4.5.]

4.5 Extra Services for Standard Mail

* * * * *

4.5.2 Eligible Matter

[Revise renumbered 4.5.2 as follows:]

Extra services may be used only with pieces mailed at machinable or irregular parcel rates.

4.5.3 Ineligible Matter

Extra services (other than certificate of mailing service) may not be used for any of the following types of Standard Mail:

[Revise item a as follows:]

a. Pieces entered as letters, flats, or NFMs.

* * * * *

[Revise the heading of 5.0 as follows:]

5.0 Additional Eligibility Standards for Presorted Standard Mail Pieces

* * * * *

5.2 Rate Application

[Revise 5.2 to add Not Flat-Machinable pieces and to note separate rates as follows:]

Rates for Regular and Nonprofit Standard Mail apply separately to machinable parcels, irregular parcels, and Not Flat-Machinable pieces that meet the eligibility standards in 2.0 through 4.0 and the preparation standards in 445.5.0 or 705.8.0, *Preparing Pallets*. When parcels and Not Flat-Machinable pieces are combined under 445.5.0, all pieces are eligible for the applicable rates when the combined total meets the eligibility standards. For example, when there are 10 pounds of combined machinable parcels, irregular parcels, and Not Flat-Machinable pieces in a 5-digit sack, all pieces are eligible for the 5-digit rates.

[Delete 5.3 through 5.5. Insert new 5.3 for machinable parcel rates as follows:]

5.3 Rates for Machinable Parcels

5.3.1 5-Digit Rate

The 5-digit rate applies to qualifying machinable parcels presented:

a. In a 5-digit/scheme (L606) sack containing at least 10 pounds of pieces.

b. On a 5-digit/scheme (L606) pallet, according to standards in 705.8.10.

c. As one or more parcels that mailers drop ship to a DDU under 446.5.2.

5.3.2 BMC Rate

The BMC rate applies to qualifying machinable parcels presented:

a. In an ASF or BMC sack containing at least 10 pounds of parcels.

b. On an ASF or BMC pallet, according to standards in 705.8.10.

5.3.3 Mixed BMC Rate

The mixed BMC rate applies to machinable parcels that are not eligible for 5-digit or BMC rates. Place machinable parcels at mixed BMC rates in mixed BMC sacks under 445.5.3.2 or on mixed BMC pallets under 705.8.10.

[Insert new 5.4 for irregular parcel rates as follows:]

5.4 Rates for Irregular Parcels

5.4.1 5-Digit Rate

The 5-digit rate applies to irregular parcels (see 401.1.6) presented:

a. In a 5-digit/scheme (L606) sack containing at least 10 pounds of pieces.

b. On a 5-digit/scheme (L606) pallet, according to 705.8.10.

c. As one or more parcels that mailers drop ship to a DDU under 446.5.2.

5.4.2 3-Digit Rate

The 3-digit rate applies to irregular parcels (see 401.1.6) presented:

a. In a 3-digit sack containing at least 10 pounds of parcels.

b. On a 3-digit pallet, according to 705.8.10.

5.4.3 ADC Rate

The ADC rate applies to irregular parcels (see 401.1.6) presented:

a. In an ADC sack containing at least 10 pounds of parcels, or in an optional 3-digit origin/entry sack.

b. On an ADC pallet, according to 705.8.10.4.

5.4.4 Mixed ADC Rate

The mixed ADC rate applies to irregular parcels (see 401.1.6) in mixed ADC containers.

[Insert new 5.5 for Not Flat-Machinable rates as follows:]

5.5 Rates for Not Flat-Machinable (NFM) Pieces

5.5.1 5-Digit Rate

The 5-digit rate applies to NFM pieces presented:

a. In a 5-digit/scheme sack containing at least 10 pounds of pieces.

b. In 5-digit bundles of five or more pieces on pallets or in pallet boxes under 705.8.0.

c. On a 5-digit/scheme pallet under 705.8.10.

d. As one or more pieces that mailers drop ship to a DDU under 446.5.0.

5.5.2 3-Digit Rates

The 3-digit rate applies to NFM pieces presented:

a. In a 3-digit sack containing at least 10 pounds of pieces.

b. On a 3-digit pallet under 705.8.10.

5.5.3 ADC Rate

The ADC rate applies to NFM pieces presented:

a. In an ADC or BMC/ASF sack containing at least 10 pounds of pieces or in an optional 3-digit origin/entry sack.

b. On an ADC or BMC/ASF pallet under 705.8.10.

5.5.4 Mixed ADC Rate

The mixed ADC rate applies to NFM pieces in mixed ADC or mixed BMC containers.

* * * * *

445 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.4 Preparation Definitions and Instructions

For purposes of preparing mail:

* * * * *

[Revise item c as follows:]

c. A *5-digit/scheme sort for Standard Mail parcels* yields 5-digit scheme sacks or pallets for those 5-digit ZIP Codes listed in L606 and 5-digit sacks or pallets for other ZIP Codes. The 5-digit ZIP Codes in each scheme are treated as a single presort destination subject to a single minimum volume (if required), with no further separation by 5-digit ZIP Code required. Sacks or pallets prepared for a 5-digit scheme destination that contain pieces for only one of the schemed 5-digit ZIP Codes are still considered 5-digit scheme sorted and are labeled accordingly.

* * * * *

2.0 Bundles

2.1 Definition of a Bundle

[Revise 2.1 to restrict bundling as follows:]

Mailers assemble pieces available for different presort destinations into groups. A ''bundle'' is a group of addressed pieces secured together as a unit. The term ''bundle'' does not apply to unsecured groups of pieces. Bundling under 445 is allowed only for carrier route bundles of irregular parcels and 5-digit bundles of Not Flat-Machinable pieces placed on pallets or in pallet boxes (see 6.0).

* * * * *

5.0 Preparing Presorted Parcels

* * * * *

5.3 Preparing Machinable Parcels

5.3.1 5-Digit Sacks

[Revise 5.3.1 to change the preparation of 5-digit/scheme sacks containing both machinable and irregular parcels (or also containing Not Flat-Machinable pieces) to be that for machinable parcels, and to add 5-digit scheme sorting when claiming 5-digit rates, as follows:]

There is no minimum for parcels prepared in 5-digit/scheme sacks entered at a DDU. Mailers choosing to combine the preparation of either irregular parcels or Not Flat-Machinable pieces (see 401.2.2.3) weighing 6 ounces or more with machinable parcels placed in 5-digit/scheme sacks must prepare those sacks under 5.3.2. Mailers choosing to combine the preparation of Not Flat-Machinable pieces weighing 6 ounces or more with machinable parcels placed in ASF, BMC, or mixed BMC sacks must prepare the sacks under 5.3.2.

5.3.2 Sacking and Labeling

Preparation sequence, sack size, and labeling:

[Revise item a as follows:]

a. 5-digit/scheme (optional, but required for 5-digit rate), see definition in 1.4c; 10-pound minimum except under 5.3.1; labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code destination on pieces (see 4.0 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''STD MACH 5D SCH.'' For 5-digit sacks, ''STD MACH 5D.''

[Delete item b. Renumber items c through e as new items b through d.]

* * * * *

5.4 Preparing Irregular Parcels

[Delete 5.4.1 and 5.4.2. Renumber 5.4.3 through 5.4.8 as new 5.4.1 through 5.4.6. Revise heading and text of renumbered 5.4.1 to restrict bundling of irregular parcels as follows:]

5.4.1 Bundling

Bundling is not permitted, except for bundles of carrier route irregular parcels under 6.0.

* * * * *

[Delete renumbered 5.4.2 through 5.4.5 and renumber 5.4.6 through 5.4.8 as new 5.4.2 through 5.4.4.]

5.4.2 Required Sacking

[Revise renumbered 5.4.2 to change the minimum quantity per sack from 15 pounds to 10 pounds and to add NFMs as follows:]

Mailers must prepare a sack when the quantity of mail for a required presort destination reaches 10 pounds of pieces. There is no minimum for parcels prepared in 5-digit/scheme sacks entered at a DDU. Mailers choosing to combine irregular parcels with machinable parcels and NFMs in 5-digit/scheme sacks must prepare those sacks under 5.3.2. Mailers may not prepare sacks containing irregular and machinable parcels to other presort levels. Mailers may combine irregular parcels with Not Flat-Machinable pieces weighing less than 6 ounces in sacks under 5.4.4.

* * * * *

5.4.4 Sacking and Labeling

[Revise renumbered 5.4.4 as follows:]

Preparation sequence, sack size, and labeling:

a. 5-digit/scheme (optional, but required for 5-digit rate), 10-pound minimum, except when entered at a DDU; labeling:

1. For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''STD IRREG 5D SCH.'' For 5-digit sacks, ''STD IRREG 5D.''

b. 3-digit (required); 10-pound minimum; for irregular parcels only; labeling:

1. For Line 1, L002, Column A.

2. For Line 2, ''STD IRREG 3D.''

c. Origin/entry 3-digit(s) (optional); no minimum; labeling:

1. Line 1: Use L002, Column A.

2. Line 2: ''STD IRREG 3D.''

d. ADC (required); 10-pound minimum; labeling:

1. Line 1: L603, Column B. (Use L004 for parcels that weigh at least 2 ounces and are not rolls or tubes. Do not mix pieces labeled to L603 with pieces labeled to L004.)

2. Line 2: ''STD IRREG ADC.''

e. Mixed ADC (required); no minimum; labeling:

1. Line 1: L604, Column B. (Use L009 for parcels that weigh at least 2 ounces and are not rolls or tubes. Do not mix pieces labeled to L604 with pieces labeled to L009.)

2. Line 2: ''STD IRREG WKG.''

[Renumber 6.0 as new 7.0. Insert new 6.0 for preparation of NFM pieces as follows:]

6.0 Preparing Not Flat-Machinable Pieces

6.1 Basic Standards

All mailings at Regular Standard Mail and Nonprofit Standard Mail NFM rates are subject to the general preparation standards in 1.0 through 4.0. Prepare NFM pieces according to the standards in 6.0 unless commingled with parcels under 445.5.0. Mark NFM pieces according to the standards in 402.2.1.1.

6.2 Bundling

Mailers may make 5-digit bundles of at least five pieces when placed on pallets or in pallet boxes under 705.8.0. No other NFM bundling is permitted. The height of a 5-digit bundle must be at least 1 inch less than the longest dimension of the individual mailpiece. For example, a mailpiece measuring 7 inches long, 5 inches high, and ½ inch thick must be placed in a bundle no higher than 6 inches.

6.3 Sacking and Labeling

6.3.1 General

Mailers may combine NFM pieces with parcels in 5-digit/scheme sacks under 445.5.3. See 6.3.2 for NFM pieces that weigh less than 6 ounces; see 6.3.3 for NFM pieces that weigh 6 ounces or more.

6.3.2 NFM Pieces Weighing Less Than 6 Ounces

Preparation sequence, sack size, and labeling for sacks of NFM pieces that weigh less than 6 ounces:

a. 5-digit/scheme (optional, but required for 5-digit rate); see definition in 445.1.4c; 10-pound minimum, except when drop shipped to a DDU (no minimum); labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code destination on pieces (see 4.0 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''STD NFM 5D SCH.'' For 5-digit sacks, ''STD NFM 5D.''

b. 3-digit (required); 10-pound minimum; labeling:

1. Line 1: Use L002, Column A.

2. Line 2: ''STD NFM 3D.''

c. Origin/entry 3-digit(s) (optional); no minimum; labeling:

1. Line 1: Use L002, Column A.

2. Line 2: ''STD NFM 3D.''

d. ADC (required); 10-pound minimum; labeling:

1. Line 1: Use L004, Column B.

2. Line 2: ''STD NFM ADC.''

e. Mixed ADC (required); no minimum; labeling:

1. Line 1: Use L009, Column B.

2. Line 2: ''STD NFM WKG.''

6.3.3 NFM Pieces Weighing 6 Ounces or More

Preparation sequence, sack size, and labeling for sacks of NFM pieces that weigh 6 ounces or more:

a. 5-digit/scheme (optional but required for 5-digit rate); see definition in 445.1.4c; 10-pound minimum, except when drop shipped to a DDU (no minimum); labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code destination on pieces (see 4.0 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, use ''STD NFM MACH 5D SCH.'' For 5-digit sacks, use ''STD NFM MACH 5D.''

b. ASF (optional), permitted only for mail deposited at an ASF to claim DBMC rate; 10-pound minimum; labeling:

1. Line 1: L602, Column B. DBMC rate eligibility determined by Exhibit 446.3.1, *BMC/ASF—DBMC Rate Eligibility.*

2. Line 2: ''STD NFM MACH ASF.''

c. BMC (required); 10-pound minimum; labeling:

1. Line 1: L601, Column B. DBMC rate eligibility determined by Exhibit 446.3.1, *BMC/ASF—DBMC Rate Eligibility.*

2. Line 2: ''STD NFM MACH BMC.''

d. Mixed BMC (required); no minimum; labeling:

1. Line 1: ''MXD'' followed by L601, Column B information for BMC serving 3-digit ZIP Code prefix of entry post office.

2. Line 2: ''STD NFM MACH WKG.''

* * * * *

446 Enter and Deposit

* * * * *

4.0 Destination Sectional Center Facility (DSCF) Entry

* * * * *

4.2 Eligibility

Pieces in a mailing that meets the standards in 2.0 and 4.0 are eligible for the DSCF rate, as follows:

* * * * *

[Insert new item c as follows:]

c. When prepared and deposited under 705.6.3.

* * * * *

5.0 Destination Delivery Unit (DDU) Entry

* * * * *

5.2 Eligibility

[Revise 5.2 to allow 5-digit sacks of parcels to be entered at DDUs and to add ''Not Flat-Machinable'' pieces as follows:]

Pieces in a mailing that meets the standards in 2.0 and 5.0 are eligible for the DDU rate when deposited at a DDU, addressed for delivery within that facility's service area, and prepared as follows:

a. Irregular parcels in carrier route bundles sorted to carrier route sacks, and otherwise eligible for and claimed at a carrier route rate.

b. One or more parcels or Not Flat-Machinable pieces in 5-digit containers.

450 Discount Parcels: Parcel Post

453 Rates and Eligibility

* * * * *

3.0 Rate Eligibility Standards for Parcel Post

3.1 Parcel Post and Parcel Select Rate Eligibility

There are five Parcel Post (including Parcel Select) rate categories: Intra-BMC, Inter-BMC, destination bulk mail center (DBMC), destination sectional center facility (DSCF), and destination delivery unit (DDU). Parcel Post mailed at any of the destination entry rates is called ''Parcel Select'' (see 456.2.0). Intra-BMC and Inter-BMC Parcel Post rates and DBMC Parcel Select rates are calculated based on the zone to which the parcel is addressed and the weight of the parcel. DSCF and DDU Parcel Select rates are calculated based on the weight of the parcel. Requirements for Parcel Post rates and discounts are as follows:

* * * * *

[Revise item f as follows:]

f. The barcode discount applies to Inter-BMC/ASF and Intra-BMC/ASF Parcel Post machinable parcels (401.1.5) that bear a barcode under 708.5.0 for the ZIP Code of the delivery address and are part of a mailing of 50 or more Parcel Post rate pieces.

* * * * *

[Revise item h as follows:]

h. An item weighing less than 20 pounds but measuring more than 84 inches (but not more than 108 inches) in combined length and girth is charged the rate for a 20-pound parcel for the zone to which it is addressed (balloon rate).

* * * * *

455 Mail Preparation

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5.0 Standards for Barcode Discounts

5.1 Standards for Barcoded Mail

[Revise 5.1 as follows:]

The barcode discount applies to Inter-BMC/ASF and Intra-BMC/ASF Parcel Post machinable parcels (401.1.5) that bear a barcode under 708.5.0 for the ZIP Code of the delivery address and are part of a mailing of 50 or more Parcel Post rate pieces.

* * * * *

456 Enter and Deposit

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2.0 Parcel Select

* * * * *

2.2 Rate Eligibility for Parcel Select Rates

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2.2.2 DBMC Rates

For DBMC rates, pieces must meet the applicable standards in 2.1 through 2.6 and the following:

* * * * *

[Renumber items b and c as new items c and d. Insert new item b as follows:]

b. Machinable parcels must bear a barcode under 708.5.0 for the ZIP Code of the delivery address. Nonbarcoded machinable parcels are eligible only for the Intra-BMC/ASF rates.

* * * * *

2.6 Acceptance at Designated SCF

Mailers may deposit parcels otherwise eligible for the DBMC rates at an SCF designated by the USPS for destination ZIP Codes listed in labeling list L607. The following standards apply:

* * * * *

[Revise item b as follows:]

b. Bound Printed Matter machinable parcels under 466.3.3 and Standard Mail parcels and NFMs under 705.6.3 may be included.

* * * * *

460 Discount Parcels: Bound Printed Matter

[Incorporate the standards for Bound Printed Matter in 160 into 460. Make revisions throughout to change single-piece Bound Printed Matter to ''nonpresorted'' Bound Printed Matter and make the following additional changes:]

* * * * *

465 Mail Preparation

1.0 General Information for Mail Preparation

* * * * *

1.3 Terms for Presort Levels

Terms used for presort levels are defined as follows:

* * * * *

[Renumber items c through g as new items d through h. Insert new item c for 5-digit schemes as follows:]

c. *5-digit scheme (pallets and sacks) for Bound Printed Matter parcels:* The ZIP Code in the delivery address on all pieces begins with one of the 5-digit ZIP Code ranges processed by the USPS as a single scheme, as shown in L606.

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5.0 Preparing Presorted Parcels

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5.2 Preparing Irregular Parcels Weighing Less Than 10 Pounds

* * * * *

5.2.3 Required Sacking

[Revise the third sentence in the introductory text as follows:]

A sack must be prepared when the quantity of mail for a required presort destination reaches either 10 addressed pieces or 20 pounds, whichever occurs first. Smaller volumes are not permitted (except mixed ADC sacks). Optional SCF sacks may be prepared only when there are at least 10 addressed pieces or 20 pounds, whichever occurs first. Sacking is not required for 5-digit bundles when prepared for and entered at DDU rates. Such bundles may be bedloaded and may weigh up to 40 pounds. Sacking also is subject to these conditions:

* * * * *

5.2.4 Sacking and Labeling

Preparation sequence and labeling:

[Replace items a and b with new item a as follows. Renumber items c through f as new items b through e.]

a. 5-digit/scheme (required); labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''PSVC IRREG 5D SCH.'' For 5-digit sacks, ''PSVC IRREG 5D.''

* * * * *

5.3 Preparing Irregular Parcels Weighing 10 Pounds or More

* * * * *

5.3.3 Sacking and Labeling

Preparation sequence and labeling:

[Replace items a and b with new item a as follows. Renumber items c through f as new items b through e.]

a. 5-digit/scheme (required); labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''PSVC IRREG 5D SCH.'' For 5-digit sacks, ''PSVC IRREG 5D.''

* * * * *

5.4 Preparing Machinable Parcels Not Claiming the DBMC Rates

* * * * *

5.4.2 Sacking and Labeling

Preparation sequence and labeling:

[Replace items a and b with new item a as follows. Renumber items c and d as new items b and c.]

a. 5-digit/scheme (required); labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''PSVC MACH 5D SCH.'' For 5-digit sacks, ''PSVC MACH 5D.''

* * * * *

5.5 Preparing Machinable Parcels Claiming the DBMC Rates

* * * * *

5.5.2 Sacking and Labeling

Preparation sequence and labeling:

[Replace items a and b with new item a as follows. Renumber items c through e as new items b through d.]

a. 5-digit/scheme (required); labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

2. Line 2: ''PSVC MACH 5D SCHEME'' or ''PSVC MACH 5D SCH.''

* * * * *

466 Enter and Deposit

1.0 Presenting a Mailing

[Revise the heading of 1.1 as follows:]

1.1 Verification and Entry—Presorted, Carrier Route, Destination Entry, And Barcoded Mailings

* * * * *

[Renumber 1.2 through 1.5 as new 1.3 through 1.6. Insert new 1.2 as follows:]

1.2 Verification and Entry—Nonpresorted Mailings

Nonpresorted rate Bound Printed Matter is not offered at post offices, branches, or stations or through Postal Service carriers, except under 1.2c and 1.2d. Mailers must deposit Nonpresorted Bound Printed Matter as follows:

a. At the time and place specified by the postmaster at the office of mailing.

b. For metered mail, at other than the licensing post office only as permitted under 705.18.0, *Metered Mail Drop Shipment.*

c. For permit imprint mail, only at the post office where the permit is held (see 604.5.0).

d. At any post office, branch, or station or with a Postal Service carrier, if the correct postage is applied, including postage for any extra service elected.

* * * * *

3.0 Destination Bulk Mail Center (DBMC) Entry

* * * * *

3.2 Acceptance at Designated SCF—Mailer Benefit

Mailers may deposit machinable parcels otherwise eligible for the DBMC rates at an SCF designated by the USPS for destination ZIP Codes listed in labeling list L607. The following standards apply:

* * * * *

[Revise item c as follows:]

c. Parcel Select machinable parcels under 456.2.6 and Standard Mail parcels and NFMs under 705.6.3 may be included.

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470 Media Mail

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475 Mail Preparation

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5.0 Preparing Media Mail Parcels

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5.2 Preparing Machinable Parcels

* * * * *

5.2.2 Sacking and Labeling

Preparation sequence and labeling:

[Replace items a and b with new item a as follows. Renumber items c and d as new items b and c.]

a. 5-digit/scheme (optional, but required for 5-digit rate); labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''PSVC MACH 5D SCH.'' For 5-digit sacks, ''PSVC MACH 5D.''

* * * * *

[Revise heading of 5.3 as follows:]

5.3 Preparing Irregular Parcels

* * * * *

5.3.4 Sacking and Labeling

Preparation sequence and labeling:

[Replace items a and b with new item a as follows. Renumber items c through e as new items b through d.]

a. 5-digit/scheme (optional, but required for 5-digit rate); labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''PSVC IRREG 5D SCH.'' For 5-digit sacks, ''PSVC IRREG 5D.''

* * * * *

480 Library Mail

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485 Mail Preparation

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5.0 Preparing Library Mail Parcels

* * * * *

5.2 Preparing Machinable Parcels

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5.2.2 Sacking and Labeling

Preparation sequence and labeling:

[Replace items a and b with new item a as follows. Renumber items c and d as new items b and c.]

a. 5-digit/scheme (optional, but required for 5-digit rate); labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''PSVC MACH 5D SCH.'' For 5-digit sacks, ''PSVC MACH 5D.''

* * * * *

[Revise heading of 5.3 as follows:]

5.3 Preparing Irregular Parcels

* * * * *

5.3.4 Sacking and Labeling

Preparation sequence and labeling:

[Replace items a and b with new item a as follows. Renumber items c through e as new items b through d.]

a. 5-digit/scheme (optional, but required for 5-digit rate); labeling:

1. Line 1: For 5-digit scheme sacks, use L606, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code on mail (see 4.3 for overseas military mail).

2. Line 2: For 5-digit scheme sacks, ''PSVC IRREG 5D SCH.'' For 5-digit sacks, ''PSVC IRREG 5D.''

* * * * *

500 Additional Services

503 Extra Services

* * * * *

4.0 Insured Mail

* * * * *

4.2 Basic Information

4.2.1 Description

Insured mail provides the following features:

* * * * *

[Revise item d as follows:]

d. Insured mail service provides the mailer with a mailing receipt. No record of insured mail is kept at the office of mailing. For mail insured for $200 or less, the USPS maintains delivery information (not including a signature) for a specified period of time. For mail insured for more than $200, the USPS maintains a delivery record (which includes the recipient's signature) for a specified period of time. Customers may obtain a delivery record by purchasing additional services; see 6.0 for details.

4.2.2 Eligible Matter

The following types of mail may be insured:

* * * * *

[Revise item b as follows:]

b. Standard Mail pieces prepared as machinable or irregular parcels (bulk insurance only).

* * * * *

4.2.4 Additional Services

[Revise the first sentence in 4.2.4 as follows:]

Insuring an item for more than $200 allows customers to purchase restricted delivery service or return receipt service. The following services may be purchased at a retail post office and combined with insurance if the applicable standards for the services are met and the additional service fees are paid:

* * * * *

[Revise item c as follows:]

c. Return receipt for merchandise (for items insured for $200 or less).

* * * * *

4.3 Mailing

* * * * *

4.3.3 Markings and Forms

The treatment of pieces is determined by the insurance amount:

[Revise items a and b as follows:]

a. Retail pieces insured for $200 or less: The mailer must affix a barcoded Form 3813 (see Exhibit 4.3.3) to each piece above the delivery address and to the right of the return address. No signature is obtained.

b. Retail pieces insured for more than $200: The mailer must affix a barcoded Form 3813–P (see Exhibit 4.3.3) to each piece above the delivery address and to the right of the return address.

* * * * *

4.3.5 Integrated Barcodes

The following options are available for mailers who print their own labels:

* * * * *

c. Mailers must use an integrated barcode (see Exhibit 4.3.5c) when insurance is purchased online for Priority Mail and for parcels mailed at First-Class Mail, Media Mail, or Parcel Post rates. This barcode combines insurance with electronic option Delivery Confirmation or Signature Confirmation into a single barcode on the shipping label. Additional information on the integrated barcode can be found in Publication 91, *Confirmation Services Technical Guide.*

[Revise items c1 and c2 as follows:]

1. Mailers may purchase insurance online for indemnity coverage of $200 or less with electronic option Delivery Confirmation service. The human-readable text above the integrated barcode must state, ''e/USPS DELIVERY CONFIRMATION'' or, for parcels prepared using eVS under 705.2.9, ''USPS DELIVERY CONFIRMATION.''

2. Mailers may purchase insurance online for indemnity coverage of more than $200, up to $500, with electronic option Delivery Confirmation service. The human-readable text above the integrated barcode must state, ''e/USPS INSURED'' or, for parcels prepared using eVS under 705.2.9, ''USPS INSURED.''

* * * * *

4.3.7 Receipt

Receipts are provided as follows:

a. For each retail insured mail article, the mailer receives a USPS sales receipt and the appropriate postmarked (round-dated) insured mail form as follows:

[Revise items a1 and a2 as follows:]

1. Form 3813 when the insurance coverage is $200 or less.

2. Form 3813–P when the insurance coverage is more than $200.

* * * * *

4.5 Delivery

[Revise 4.5 as follows:]

An item insured for $200 or less receives a delivery scan. An item insured for more than $200 receives a delivery scan and the recipient's signature. Delivery of insured mail is subject to 508.1.0, *Recipient Options,* and 508.2.0, *Conditions of Delivery.*

* * * * *

6.0 Return Receipt

* * * * *

6.2 Basic Information

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6.2.2 Eligible Matter

Return receipt service is available for:

* * * * *

[Revise items b, c, and d to replace old value of $50 with new value of $200. Further revise item c to remove reference to residual shape surcharge and insert text about preparation as machinable or irregular parcels as follows:]

b. First-Class Mail (including Priority Mail) when purchased at the time of mailing with Certified Mail, COD, insured mail (for more than $200), or Registered Mail service.

c. Standard Mail prepared as parcels when bulk insurance (for more than $200) is purchased at the time of mailing.

d. Package Services when purchased at the time of mailing with COD or insured mail (for more than $200).

* * * * *

6.3 Obtaining Service

* * * * *

6.3.2 After Mailing

[Revise first sentence in the introductory text to replace old value of $50 with new value of $200 as follows:]

The mailer may request a delivery record after mailing for Express Mail, Certified Mail, Registered Mail, COD mail, and mail insured for more than $200. When a delivery record is available, the USPS provides the mailer information from that record, including to whom the mail was delivered and the date of delivery. The mailer requests a delivery record by completing Form 3811–A, paying the appropriate fee in 6.1.1, and submitting the request to the appropriate office as follows:

* * * * *

7.0 Restricted Delivery

* * * * *

7.2 Basic Information

* * * * *

7.2.2 Eligible Matter

Restricted Delivery service is available for:

[Revise items a, b, and c to replace old value of $50 with new value of $200. Further revise item b to remove reference to residual shape surcharge and insert text about preparation as machinable or irregular parcels as follows:]

a. First-Class Mail (including Priority Mail) when purchased at the time of mailing with Certified Mail, COD, insured mail (for more than $200), or Registered Mail service.

b. Standard Mail prepared as machinable or irregular parcels when bulk insurance (for more than $200) is purchased at the time of mailing.

c. Package Services when purchased at the time of mailing with COD or insured mail (for more than $200).

* * * * *

8.0 Return Receipt for Merchandise

* * * * *

8.2 Basic Information

* * * * *

8.2.2 Eligible Matter

[Revise 8.2.2 as follows:]

Return receipt for merchandise is available for merchandise sent as Priority Mail, Standard Mail machinable and irregular parcels, and Package Services.

* * * * *

8.2.4 Additional Services

The following services may be combined with return receipt for merchandise if the applicable standards for the services are met and the additional service fees are paid:

* * * * *

[Revise item b to replace old value of $50 with new value of $200 as follows:]

b. Insurance (for up to $200).

* * * * *

9.0 Delivery Confirmation

* * * * *

9.2 Basic Information

* * * * *

9.2.2 Eligible Matter

[Revise 9.2.2 to remove reference to Standard Mail residual shape surcharge and insert text about Standard Mail preparation as machinable or irregular parcels as follows:]

Delivery Confirmation is available for First-Class Mail parcels, for all Priority Mail pieces, for Standard Mail pieces prepared as machinable or irregular parcels (electronic option only), and for Package Services parcels under 401.1.0. For the purposes of using Delivery Confirmation with a Package Services parcel, the parcel must meet these additional requirements:

* * * * *

9.2.6 Additional Services

Delivery Confirmation may be combined with:

* * * * *

[Revise items d and e as follows:]

d. Restricted delivery, if purchased with insurance for more than $200, COD, or Registered Mail service.

e. Return receipt, if purchased with insurance for more than $200, COD, or Registered Mail service.

* * * * *

10.0 Signature Confirmation

* * * * *

10.2 Basic Information

* * * * *

10.2.2 Eligible Matter

[Revise the introductory text of 10.2.2 as follows:]

Signature Confirmation is available for First-Class Mail parcels, Package Services parcels defined in 401.1.0, and for all Priority Mail pieces. For the purposes of using Signature Confirmation with a Package Services parcel, the parcel must meet these additional requirements:

* * * * *

10.2.6 Additional Services

Signature Confirmation may be combined with:

* * * * *

[Revise item d as follows:]

d. Restricted delivery, if purchased with insurance for more than $200, COD, or Registered Mail service.

* * * * *

507 Mailer Services

[Revise 507 to change the term ''accounting fee'' to ''account maintenance fee'' throughout the chapter.]

1.0 Treatment of Mail

* * * * *

1.5 Treatment for Ancillary Services by Class of Mail

* * * * *

1.5.2 Periodicals

Undeliverable-as-addressed (UAA) Periodicals publications (including publications pending Periodicals authorization) are treated as described in Exhibit 1.5.2, with these additional conditions:

* * * * *

[Revise the second-to-last sentence in item f as follows:]

f. The publisher may request the return of copies of undelivered Periodicals by printing the endorsement ''Address Service Requested'' on the envelopes or wrappers, or on one of the outside covers of unwrapped copies, immediately preceded by the sender's name, address, and ZIP+4 or 5-digit ZIP Code. This endorsement obligates the publisher to pay return postage. Each returned piece is charged the single-piece First-Class Mail rate for the weight and shape of the piece, and the nonmachinable surcharge if applicable, or the Priority Mail rate for the weight and destination of the piece. When the address correction is provided incidental to the return of the piece, there is no charge for the correction.

* * * * *

1.5.3 Standard Mail

Undeliverable-as-addressed (UAA) Standard Mail is treated as described in Exhibit 1.5.3a and Exhibit 1.5.3k, with these additional conditions:

* * * * *

[Revise item j as follows:]

j. A returned piece endorsed ''Return Service Requested'' is charged the single-piece First-Class Mail rate for the weight and shape of the piece, and the nonmachinable surcharge if applicable, or the Priority Mail rate for the weight and destination of the piece. The appropriate First-Class Mail rate for a Not Flat-Machinable piece is the First-Class Mail parcel rate.

* * * * *

Exhibit 1.5.3a Treatment of Undeliverable Standard Mail

[Add a new entry for Standard Mail using Address Change Service with the electronic or the automated option as follows:]

Mailer endorsement	USPS treatment of UAA pieces
* * * * * * *	
"Address Service Requested" [3]	If no change-of-address order on file: Piece returned with reason for nondelivery attached (First-Class Mail rate charged). If change-of-address order on file: • *Months 1 through 12:* Piece forwarded ($0.35 per letter or $1.05 per flat postage due charged to mailer); separate notice of new address provided (address correction fee charged). • *Months 13 through 18:* Piece returned with new address attached (First-Class Mail rate charged). • *After month 18:* Piece returned with reason for nondelivery attached (First-Class Mail rate charged).
* * * * * * *	

[Renumber footnote 3 as footnote 4. Revise footnote 2 and insert new footnote 3 as follows:]

2. Valid for all pieces not using Address Change Service electronic and automated options under footnote 3.

3. Valid only for pieces using Address Change Service electronic and automated options as automated postage due transactions are implemented.

* * * * *

1.6 Attachments and Enclosures

1.6.1 Periodicals

[Revise the first sentence in 1.6.1 as follows:]

Undeliverable Periodicals (including publications pending Periodicals authorization) with a nonincidental First-Class Mail attachment or enclosure are returned at the single-piece First-Class Mail rate for the weight and shape of the piece, and the nonmachinable surcharge if applicable, or Priority Mail rate for the weight and destination of the piece. The weight of the attachment or enclosure is not included when computing the charges for return of the mailpiece. Undeliverable Periodicals (including publications pending Periodicals authorization) with an incidental First-Class Mail attachment or enclosure are treated as dead mail unless endorsed ''Address Service Requested.''

1.6.2 Standard Mail

[Revise the first sentence in 1.6.2 as follows:]

Undeliverable, unendorsed Standard Mail with a nonincidental First-Class Mail attachment or enclosure is returned at the single-piece First-Class Mail rate for the weight and shape of the piece or Priority Mail rate for the weight and destination of the piece. The weight of the First-Class Mail attachment or enclosure is not included when computing the charges for return of the mailpiece. Undeliverable, unendorsed Standard Mail with an incidental First-Class Mail attachment or enclosure is treated as dead mail.

* * * * *

3.0 Address Correction Services

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3.2 Address Change Service (ACS)

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[Revise heading and text in 3.2.2 as follows:]

3.2.2 Service Options

ACS offers three levels of service:

a. An *automated* option for letter-size mail with electronic notices processed using OneCode technology (see 3.2.6, *Additional Standards—Intelligent Mail barcodes*).

b. An *electronic* option for all notices processed electronically, except automated notices under 3.2.2a.

c. A *manual* option for notices processed manually.

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10.0 Merchandise Return Service

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10.5 Additional Features

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10.5.3 Insured Markings

[Revise 10.5.3 as follows:]

The permit holder must either leave a clear space on the merchandise return label to the right of the return address for the insured label or instruct the customer to affix the merchandise return label to the article so that the USPS acceptance employee can place the insured label on the article directly above the merchandise return label.

* * * * *

508 Recipient Services

1.0 Recipient Options

1.1 Basic Recipient Concerns

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1.1.7 Express Mail and Accountable Mail

[Revise the introductory text of 1.1.7 to change the insurance threshold from $50 to $200 as follows:]

The following conditions also apply to the delivery of Express Mail and accountable mail (registered, certified, insured for more than $200, or COD, as well as mail for which a return receipt or a return receipt for merchandise is requested or for which the sender has specified restricted delivery):

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600 Basic Standards for All Mailing Services

601 Mailability

1.0 General Standards

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1.4 Length and Height

Determine length and height as follows:

a. *Letter-size pieces.* Determine the length and height according to the location and orientation of the delivery address. The *length* is the dimension parallel to the address as read; the *height* is the dimension perpendicular to the length.

b. *Flat-size pieces.* The *length* of a flat-size mailpiece is the longest dimension. The *height* is the dimension perpendicular to the length.

c. *Parcels and Not Flat-Machinable pieces.* The *length* is the longest dimension.

d. *Customized MarketMail pieces.* See 705.1.0.

* * * * *

604 Postage Payment Methods

1.0 Stamps

1.1 Postage Stamp Denominations

[Add the forever stamp to the table of types and formats of stamps.]

* * * * *

[Renumber 1.10 through 1.12 as new 1.11 through 1.13. Insert new 1.10 as follows:]

1.10 Additional Standards for Forever Stamps

Forever stamps are sold for the price of the current First-Class Mail single-piece 1-ounce letter rate in 133.1.5. The postage value of each forever stamp is the current First-Class Mail single-piece 1-ounce letter rate. Forever stamps may be used only on single-piece rate mail.

[Revise the heading of renumbered 1.11 as follows:]

1.11 Additional Standards for Semipostal Stamps

* * * * *

609 Filing Indemnity Claims for Loss or Damage

1.0 General Filing Instructions

1.1 Extra Services With Indemnity

A customer may file an indemnity claim for insured mail, collect on delivery (COD) items, Registered Mail with postal insurance, or Express Mail. Inquiries on uninsured Registered Mail may be filed as detailed in 503.2.0. Customers can find additional information in Publication 122, *Customer Guide to Filing Domestic Insurance Claims or Registered Mail Inquiries*, available on *http://www.usps.com* and in post offices.

* * * * *

1.3 Who May File for Loss or Damage

[Revise 1.3 as follows:]

A claim may be filed by:

a. Either the mailer or addressee, for damaged articles or articles with some or all of the contents missing.

b. Either the mailer or addressee who is in possession of the original retail mailing receipt, or in possession of the online label record or computer printout of the web-based application as described in 3.1e., for lost articles.

c. Only the merchandise return permit holder, for merchandise return service (MRS) parcels that are registered or insured as indicated by the permit holder on the MRS label.

d. Only the mailer, when the mailer has added and paid for insurance on merchandise return service parcels.

e. Only the mailer, for bulk insured service mail.

1.4 When To File for Loss or Damage

[Revise 1.4 as follows:]

File claims as follows:

a. For damaged or missing contents, a customer should file a claim immediately, but must file no later than 60 days from the date of mailing.

b. For a lost article, a customer must file a claim within the time limits in the chart below.

Mail type or service	When to file (from mailing date)	
	No sooner than	No later than
Insured Mail	21 days	180 days.
COD	45 days	180 days.
Registered Mail	15 days	180 days.
Registered COD	45 days	180 days.
Express Mail	7 days	90 days.
Express Mail COD	45 days	90 days.
APO/FPO Insured Mail (First-Class Mail, SAM, PAL, or COD)	45 days	1 year.
APO/FPO Insured Mail (Surface Only)	75 days	1 year.

1.5 Where To File for Loss or Damage

A claim may be filed:

* * * * *

[Revise items b and c as follows:]

b. Only at the post office where the merchandise return permit is held, for Registered Mail articles with merchandise return service.

c. Online at *http://www.usps.com* for customers who purchased insurance online through Click-N-Ship or eBay.

1.6 How To File for Loss or Damage

[Revise 1.6 as follows:]

A customer may file a claim by presenting evidence of insurance, evidence of value, and/or proof of damage. If the article was mailed Express Mail COD or Registered Mail COD, the customer must provide both the original COD receipt with either the Express Mail or the Registered Mail receipt. The customer must complete the applicable portions of Form 1000. Customers may print Form 1000 from *http://www.usps.com* and complete the customer section before going to the Post Office.

* * * * *

2.0 Providing Proof of Loss or Damage

2.1 Missing Contents

[Revise 2.1 as follows:]

If a claim is filed because some or all of the contents are missing, the addressee must make the mailing container available to the USPS for inspection, including any wrapping, packaging, and any contents that were received. Failure to do so will result in denial of the claim.

2.2 Proof of Damage

[Revise 2.1 as follows:]

If the addressee files the claim, the addressee must make the damaged article and mailing container available to the USPS for inspection, including any wrapping, packaging, and any other contents that were received. If the mailer files the claim, the St. Louis ASC will notify the addressee by letter to present the damaged article and mailing container to the USPS for inspection, including any wrapping, packaging, and any other contents that were received. Failure to do so will result in denial of the claim.

[Delete 2.3, Proof of Loss.]

3.0 Providing Evidence of Insurance and Value

3.1 Evidence of Insurance

For a claim involving insured, COD, registered, or Express Mail service, the customer must present any of the following evidence showing that the particular service was purchased:

* * * * *

[Revise item e as follows:]

e. For insurance purchased online, the mailer may access and print an electronic record as follows:

1. A computer printout from the Web-based application used to print the label and purchase the insurance. The printout must clearly identify the following information: The Delivery Confirmation or Signature Confirmation number of the insured parcel, total postage paid, insurance fee paid, declared value, declared mailing or shipping date, origin ZIP Code, and delivery ZIP Code.

2. A printed online label record.

* * * * *

4.0 Claims

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4.3 Nonpayable Claims

Indemnity is not paid for insured mail, Registered Mail, COD, or Express Mail in these situations:

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[Revise items f and s as follows:]

f. Loss resulting from delay of the mail, except under 4.2a2, *Payable Express Mail Claim,* and 4.3ae below.

* * * * *

s. Consequential loss of Express Mail claimed, except under 4.2a3 and 4.3ae.

* * * * *

5.0 Compensation

5.1 Payment Limitation

[Revise 5.1 as follows:]

The USPS does not make payment for more than the actual value of the article or, for bulk insurance, for more than the wholesale cost of the contents to the sender if a lesser amount. The USPS does not make payment for more than the maximum amount covered by the fee paid.

* * * * *

6.0 Adjudication of Claims

6.1 Initial Adjudication of Claims

[Revise 6.1 as follows:]

The St. Louis Accounting Service Center (ASC) adjudicates and pays or disallows all domestic claims, except the initial adjudication of domestic retail insured claims for insurance coverage of $50 or less that are not for bulk insured service, and claims appealed under 6.3. Domestic retail insured claims for insurance coverage of $50 or less, except for bulk insured service, are adjudicated and paid locally at the post office accepting the claims. Claims for insurance purchased online (through Click-N-Ship or eBay) up to $500 may be filed online through *http://www.usps.com,* and will be processed and paid through the St. Louis ASC.

6.2 Appealing a Claim Decision

[Revise 6.2 as follows:]

A customer may appeal a claim decision by filing a written appeal within 60 days of the date of the original decision. Except for domestic retail insured claims for insurance coverage of $50 or less, the customer must send the appeal directly to Claims Appeals (see 608.8.0 for address). For domestic retail insured claims for insurance coverage of $50 or less, the customer must send the appeal to the post office where the claim was filed. That post office forwards the appeal to the manager of Claims Appeals at the St. Louis ASC.

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700 Special Standards

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705 Advanced Preparation and Special Postage Payment Systems

1.0 Customized MarketMail

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1.2 Rates

[Revise 1.2 as follows:]

Pieces mailed as Customized *MarketMail* under 705.1.0 must be charged the Regular or Nonprofit Standard Mail 5-digit nonentry rate for Not Flat-Machinable pieces and must not exceed 3.3 ounces.

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2.3 Keyline

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2.3.3 Rate Category Abbreviations

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Exhibit 2.3.3a Rate Category Abbreviations—First-Class Mail

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[Delete the entry for Automation Carrier Route.]

Exhibit 2.3.3b Rate Category Abbreviations—Standard Mail

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[Delete the entry for Automation Carrier Route. Add an entry for Not Flat-Machinable pieces as follows:]

Code	Rate category
NF ..	Not Flat-Machinable

* * * * *

6.0 Combining Mailings of Standard Mail and Package Services Parcels

6.1 Combining Machinable Parcels—DBMC Entry

* * * * *

6.1.2 Basic Standards

Standard Mail and Package Services machinable parcels must meet the following conditions:

* * * * *

[Renumber items c through h as new items d through i. Insert new item c as follows:]

c. Parcel Select machinable parcels must bear a barcode under 708.5.0 for the ZIP Code of the delivery address.

* * * * *

[Revise heading and text of 6.2 to include all Package Services parcels when a combined mailing is drop shipped to DSCFs, and to allow mailers to combine Standard Mail parcels and NFMs with Packages Services parcels for DDU rates, as follows:]

6.2 Combining Parcels—Parcel Post OBMC Presort, BMC Presort, DSCF, and DDU Rates

6.2.1 Qualification

[Revise 6.2.1 as follows:]

Combination requirements for specific discounts and rates are as follows:

a. When claiming Parcel Post OBMC Presort discounts, Parcel Post BMC Presort discounts, and DSCF rates for Parcel Post or Bound Printed Matter parcels, machinable Standard Mail parcels and NFMs 6 ounces or more may be combined with machinable Package Services parcels under 6.2.

b. When claiming the DSCF rate for Parcel Post or Bound Printed Matter parcels, all Standard Mail parcels and NFMs may be combined with Package Services parcels under 6.2.

c. Standard Mail parcels and NFMs may be combined with Package Services parcels prepared for DDU rates under 6.2.

* * * * *

6.2.4 Preparation and Rates

Combined parcels must be prepared as follows:

* * * * *

[Revise items b and b6 as follows:]

b. Parcel Post or Bound Printed Matter Qualifying for DSCF Rates. Mailers must prepare the combined mailings under the applicable 5-digit scheme and 5-digit sack requirements in 455.4.0 or the applicable 5-digit scheme and 5-digit pallet requirements in 8.0 for the Parcel Post DSCF rates. All other requirements for Parcel Post DSCF rates and Standard Mail rates, as applicable, must be met. The following additional requirements apply:

* * * * *

6. Standard Mail parcels are eligible for presorted rates according to 443.

[Revise item c as follows. Delete item c3.]

c. Parcel Post Qualifying for OBMC Presort or BMC Presort Rates. Mailers must prepare the combined mailings under the BMC pallet requirements in 8.0 for machinable parcels at Parcel Post OBMC Presort or BMC Presort rates. All other requirements for Parcel Post OBMC Presort or BMC Presort rates and Standard Mail rates must be met. The following additional requirements apply:

* * * * *

[Revise item d as follows:]

d. Package Services and Standard Mail parcels and NFMs qualifying for DDU rates:

1. The combined mailings must be prepared under the applicable 5-digit scheme and 5-digit sack requirements in 455.4.0 or the applicable 5-digit scheme and 5-digit pallet requirements in 8.22 for the Parcel Post or Bound Printed Matter DDU rates.

2. Line 2 of 5-digit scheme container labels must read, ''STD/PSVC PARCELS 5D SCH.'' Line 2 of 5-digit container labels must read, ''STD/PSVC PARCELS 5D.''

* * * * *

[Insert new 6.3 as follows:]

6.3 Combining Package Services and Standard Mail—Optional 3-Digit SCF Entry

6.3.1 Acceptance at Designated SCF—Qualification and Preparation

Mailers may deposit parcels otherwise eligible for the Package Services and Standard Mail DBMC rates (for machinable parcels) and the Standard Mail SCF rate (for irregular parcels and Not Flat-Machinable pieces) at an SCF designated by the USPS for destination ZIP Codes listed in labeling list L607. The following standards apply:

a. Standard Mail parcels, Not Flat-Machinable pieces, Bound Printed Matter machinable parcels, and Parcel Select machinable parcels may be included. Standard Mail parcels and Not Flat-Machinable pieces that weigh less than 2 ounces and Standard Mail parcels that are tubes, rolls, triangles, and similar pieces may not be included.

b. Mailers must prepare pieces on 3-digit pallets or in 3-digit pallet boxes, or unload and physically separate the pieces into containers as specified by the destination facility.

c. Parcel Select and Bound Printed Matter parcels are eligible for the applicable DBMC entry rate.

d. Standard Mail machinable parcels are eligible for the BMC presort level, DBMC rate; Not Flat-Machinable pieces and irregular parcels are eligible for the 3-digit presort level, DSCF rate.

e. All pieces must be for delivery within the service area of the SCF where they are deposited by the mailer.

f. Postage on all zone-rated parcels deposited at the SCF is computed using the zone chart for that postal facility.

6.3.2 Documentation

Presort documentation is required for each rate claimed if the manifest does not list pieces in presort order. Separate postage statements must be prepared for the Standard Mail and Package Services pieces. Within each group, combined forms may be prepared where the standards and the forms permit. All postage statements must be provided at the time of mailing.

6.3.3 Authorization

Mailers must be authorized under 6.1.5 to prepare mailings that combine Standard Mail pieces and Package Services parcels.

6.3.4 Postage Payment

Postage for all pieces must be paid with permit imprint at the post office serving the mailer's plant under an approved manifest mailing system under 2.0.

7.0 Combining Package Services Parcels for Destination Entry

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7.2 Combining Package Services Machinable Parcels for DBMC Entry

* * * * *

7.2.2 Basic Standards

Package Services parcels must meet the following conditions:

* * * * *

[Renumber items c through h as new items d through i. Insert new item c as follows:]

c. Parcel Select machinable parcels must bear a barcode under 708.5.0 for the ZIP Code of the delivery address.

* * * * *

8.0 Preparing Pallets

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8.5 General Preparation

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8.5.3 Minimum Load

The following minimum load standards apply to mail prepared on pallets:

a. For Periodicals, Standard Mail, and Package Services (except for Parcel Post mailed at BMC Presort, OBMC Presort, DSCF, and DDU rates):

[Revise item 1 to add an exception for letter trays as follows:]

1. In a single mailing, the minimum load per pallet is 250 pounds of bundles, parcels, or sacks, except as provided in items 2 through 4 below. When preparing letter trays on pallets, the minimum load is 36 linear feet or three layers of trays, except as provided in item 3 below.

* * * * *

[Revise item a3 to expand the types of mail that can be placed on pallets with a reduced minimum load as follows:]

3. A pallet may contain a minimum of 12 linear feet of letter trays or 100 pounds of nonletter-size mail on any pallet that is a BMC or ASF pallet entered at the destination BMC or ASF; an ADC pallet entered at the destination ADC; an SCF pallet entered at the destination SCF; and the only pallet entered at an individual destination BMC or ASF, ADC, or SCF facility.

* * * * *

8.5.6 Mail on Pallets

These standards apply to mail on pallets:

* * * * *

[Revise item c to delete ''automation carrier route'' and to replace ''presorted'' with ''nonautomation'' as follows:]

c. For letter-size Standard Mail and Periodicals prepared in trays on pallets, mailers must prepare carrier route rate mail on separate 5-digit pallets (5-digit carrier routes pallets) from automation rate or nonautomation rate mail (5-digit pallets).

* * * * *

8.6 Pallet Labels

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8.6.5 Line 2 (Content Line)

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[Delete the entry for ''manual only'' processing in the table in item b.]

8.10 Pallet Presort and Labeling

8.10.1 Periodicals—Bundles, Sacks, or Trays

[Replace ''AFSM–100 compatible'' with ''automation-compatible under 301.3.0'' in 8.10.1.]

* * * * *

8.10.2 Standard Mail—Bundles, Sacks, or Trays

[Replace ''AFSM–100 compatible'' with ''automation-compatible under 301.3.0'' in 8.10.2. Reorganize introductory text as follows:]

Mailers must prepare pallets under 8.0 in the sequence listed below and complete at each required level before preparing the next optional or required level. Unless indicated as optional, all sort levels are required. For mailings of sacks or trays on pallets, pallet preparation begins with 8.10.2c. For irregular parcels, use this preparation only for pieces in carrier route bundles or in sacks. Palletize unbundled or unsacked irregular parcels under 705.8.10.6. Pallets must be labeled according to the Line 1 and Line 2 information listed below and under 8.6. Mailers also may palletize bundles of Standard Mail flats under 10.0, 12.0, or 13.0.

[Delete items a and c to remove the merged 5-digit and merged 5-digit scheme pallet levels; renumber item b as new item a; renumber items d through k as new items b through i.]

* * * * *

[Revise renumbered item c to allow all 5-digit scheme bundles or sacks on 5-digit pallets as follows:]

c. *5-digit, required except for trays, permitted for bundles, sacks, and trays.* Pallet must contain only automation rate and/or Presorted rate mail for the same 5-digit ZIP Code or the same 5-digit scheme. 5-digit scheme bundles and sacks are assigned to 5-digit pallets according to the ''label to'' 5-digit ZIP Code. Labeling: * * *

* * * * *

8.10.3 Package Services Flats—Bundles and Sacks

[Replace ''AFSM–100 compatible'' with ''automation-compatible under 301.3.0'' in 8.10.3.]

* * * * *

[Delete items a, c, and d to remove the 5-digit scheme, the merged 5-digit and merged 5-digit scheme pallet levels; renumber item b as new item a; renumber items e through l as new items b through i.]

* * * * *

[Revise the heading and text of 8.10.5 to add Not Flat-Machinable pieces as follows:]

8.10.5 Package Services and Standard Mail Machinable Parcels, and Not Flat-Machinable Pieces Weighing 6 Ounces or More

Pallets must be prepared under 8.0 in the sequence listed below and completed at each required level before the next optional or required level is prepared. Unless indicated as optional, all sort levels are required under the conditions shown. At the mailer's option, Inter-BMC/ASF and Intra-BMC/ASF Parcel Post mailings may be prepared on pallets under this section. Destination entry rates eligibility applies only to Standard Mail (see 446 for parcels and NFMs that weigh 6 ounces or more), Parcel Select (see 456), and Bound Printed Matter (see 466). Combined mailings of Standard Mail and Package Services machinable parcels also must meet the standards in 6.0. Pallets must be labeled according to the Line 1 and Line 2 information listed below and under 8.6.

a. *5-digit scheme, required*. Pallet must contain parcels or NFMs for the same 5-digit scheme under L606. For 5-digit destinations not part of L606, or for which scheme sorts are not performed, 5-digit pallets are prepared under 8.10.5b. Labeling:

1. Line 1: Use L606.

2. Line 2: ''STD MACH 5D,'' ''STD NFM MACH 5D,'' or ''PSVC MACH 5D,'' as applicable; followed by ''SCHEME'' (or ''SCH'').

b. *5-digit, required*. Pallet must contain parcels only for the same 5-digit ZIP Code. Labeling:

1. Line 1: city, state, and 5-digit ZIP Code destination (see 8.6.4c for overseas military mail).

2. Line 2: ''STD MACH 5D,'' ''STD NFM MACH 5D,'' or ''PSVC MACH 5D,'' as applicable.

c. *ASF, optional, but required for DBMC rates*. Not available for the Buffalo NY ASF in L602. Pallets must contain only parcels or NFMs for the 3-digit ZIP Code groups in L602. Labeling:

1. Line 1: Use L602.

2. Line 2: ''STD MACH ASF,'' ''STD NFM MACH ASF,'' or ''PSVC MACH ASF,'' as applicable.

d. *BMC, required*. Pallets must contain only parcels or NFMs for the 3-digit ZIP Code groups in L601. Labeling:

1. Line 1: Use L601.

2. Line 2: ''STD MACH BMC,'' ''STD NFM MACH BMC,'' or ''PSVC MACH BMC,'' as applicable.

e. *Mixed BMC, optional*. Labeling:

1. Line 1: ''MXD'' followed by information in L601, Column B, for BMC serving 3-digit ZIP Code prefix of entry post office (or labeled to plant serving entry post office if authorized by processing and distribution manager).

2. Line 2: ''STD MACH WKG,'' ''STD NFM MACH WKG,'' or ''PSVC MACH WKG,'' as applicable.

[Insert new 8.10.6 as follows:]

8.10.6 Standard Mail Irregular Parcels Weighing 2 Ounces or More

Mailers who palletize unbundled or unsacked irregular parcels must make pallets or pallet boxes when there are 250 pounds or more for the destination levels below. Pallets or pallet boxes of irregular parcels (except tubes, rolls, and similar pieces) weighing 2 ounces or more must be prepared under 8.0 in the sequence listed below and completed at each required level before the next optional or required level is prepared. Unless indicated as optional, all sort levels are required. Label pallets or pallet boxes according to the Line 1 and Line 2 information listed below and under 8.6. Mailers may not prepare tubes, rolls, and similar pieces or pieces that weigh less than 2 ounces on pallets or in pallet boxes, except for pieces in carrier route bundles or in sacks under 8.10.2.

a. *5-digit scheme, required*. Pallet or pallet box must contain parcels only for the same 5-digit scheme under L606. For 5-digit destinations not part of L606 prepare 5-digit pallets under 8.10.6b. Labeling:

1. Line 1: Use L606.

2. Line 2: ''STD IRREG 5D''; followed by ''SCHEME'' (or ''SCH'').

b. *5-digit, required*. Pallet or pallet box must contain parcels only for the same 5-digit ZIP Code. Labeling:

1. Line 1: city, state, and 5-digit ZIP Code destination (see 8.6.4c for overseas military mail).

2. Line 2: ''STD IRREG 5D.''

c. *3-digit, optional*, option not available for 3-digit ZIP Code prefixes marked ''N'' in L002. Pallet or pallet box must contain parcels only for the same 3-digit ZIP Code. Labeling:

1. Line 1: Use L002, Column A.

2. Line 2: ''STD IRREG 3D.''

d. ADC, *required*. Pallet or pallet box must contain parcels for the 3-digit ZIP Code groups in L004. Labeling:

1. Line 1: Use L004.

2. Line 2: ''STD IRREG ADC.''

e. Mixed ADC, *optional*. Labeling:

1. Line 1: ''MXD'' followed by city, state, and ZIP Code information for ADC serving 3-digit ZIP Code prefix of entry post office as shown in L009, Column A.

2. Line 2: ''STD IRREG WKG.''

[Insert new 8.10.7 as follows:]

8.10.7 Standard Mail Not Flat-Machinable Pieces Weighing Less Than 6 Ounces

Mailers must prepare pieces on pallets or in pallet boxes when there are 250 pounds or more of NFMs for the destination levels below. Prepare pallets or pallet boxes of NFM pieces weighing less than 6 ounces under 8.0 in the sequence listed below and completed at each required level before the next optional or required level is prepared. Unless indicated as optional, all sort levels are required. The height of a 5-digit bundle must be at least 1 inch less than the longest dimension of the individual mailpiece. For example, a mailpiece measuring 7 inches long, 5 inches high, and ½ inch thick must be placed in a bundle no higher than 6 inches. Label pallets or pallet boxes according to the Line 1 and Line 2 information listed below and under 8.6.

a. *5-digit scheme, required.* Pallet or pallet box must contain NFMs only for the same 5-digit scheme under L606. For 5-digit destinations not part of L606 prepare 5-digit pallets under 8.10.6b. Labeling:

1. Line 1: Use L606.

2. Line 2: ''STD NFM 5D'' followed by ''SCHEME'' (or ''SCH'').

b. *5-digit, required.* Pallet or pallet box must contain NFMs only for the same 5-digit ZIP Code. Labeling:

1. Line 1: city, state, and 5-digit ZIP Code destination (see 8.6.4c for overseas military mail).

2. Line 2: ''STD NFM 5D.''

c. *3-digit, optional,* option not available for 3-digit ZIP Code prefixes marked ''N'' in L002. Pallet or pallet box must contain NFMs only for the same 3-digit ZIP Code. Labeling:

1. Line 1: Use L002, Column A.

2. Line 2: ''STD NFM 3D.''

d. *ADC, required.* Pallet or pallet box must contain NFMs for the 3-digit ZIP Code groups in L004. Labeling:

1. Line 1: Use L004.

2. Line 2: ''STD NFM ADC.''

e. *Mixed ADC, optional.* Labeling:

1. Line 1: ''MXD'' followed by city, state, and ZIP Code information for ADC serving 3-digit ZIP Code prefix of entry post office as shown in L009, Column A.

2. Line 2: ''STD NFM WKG.''

* * * * *

8.14 Pallets of Bundles, Sacks, and Trays

* * * * *

8.14.2 Standard Mail

Additional pallet preparation:

[Revise item a as follows:]

a. Combined mailings. Nonprofit Standard Mail may be included in the same mailing or palletized on the same pallet as Regular Standard Mail only as permitted by standard. Mailers may include machinable parcels, irregular parcels, and Not Flat-Machinable pieces on 5-digit pallets.

* * * * *

[Revise the heading of 8.22 as follows:]

8.22 Parcel Post and Bound Printed Matter DDU Rates

* * * * *

[Revise the heading of 9.0 as follows:]

9.0 Preparing Cotrayed and Cosacked Bundles of Automation and Nonautomation Flats

* * * * *

9.2 Periodicals

* * * * *

9.2.5 Sack Preparation and Labeling

* * * * *

[Revise item a as follows:]

a. 5-digit/scheme, required; scheme sort required, only for pieces meeting the automation-compatibility criteria in 301.3.0; 24-piece minimum, fewer pieces not permitted; labeling:

1. Line 1: For 5-digit scheme sacks, use L007, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code destination on pieces.

2. Line 2: ''PER'' or ''NEWS'' as applicable and, for 5-digit scheme sacks, ''FLT 5D SCH BC/NBC''; for 5-digit sacks, ''FLT 5D BC/NBC.''

* * * * *

9.3 Standard Mail

* * * * *

9.3.5 Sack Preparation and Labeling

* * * * *

[Revise item a as follows:]

a. 5-digit/scheme, required; scheme sort required, only for pieces meeting the automation-compatibility criteria in 301.3.0; 125-piece/15-pound minimum; labeling:

1. Line 1: For 5-digit scheme sacks, use L007, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code destination on pieces.

2. Line 2: For 5-digit scheme sacks, ''STD FLT 5D SCH BC/NBC''; for 5-digit sacks, ''STD FLT 5D BC/NBC.''

* * * * *

9.4 Bound Printed Matter

* * * * *

9.4.4 Sack Preparation and Labeling

* * * * *

[Revise item a as follows:]

a. 5-digit/scheme, required; scheme sort required, only for pieces meeting the automation-compatibility criteria in 301.3.0; minimum 20 addressed pieces; labeling:

1. Line 1: For 5-digit scheme sacks, use L007, Column B. For 5-digit sacks, use city, state, and 5-digit ZIP Code destination on pieces.

2. Line 2: For 5-digit scheme sacks, ''PSVC FLT 5D SCH BC/NBC''; for 5-digit sacks, ''PSVC FLT 5D BC/NBC.''

* * * * *

[Revise 11.0 to replace ''presorted'' with ''nonautomation'' throughout.]

11.0 Preparing Cobundled Automation Rate and Nonautomation Rate Flats

11.1 First-Class Mail

11.1.1 Basic Standards

Mailers may choose to cobundle (see 335.1.4m) automation rate and nonautomation rate pieces as an option to the basic bundling requirements in 9.0, *Preparing Cotrayed and Cosacked Bundles of Automation and Nonautomation Flats,* subject to the following conditions:

* * * * *

[Delete item f. Renumber item g as item f.]

11.2 Periodicals

11.2.1 Basic Standards

[Revise the introductory text in 11.2.1 to require 5-digit scheme and 3-digit scheme sort and eliminate distinctions between AFSM 100 and UFSM 1000 flats as follows:]

Mailers may choose to cobundle (under 705.11.0) automation rate and nonautomation rate flat-size pieces as an option to the basic bundling requirements in 707.22.0 and 707.25.0. All flats in the same bundle must meet the standards in either 301.3.0 or 707.25.3. 5-digit scheme and 3-digit scheme bundles also must meet the additional standards in 707.18.4i and 707.18.4r. Mailing jobs (for flats meeting the criteria in 301.3.0) prepared using the 5-digit scheme and/or the 3-digit scheme bundle preparation must be sacked under 10.0 or palletized under 10.0, 12.0, or 13.0. All bundles are subject to the following conditions:

* * * * *

11.2.2 Bundle Preparation

[Revise the introductory text in 11.2.2 as follows:]

Pieces meeting the criteria in 301.3.0 must be prepared in 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and in 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. Preparation sequence, bundle size, and labeling:

* * * * *

[Revise item b to require 5-digit scheme bundles as follows:]

b. 5-digit scheme, required; * * *

* * * * *

[Revise item d to require 3-digit scheme bundles as follows:]

d. 3-digit scheme, required; * * *

* * * * *

11.3 Standard Mail

11.3.1 Basic Standards

[Revise the introductory text in 11.3.1 to require 5-digit scheme and 3-digit scheme sort and eliminate distinctions between AFSM 100 and UFSM 1000 flats as follows:]

Mailers may choose to cobundle (see 345.1.4u) automation rate and nonautomation rate flat-size pieces as an option to the basic bundling requirements in 345.5.0 and 345.7.0. All flats in the same bundle must meet the standards in 301.3.0. 5-digit scheme and 3-digit scheme bundles must meet the additional standards in 345.1.4f and 345.1.4n. Mailing jobs prepared using the 5-digit scheme and/or 3-digit scheme bundle preparation (for flats meeting the criteria in 301.3.0) must be sacked under 10.0 or palletized under 10.0, 12.0, or 13.0. All bundles are subject to the following conditions:

* * * * *

[Delete item g. Renumber item h as new item g.]

11.3.2 Bundle Preparation

[Revise the introductory text in 11.3.2 as follows:]

Pieces meeting the criteria in 301.3.0 must be prepared in 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and in 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. Preparation sequence, bundle size, and labeling:

[Revise item a to require 5-digit scheme bundles as follows:]

a. 5-digit scheme, required; * * *

* * * * *

[Revise item c to require 3-digit scheme bundles as follows:]

c. 3-digit scheme, required; * * *

* * * * *

707 Periodicals

* * * * *

3.0 Physical Characteristics and Content Eligibility

* * * * *

3.5 Mailpiece Construction

* * * * *

3.5.2 Size and Weight

[Insert new second sentence in 3.5.2 to include the maximum weight and thickness for Periodicals automation flat-size pieces as follows:]

Periodicals mail may not weigh more than 70 pounds or measure more than 108 inches in length and girth combined. Automation flat-size pieces may not weigh more than 6 pounds or measure more than 1¼ inch thick. Additional size and weight limitations apply to individual Periodicals rate categories. Requester publications must contain at least 24 pages per issue.

* * * * *

15.0 Ride-Along Rate Eligibility

* * * * *

15.3 Physical Characteristics

The host Periodicals piece and the Ride-Along piece must meet the following physical characteristics:

* * * * *

[Revise item c as follows:]

c. A Periodicals piece with a Ride-Along that claims automation rates must meet the automation requirements in 201.3.0, *Physical Standards for Automation Letters and Cards,* or 25.0, *Preparing Flat-Size Automation Periodicals,* and must maintain the same processing category as before the addition of the Ride-Along. For example, if, due to the inclusion of a Ride-Along piece, an automation letter-size host piece can no longer be processed as an automation letter, then that piece must be charged the Periodicals nonautomation rate for the host piece plus the Ride-Along rate or the Standard Mail rate for the attachment or enclosure.

* * * * *

22.0 Preparing Presorted Periodicals

* * * * *

22.2 Bundle Preparation

[Revise the introductory text of 22.2 as follows:]

Mailings consisting entirely of pieces meeting the criteria in 301.3.0 may be prepared in 5-digit scheme bundles for those 5-digit ZIP Codes identified in L007 and in 3-digit scheme bundles for those 3-digit ZIP Codes identified in L008. Bundling is required before traying or sacking. A bundle must be prepared when the quantity of addressed pieces for a required presort level reaches the minimum bundle size. Smaller volumes are not permitted except mixed ADC bundles and 5-digit/scheme and 3-digit/scheme bundles prepared under 22.4. Bundling is also subject to 19.0, Bundles. Preparation sequence, bundle size, and labeling:

* * * * *

22.7 Optional Tray Preparation—Flat-Size Nonautomation Pieces

[Revise the introductory text in 22.7 as follows:]

As an option, mailers may place in flat-size trays the automation-compatible flat-size pieces prepared under 301.3.0 that would normally be placed in ADC, origin mixed ADC, or mixed ADC sacks. Pieces must not be secured in bundles. Mailers must group together pieces for each 5-digit scheme, 5-digit, 3-digit scheme, 3-digit, and ADC destination as follows:

* * * * *

25.0 Preparing Flat-Size Automation Periodicals

25.1 Basic Standards

25.1.1 General

[Revise 25.1.1 as follows:]

Each piece must meet the physical standards in 301.3.0 or in 25.3. Bundle, sack, and tray preparation are subject to 18.0 through 21.0. Trays and sacks must bear the appropriate barcoded container labels under 708.6.0.

* * * * *

25.1.5 Bundle Preparation

All pieces must be prepared in bundles and meet the following requirements:

[Revise items a, c, and d as follows:]

a. Pieces that meet the standards in 301.3.0 must be prepared in separate bundles from pieces that meet the standards in 25.3.

* * * * *

c. Each bundle of pieces prepared under 301.3.0 and each bundle of pieces prepared under 25.3 must separately meet the bundle minimums in 25.4.

d. Presort destination bundles may contain fewer than six pieces when the mailpieces are too thick or too heavy to create a six-piece bundle. Rate eligibility is not affected if the total number of pieces bundled for a presort destination meets or exceeds the minimum for rate eligibility under 14.0.

* * * * *

25.1.7 Sack Preparation

[Revise 25.1.7 as follows:]

Mailers may combine bundles of pieces prepared under 301.3.0 and bundles of pieces prepared under 25.3 in the same sack.

* * * * *

[Renumber 25.2 through 25.4 as new 25.4 through 25.6. Insert new 25.2 and 25.3 as follows:]

25.2 Physical Standards

Each flat-size piece must be rectangular and must meet the standards in 301.3.0 or the alternative criteria in 25.3.

25.3 Alternative Criteria

25.3.1 General

As an exception to the standards in 301.1.4 and 301.3.2, mailers may prepare automation flat-size pieces according to 25.3 below. Pieces prepared under 25.3 and pieces prepared under 301.3.0 may not be combined in the same bundle. Determine length and height according to 301.1.2.

25.3.2 Weight and Size

The maximum weight for each piece is 6 pounds. The following minimum and maximum dimensions apply:

a. Minimum height is 5 inches. Maximum height is 12 inches.

b. Minimum length is 6 inches. Maximum length is 15 inches.

c. Minimum thickness is 0.009 inch. Maximum thickness is 1.25 inches.

25.3.3 Address Placement on Folded Pieces

Mailers must design folded pieces so that the address is in view when the final folded edge is to the right and any intermediate bound or folded edge is at the bottom of the piece. Unbound flat-size pieces must be at least double-folded.

25.3.4 Flexibility and Deflection

Pieces prepared under 25.3 are not required to meet the minimum standards for flexibility in 301.1.4 or the maximum standards for deflection in 301.3.2.4.

25.3.5 Additional Criteria

Pieces must meet the standards for polywrap coverings in 301.3.3; protrusions and staples in 301.3.4; tabs, wafer seals, tape, and glue in 301.3.5; and uniform thickness and exterior format in 301.3.6.

* * * * *

25.6 Optional Tray Preparation—Flat-Size Barcoded Pieces

[Revise the introductory text in renumbered 25.6 as follows:]

As an option, mailers may place in trays the automation-compatible flat-size pieces prepared under 301.3.0 that would normally be placed in ADC, origin mixed ADC, or mixed ADC sacks. Pieces must not be secured in bundles. Mailers must group together pieces for each 5-digit scheme, 5-digit, 3-digit scheme, 3-digit, and ADC destination as follows:

* * * * *

708 Technical Specifications

1.0 Standardized Documentation for First-Class Mail, Periodicals, Standard Mail, and Flat-Size Bound Printed Matter

* * * * *

1.2 Format and Content

For First-Class Mail, Periodicals, Standard Mail, and flat-size Bound Printed Matter, standardized documentation includes:

* * * * *

c. For mail in trays or sacks, the body of the listing reporting these required elements:

[Revise item c1 as follows:]

1. Tray/sack sortation level. Mailers must note with an asterisk (''*'') all trays containing overflow mail moved into that tray under 235.6.6 and 245.7.5.

* * * * *

[Revise item c3 as follows:]

3. The number of pieces for each 5-digit ZIP Code in 5-digit/scheme bundles or trays; for each 3-digit ZIP Code in 3-digit/scheme bundles or trays; for each 3-digit/scheme in (A)ADC bundles or trays; for each (A)ADC in mixed (A)ADC bundles or trays (or, for Periodicals, origin mixed ADC trays). For automation-rate mailings prepared under the reduced overflow option, the number of pieces in the next higher level tray in lieu of overflow trays. For ECR letters prepared under 245.6.0, the number of pieces in carrier routes within full trays. For automation and nonautomation mail, and ECR Standard Mail, the number of pieces in each bundle level and presort destination.

* * * * *

1.3 Rate Level Column Headings

The actual name of the rate level (or corresponding abbreviation) is used for column headings required by 1.2, *Format and Content*, and shown below:

a. Automation First-Class Mail, Periodicals, and Standard Mail:

[Delete the ''Carrier Route'' entry in item a. Revise the ''3/5'' and ''Basic'' entries as follows:]

Rate	Abbreviation
* * * * *	
5-Digit [Standard Mail flats]	5B
3-Digit [Standard Mail flats]	3B
ADC [Standard Mail flats]	AB
Mixed ADC [Standard Mail flats].	MB
* * * * *	

[Revise item b to add ''machinable and nonmachinable'' to Standard Mail in the introductory text. Delete the ''3/5'' entry and revise the ''5-Digit,'' ''3-Digit,'' and ''Basic'' entries as follows:]

b. Presorted First-Class Mail, nonautomation presorted Periodicals, and machinable and nonmachinable Standard Mail:

Rate	Abbreviation
* * * * *	
5-Digit [Standard Mail letters; Periodicals letters, flats, and parcels].	5D
3-Digit [Standard Mail letters; Periodicals letters, flats, and parcels].	3D
ADC [letters/cards and flats] ...	AD
Mixed ADC [letters/cards and flats].	MD
Mixed ADC [First-Class Mail parcels].	SP
* * * * *	

[Delete the ''Basic Automation'' entry in item c.]

1.4 Sortation Level

[Revise the ''5-Digit Scheme'' entry as follows:]

Sortation level	Abbreviation
* * * * *	
5-Digit Scheme [barcoded and machinable letters].	5DGS
* * * * *	

[Revise the heading of 4.0 as follows:]

4.0 Standards for POSTNET and Intelligent Mail Barcodes

* * * * *

4.4 Reflectance

4.4.1 Background Reflectance

A background reflectance of at least 50% in the red portion and 45% in the green portion of the optical spectrum must be produced in the following locations when measured with a USPS or USPS-licensed envelope reflectance meter:

* * * * *

[Revise item b as follows:]

b. The area surrounding the barcode (within 1/8 inch of the leftmost and rightmost bars and 1/25 inch above and below the barcode) of a card-size, letter-size, or flat-size piece barcoded in the address block and of a flat-size, First-Class Mail parcel, or Not-Flat Machinable piece barcoded elsewhere.

* * * * *

4.4.4 Dark Fibers and Background Patterns

Dark fibers or background patterns (for example, checks) that produce a print contrast ratio of more than 15% when measured in the red and green portions of the optical spectrum are prohibited in these locations:

* * * * *

[Revise item b as follows:]

b. The area of the address block or the area of the mailpiece where the barcode appears on a flat-size piece in an automation rate mailing or on a First-Class Mail parcel or a Not Flat-Machinable piece.

4.5 Skew and Baseline Shift

* * * * *

[Revise heading and text of 4.5.2 as follows:]

4.5.2 Flat-Size Pieces, First-Class Mail Parcels, Standard Mail Irregular Parcels, and Not Flat-Machinable Pieces

The maximum rotational skew (slant or tilt of the individual barcode bars) for barcodes is ±10 degrees from a perpendicular to the baseline of the barcode. There is no positional skew requirement. The individual bars of a barcode must not shift (be vertically offset) more than 0.015 inch from the average baseline of the barcode. For information on barcode placement for flat-size pieces, see 302.4.0. For information on barcode placement on parcels and Not Flat-Machinable pieces weighing less than 6 ounces, see 402.4.0.

[Revise the heading of 5.0 as follows:]

5.0 Standards for Postal Routing Barcodes

5.1 Basic Requirements

[Revise 5.1 as follows:]

Mailers may use a postal routing barcode on parcels and Not Flat-Machinable pieces that meet the eligibility requirements in 433.1.1 for First-Class Mail, 443.4.4 and 443.5.5 for Standard Mail, 453.3.1 for Parcel Post,

463.4.1 for Bound Printed Matter, 473.3.4 for Media Mail, or 483.3.4 for Library Mail. Each parcel must bear a properly prepared UCC/EAN Code 128 barcode symbology as described in 5.3 that accurately represents the correct ZIP Code or ZIP+4 code of the delivery address. For information on barcode placement for parcels, see 402.4.0.

* * * * *

6.0 Barcoding Standards for Container Labels

6.1 Basic Standards—Tray and Sack Labels

6.1.1 Use

* * * * *

Exhibit 6.1.4 3-Digit Content Identifier Numbers

[Revise the content identifier numbers as follows for First-Class Mail letters and parcels, Standard Mail letters, and Periodicals and Bound Printed Matter flats. Add content identifier numbers for Not Flat-Machinable pieces.]

Class and Mailing	CIN	Human-readable content line
* * * * * * *		
First-Class Mail		
FCM Letters—Automation		
[Delete codes 263, 264, and 265 for carrier route trays.]		
* * *		
FCM Letters—Nonautomation Machinable		
[Delete code 252 for 5-digit trays.] * * *		
* * * * * * *		
FCM Parcels—Presorted		
[Add 5-digit scheme sacks as follows:]		
5-digit scheme sacks	289	FCM PARCELS 5D SCH.
* * * * * * *		
Periodicals (PER)		
* * * * * * *		
PER Flats—Nonautomation		
[Add 5-digit scheme sacks as follows:]		
5-digit scheme sacks	378	PER FLT 5D SCH NON BC.
* * * * * * *		
PER Flats—Cosacked Automation and Nonautomation		
[Add 5-digit scheme sacks as follows:]		
5-digit scheme sacks	321	PER FLT 5D SCH BC/NBC.
* * * * * * *		
NEWS Flats—Nonautomation		
[Add 5-digit scheme sacks as follows:]		
5-digit scheme sacks	478	NEWS FLT 5D SCH NON BC.
* * * * * * *		
NEWS Flats—Cosacked Automation and Nonautomation		
[Add 5-digit scheme sacks as follows:]		
5-digit scheme sacks	421	NEWS FLT 5D SCH BC/NBC.
* * * * * * *		
Standard Mail		
[Delete codes 563 through 565 for automation carrier route trays.]		
* * * * * * *		
STD Letters—Nonautomation Machinable		
[Delete code 552 for 5-digit trays.]		
* * * * * * *		
STD Flats—Cosacked Automation and Nonautomation		
[Add 5-digit scheme sacks as follows:]		
5-digit scheme sacks	521	STD FLT 5D SCH BC/NBC.
* * * * * * *		
STD Flats—Nonautomation		
[Add 5-digit scheme sacks as follows:]		
5-digit scheme sacks	578	STD FLTS 5D SCH NON BC.
* * * * * * *		
[Add Not Flat-Machinable pieces as follows:]		
STD Not Flat-Machinable Pieces Less Than 6 Ounces—Nonautomation		
5-digit sacks	500	STD NFM 5D.
5-digit scheme sacks	500	STD NFM 5D SCH.

Class and Mailing	CIN	Human-readable content line
3-digit sacks	501	STD NFM 3D.
ADC sacks	502	STD NFM ADC.
Mixed ADC/Mixed BMC sacks	506	STD NFM WKG.
* * * * * * *		
[Add Not Flat-Machinable pieces as follows:]		
STD Not Flat-Machinable Pieces 6 Ounces or more—Nonautomation		
5-digit sacks	500	STD NFM MACH 5D.
5-digit scheme sacks	500	STD NFM MACH 5D SCH.
ASF sacks	503	STD NFM MACH ASF.
BMC sacks	505	STD NFM MACH BMC.
Mixed ADC/Mixed BMC sacks	506	STD NFM MACH WKG.
* * * * * * *		
Package Services		
* * * * * * *		
Presorted BPM—Flats		
[Add 5-digit scheme sacks as follows:]		
5-digit scheme sacks	649	PSV FLT 5D SCH NON BC.
* * * * * * *		
BPM Flats—Cosacked Barcoded and Presorted		
[Add 5-digit scheme sacks as follows:]		
5-digit scheme sacks	648	PSV FLT 5D SCH BC/NBC.
* * * * * * *		

7.0 Optional Endorsement Lines (OELs)

7.1 OEL Use

7.1.1 Basic Standards

* * * * *

Exhibit 7.1.1 OEL Formats

[Delete the example for ''Carrier Route—Automation (First-Class Mail and Standard Mail).'']

* * * * *

7.2 OEL Format

* * * * *

7.2.5 ZIP Code Information

[Revise 7.2.5 to change the reference from 6.0 to 8.2 as follows:]

Except for carrier route bundles, the OEL must include the ZIP Code information (5-digit ZIP Code or 3-digit ZIP Code prefix) determined by the sortation level and, when applicable, by the labeling list designated in Exhibit 7.2.5 for ADC, mixed ADC, AADC, or mixed AADC sortation levels. Carrier route OELs must show carrier route information as specified in 8.2.

* * * * *

8.0 Carrier Route Information Lines

8.1 Basic Information

[Revise 8.1 as follows:]

Mailers must prepare bundles of all mailpieces mailed at carrier route rates with optional endorsement lines under 7.0, carrier route information lines under 8.2, or facing slips (see 245.2.11 for Standard Mail letters, 345.2.14 for Standard Mail flats, 365.2.13 for Bound Printed Matter flats, 445.2.12 for Standard Mail parcels, 465.2.12 for Bound Printed Matter parcels, and 707.19.16 for Periodicals). Carrier route information lines may be on all pieces in a mailing, regardless of presort level. Mailers must use optional endorsement lines or carrier route information lines on all pieces in mailings of Standard Mail letters prepared under 245.6.7, except for pieces in full carrier routes trays.

* * * * *

709 Experimental Classifications and Rates

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[Delete 5.0, Priority Mail Flat-Rate Box. Renumber remaining sections 6.0 and 7.0 as new 5.0 and 6.0. The Priority Mail Flat-Rate Box becomes a permanent offering in 123.]

* * * * *

Neva R. Watson,

Attorney, Legislative.

BILLING CODE 7710–12–P

UNITED STATES POSTAL SERVICE.

Rates and Fees

Effective
May 14, 2007

RETAIL RATES

Express Mail
Priority Mail
First-Class Mail
Media Mail
Library Mail
Parcel Post

DISCOUNT RATES

Letters
First-Class Mail
Standard Mail

Flats
First-Class Mail
Media Mail
Library Mail
Standard Mail
Bound Printed Matter

Parcels
First-Class Mail
Standard Mail
Bound Printed Matter
Parcel Post
Media Mail
Library Mail

Periodicals

FEES

Extra Services
Recipient Services
Mailer Services
Other Fees and Charges

Postal Explorer pe.usps.com

Express Mail

RETAIL LETTERS, FLATS, & PARCELS

Weight Not Over (pounds)	Service[1] Custom Designed	Next Day & Second Day PO to PO	Next Day & Second Day PO to Addressee
1/2[2]	$14.15	$13.85	$16.25
1	17.40	17.10	19.50
2	19.30	19.00	21.40
3	22.40	22.10	24.50
4	25.50	25.20	27.60
5	28.60	28.30	30.70
6	31.70	31.40	33.80
7	34.80	34.50	36.90
8	37.90	37.60	40.00
9	41.00	40.70	43.10
10	43.15	42.85	45.25
11	45.30	45.00	47.40
12	47.45	47.15	49.55
13	49.60	49.30	51.70
14	51.75	51.45	53.85
15	53.90	53.60	56.00
16	56.05	55.75	58.15
17	58.20	57.90	60.30
18	60.35	60.05	62.45
19	62.50	62.20	64.60
20	64.65	64.35	66.75
21	66.80	66.50	68.90
22	68.95	68.65	71.05
23	71.10	70.80	73.20
24	73.25	72.95	75.35
25	75.40	75.10	77.50
26	77.55	77.25	79.65
27	79.70	79.40	81.80
28	81.85	81.55	83.95
29	84.00	83.70	86.10
30	86.15	85.85	88.25
31	88.30	88.00	90.40
32	90.45	90.15	92.55
33	92.60	92.30	94.70
34	94.75	94.45	96.85
35	96.90	96.60	99.00
36	99.05	98.75	101.15
37	101.20	100.90	103.30
38	103.35	103.05	105.45
39	105.50	105.20	107.60
40	$107.65	$107.35	$109.75
41	109.80	109.50	111.90
42	111.95	111.65	114.05
43	114.10	113.80	116.20
44	116.25	115.95	118.35
45	118.40	118.10	120.50
46	120.55	120.25	122.65
47	122.70	122.40	124.80
48	124.85	124.55	126.95
49	127.00	126.70	129.10
50	129.15	128.85	131.25
51	131.30	131.00	133.40
52	133.45	133.15	135.55
53	135.60	135.30	137.70
54	137.75	137.45	139.85
55	139.90	139.60	142.00
56	142.05	141.75	144.15
57	144.20	143.90	146.30
58	146.35	146.05	148.45
59	148.50	148.20	150.60
60	150.65	150.35	152.75
61	152.80	152.50	154.90
62	154.95	154.65	157.05
63	157.10	156.80	159.20
64	159.25	158.95	161.35
65	161.40	161.10	163.50
66	163.55	163.25	165.65
67	165.70	165.40	167.80
68	167.85	167.55	169.95
69	170.00	169.70	172.10
70	172.15	171.85	174.25

1. Same Day Airport service is currently suspended.
2. The 1/2-pound rate is charged for matter sent in an Express Mail flat-rate envelope provided by the USPS, regardless of weight.

Retail Mail: Priority Mail

Retail Mail

Priority Mail

RETAIL LETTERS, CARDS, FLATS, & PARCELS

Weight Not Over (pounds)	Zone[1,2,3,4,5] Local, 1 & 2	3	4	5	6	7	8
1	$4.60	$4.60	$4.60	$4.60	$4.60	$4.60	$4.60
2	4.60	4.90	5.30	6.20	6.55	7.00	7.50
3	5.05	5.70	6.40	8.25	9.10	9.65	10.55
4	5.70	6.65	7.70	10.20	11.10	12.20	13.45
5	6.30	7.55	8.90	11.90	12.90	14.35	15.85
6	6.85	8.25	10.00	12.95	13.10	14.75	16.05
7	7.35	8.85	11.00	13.95	14.35	16.40	18.30
8	7.75	9.60	11.95	14.90	15.60	18.00	20.55
9	8.15	10.25	12.50	15.90	16.85	19.60	22.85
10	8.50	10.75	13.10	16.95	18.25	21.30	25.05
11	8.80	11.20	13.65	17.95	19.75	22.90	26.35
12	9.15	11.70	14.20	18.95	21.30	24.10	27.50
13	9.50	12.20	14.75	20.00	22.85	25.05	28.45
14	9.80	12.70	15.35	20.90	24.10	26.50	29.85
15	10.15	13.20	15.90	21.55	24.65	26.75	30.50
16	10.35	13.45	16.20	22.00	25.20	27.35	31.25
17	10.50	13.70	16.50	22.55	25.85	28.05	32.10
18	10.70	13.90	16.80	23.00	26.35	28.60	32.85
19	11.10	14.15	17.10	23.55	27.00	29.30	33.70
20	11.60	14.35	17.40	23.95	27.50	29.85	34.40
21	12.00	14.55	17.70	24.35	27.95	30.40	35.10
22	12.50	14.80	17.95	24.90	28.60	31.10	35.95
23	12.90	15.00	18.45	25.30	29.10	31.65	36.60
24	13.35	15.20	19.00	25.85	29.70	32.35	37.50
25	13.85	15.40	19.65	26.25	30.15	32.85	38.15
26	14.25	15.60	20.25	26.80	30.80	33.55	39.35
27	14.70	15.80	20.85	27.20	31.25	34.05	40.80
28	15.15	16.00	21.40	27.55	31.70	34.55	42.30
29	15.60	16.20	22.05	27.90	32.10	35.00	43.70
30	16.10	16.40	22.65	28.30	32.55	35.50	45.15
31	16.50	16.55	23.25	28.65	32.95	35.95	46.65
32	16.95	16.95	23.85	29.00	33.40	36.80	48.10
33	17.40	17.40	24.40	29.35	33.80	37.85	49.50
34	17.85	17.85	25.05	30.00	34.80	38.90	50.95
35	18.30	18.30	25.65	30.65	35.75	39.95	52.40
36	18.75	18.75	26.25	31.30	36.70	41.05	53.85
37	19.20	19.20	26.95	31.90	37.65	42.10	55.30
38	19.65	19.65	27.50	32.55	38.70	43.10	56.75
39	20.05	20.05	28.25	33.20	39.65	44.20	58.25
40	20.45	20.45	28.90	33.85	40.55	45.20	59.65
41	20.85	20.85	29.50	34.20	41.50	46.25	61.10
42	21.25	21.25	30.25	34.90	42.40	47.35	62.55
43	21.65	21.65	30.90	35.70	43.45	48.40	64.00
44	22.05	22.05	31.50	36.50	44.35	49.50	65.45

Weight Not Over (pounds)	Zone[1,2,3,4,5] Local, 1 & 2	3	4	5	6	7	8
45	$22.45	$22.45	$32.20	$37.25	$45.30	$50.55	$66.90
46	22.85	22.85	32.90	38.00	46.25	51.60	68.35
47	23.25	23.25	33.50	38.80	47.30	52.70	69.75
48	23.65	23.65	34.25	39.60	48.25	53.75	71.25
49	24.05	24.05	34.90	40.30	49.15	54.85	72.70
50	24.40	24.40	35.55	41.10	50.10	55.90	74.15
51	24.85	24.85	36.20	41.90	51.05	56.95	75.60
52	25.20	25.20	36.90	42.70	52.10	58.00	77.05
53	25.65	25.65	37.50	43.45	53.00	59.10	78.50
54	26.00	26.00	38.15	44.25	53.90	60.10	79.90
55	26.45	26.45	38.90	45.05	54.85	61.10	81.35
56	26.80	26.80	39.50	45.75	55.90	62.20	82.85
57	27.25	27.25	40.15	46.50	56.80	63.25	84.30
58	27.60	27.60	40.85	47.30	57.75	64.30	85.70
59	28.05	28.05	41.50	48.10	58.70	65.35	87.20
60	28.40	28.40	42.15	48.90	59.70	66.40	88.65
61	28.85	28.85	42.90	49.65	60.70	67.45	90.10
62	29.20	29.20	43.50	50.45	61.60	68.50	91.50
63	29.65	29.65	44.20	51.25	62.55	69.55	92.95
64	30.00	30.00	44.85	52.05	63.50	70.55	94.45
65	30.45	30.45	45.45	52.70	64.50	71.65	95.90
66	30.80	30.80	46.15	53.50	65.40	72.70	97.30
67	31.25	31.25	46.90	54.30	66.35	73.70	98.80
68	31.60	31.60	47.50	55.10	67.30	74.80	100.20
69	32.05	32.05	48.15	55.90	68.30	75.85	101.65
70	32.45	32.45	48.90	56.65	69.25	76.90	103.10

1. Parcels addressed for delivery to zones 1-4 (including local) that weigh less than 20 pounds but measure more than 84 inches in combined length and girth (but not more than 108 inches) are charged the applicable rate for a 20-pound parcel (balloon rate).
2. Parcels addressed for delivery to zones 5-8 that exceed 1 cubic foot (1,728 cubic inches) are charged based on the actual weight or the dimensional weight (as calculated in 123.1.4), whichever is greater.
3. For keys and ID devices that weigh:
   - Up to 13 ounces, refer to retail First-Class Mail parcel rates.
   - More than 13 ounces but not more than 1 pound, $5.30.
   - More than 1 pound but not more than 2 pounds, $6.00.
4. $4.60 is charged for matter sent in a Priority Mail flat-rate envelope provided by the USPS, regardless of weight or destination.
5. $9.15 is charged for material sent in a Priority Mail flat-rate box provided by the USPS, regardless of weight or destination.

First-Class Mail
RETAIL LETTERS AND CARDS

Weight Not Over (ounces)	Single-Piece
1[1]	$0.41
2	0.58
3	0.75
3.5[2]	0.92
Card Rate[3]	0.26

1. Letters that weigh 1 ounce or less and meet one or more of the nonmachinable characteristics in DMM 101.1.2 are subject to the $0.17 nonmachinable surcharge.
2. For weights over 3.5 ounces, see flat-size rates.
3. The card rate applies to each single or double postcard when originally mailed; reply half of double postcard must be designed for reply mail purposes only.

First-Class Mail
RETAIL FLATS

Weight Not Over (ounces)[1]	Single-Piece
1	$0.80
2	0.97
3	1.14
4	1.31
5	1.48
6	1.65
7	1.82
8	1.99
9	2.16
10	2.33
11	2.50
12	2.67
13	2.84

1. Flat-size pieces with certain characteristics (see 101.2.0) are subject to parcel rates.

First-Class Mail
RETAIL PARCELS

Weight Not Over (ounces)[1]	Single-Piece
1	$1.13
2	1.30
3	1.47
4	1.64
5	1.81
6	1.98
7	2.15
8	2.32
9	2.49
10	2.66
11	2.83
12	3.00
13	3.17

1. For keys and ID devices, add $0.70. If more than 13 ounces, see retail Priority Mail rates.

Retail Mail: Media Mail • Library Mail

Retail Mail

Media Mail
RETAIL FLATS & PARCELS

Weight Not Over (pounds)	Single-Piece[1]	Weight Not Over (pounds)	Single-Piece[1]
1	$2.13	36	$14.03
2	2.47	37	14.37
3	2.81	38	14.71
4	3.15	39	15.05
5	3.49	40	15.39
6	3.83	41	15.73
7	4.17	42	16.07
8	4.51	43	16.41
9	4.85	44	16.75
10	5.19	45	17.09
11	5.53	46	17.43
12	5.87	47	17.77
13	6.21	48	18.11
14	6.55	49	18.45
15	6.89	50	18.79
16	7.23	51	19.13
17	7.57	52	19.47
18	7.91	53	19.81
19	8.25	54	20.15
20	8.59	55	20.49
21	8.93	56	20.83
22	9.27	57	21.17
23	9.61	58	21.51
24	9.95	59	21.85
25	10.29	60	22.19
26	10.63	61	22.53
27	10.97	62	22.87
28	11.31	63	23.21
29	11.65	64	23.55
30	11.99	65	23.89
31	12.33	66	24.23
32	12.67	67	24.57
33	13.01	68	24.91
34	13.35	69	25.25
35	13.69	70	25.59

1. Machinable parcels may be eligible for barcode discount of $0.03 per parcel (50-piece minimum).

Library Mail
RETAIL FLATS & PARCELS

Weight Not Over (pounds)	Single-Piece[1]	Weight Not Over (pounds)	Single-Piece[1]
1	$2.02	36	$13.22
2	2.34	37	13.54
3	2.66	38	13.86
4	2.98	39	14.18
5	3.30	40	14.50
6	3.62	41	14.82
7	3.94	42	15.14
8	4.26	43	15.46
9	4.58	44	15.78
10	4.90	45	16.10
11	5.22	46	16.42
12	5.54	47	16.74
13	5.86	48	17.06
14	6.18	49	17.38
15	6.50	50	17.70
16	6.82	51	18.02
17	7.14	52	18.34
18	7.46	53	18.66
19	7.78	54	18.98
20	8.10	55	19.30
21	8.42	56	19.62
22	8.74	57	19.94
23	9.06	58	20.26
24	9.38	59	20.58
25	9.70	60	20.90
26	10.02	61	21.22
27	10.34	62	21.54
28	10.66	63	21.86
29	10.98	64	22.18
30	11.30	65	22.50
31	11.62	66	22.82
32	11.94	67	23.14
33	12.26	68	23.46
34	12.58	69	23.78
35	12.90	70	24.10

1. Machinable parcels may be eligible for barcode discount of $0.03 per parcel (50-piece minimum).

Parcel Post (Local and Intra-BMC/ASF)

RETAIL PARCELS

Weight Not Over (pounds)	Machinable[1, 2, 3, 4]					Nonmachinable[1, 2, 4, 5]				
	Zone					Zone				
	Local	1 & 2	3	4	5	Local	1 & 2	3	4	5
1	$3.42	$3.67	$3.70	$3.78	$3.96	$6.29	$6.54	$6.57	$6.65	$6.83
2	3.80	4.34	4.38	4.47	4.72	6.67	7.21	7.25	7.34	7.59
3	4.15	4.96	5.00	5.11	5.46	7.02	7.83	7.87	7.98	8.33
4	4.47	5.37	5.58	5.69	6.13	7.34	8.24	8.45	8.56	9.00
5	4.76	5.74	6.07	6.21	6.76	7.63	8.61	8.94	9.08	9.63
6	5.03	6.09	6.53	6.67	7.32	7.90	8.96	9.40	9.54	10.19
7	5.24	6.42	6.94	7.10	7.86	8.11	9.29	9.81	9.97	10.73
8	5.42	6.95	7.33	7.50	8.34	8.29	9.82	10.20	10.37	11.21
9	5.60	7.24	7.69	7.90	8.79	8.47	10.11	10.56	10.77	11.66
10	5.77	7.55	8.07	8.53	9.21	8.64	10.42	10.94	11.40	12.08
11	5.93	7.82	8.38	8.86	9.59	8.80	10.69	11.25	11.73	12.46
12	6.09	8.10	8.69	9.18	9.96	8.96	10.97	11.56	12.05	12.83
13	6.25	8.28	8.97	9.48	10.30	9.12	11.15	11.84	12.35	13.17
14	6.39	8.44	9.22	9.81	10.61	9.26	11.31	12.09	12.68	13.48
15	6.53	8.59	9.49	10.07	10.90	9.40	11.46	12.36	12.94	13.77
16	6.68	8.74	9.76	10.33	11.20	9.55	11.61	12.63	13.20	14.07
17	6.80	8.92	10.01	10.61	11.45	9.67	11.79	12.88	13.48	14.32
18	6.93	9.05	10.25	10.84	11.70	9.80	11.92	13.12	13.71	14.57
19	7.05	9.20	10.49	11.08	11.94	9.92	12.07	13.36	13.95	14.81
20	7.19	9.35	10.73	11.28	12.15	10.06	12.22	13.60	14.15	15.02
21	7.30	9.46	10.95	11.49	12.36	10.17	12.33	13.82	14.36	15.23
22	7.42	9.62	11.17	11.71	12.55	10.29	12.49	14.04	14.58	15.42
23	7.53	9.72	11.40	11.93	12.76	10.40	12.59	14.27	14.80	15.63
24	7.65	9.85	11.61	12.15	12.93	10.52	12.72	14.48	15.02	15.80
25	7.76	9.96	11.81	12.35	13.11	10.63	12.83	14.68	15.22	15.98
26	7.86	10.10	12.00	12.56	13.26	10.73	12.97	14.87	15.43	16.13
27	7.97	10.21	12.21	12.76	13.42	10.84	13.08	15.08	15.63	16.29
28	8.07	10.31	12.41	12.94	13.59	10.94	13.18	15.28	15.81	16.46
29	8.18	10.43	12.60	13.13	13.79	11.05	13.30	15.47	16.00	16.66
30	8.29	10.54	12.78	13.31	13.97	11.16	13.41	15.65	16.18	16.84
31	8.38	10.65	12.94	13.49	14.17	11.25	13.52	15.81	16.36	17.04
32	8.46	10.76	13.13	13.67	14.34	11.33	13.63	16.00	16.54	17.21
33	8.57	10.86	13.29	13.83	14.52	11.44	13.73	16.16	16.70	17.39
34	8.63	10.96	13.40	14.00	14.69	11.50	13.83	16.27	16.87	17.56
35	8.70	11.05	13.55	14.16	14.86	11.57	13.92	16.42	17.03	17.73

1. For parcels that originate and destinate in the same BMC service area.
2. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 20 pounds, use 20-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates regardless of weight.
3. Machinable parcels may be eligible for barcode discount of $0.03 per parcel (50-piece minimum).
4. Regardless of weight, a parcel that meets any of the criteria in 101.7.2 (for retail) or 401.2.3.2 (for discount) must pay the nonmachinable rates.
5. Rates include the $2.87 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

Retail Mail: Parcel Post (Local and Intra-BMC/ASF)

Parcel Post (Local and Intra-BMC/ASF)

RETAIL PARCELS

Weight Not Over (pounds)	Machinable[1, 2, 3, 4] Zone					Nonmachinable[1, 2, 4, 5] Zone				
	Local	1 & 2	3	4	5	Local	1 & 2	3	4	5
36	For parcels over 35 pounds, use nonmachinable rates.					$11.65	$14.01	$16.53	$17.18	$17.89
37	---	---	---	---	---	11.70	14.13	16.65	17.34	18.05
38	---	---	---	---	---	11.76	14.22	16.78	17.49	18.21
39	---	---	---	---	---	11.85	14.32	16.91	17.63	18.36
40	---	---	---	---	---	11.93	14.39	17.01	17.78	18.51
41	---	---	---	---	---	12.01	14.52	17.16	17.87	18.66
42	---	---	---	---	---	12.07	14.58	17.26	17.98	18.80
43	---	---	---	---	---	12.15	14.66	17.37	18.05	18.94
44	---	---	---	---	---	12.24	14.77	17.48	18.13	19.07
45	---	---	---	---	---	12.30	14.83	17.57	18.35	19.20
46	---	---	---	---	---	12.35	14.96	17.69	18.42	19.44
47	---	---	---	---	---	12.44	15.05	17.78	18.50	19.83
48	---	---	---	---	---	12.50	15.12	17.90	18.55	20.24
49	---	---	---	---	---	12.56	15.22	18.00	18.61	20.64
50	---	---	---	---	---	12.62	15.26	18.09	18.67	21.06
51	---	---	---	---	---	12.71	15.38	18.17	18.74	21.48
52	---	---	---	---	---	12.75	15.47	18.31	18.80	21.92
53	---	---	---	---	---	12.82	15.51	18.38	18.83	22.37
54	---	---	---	---	---	12.91	15.58	18.43	18.90	22.83
55	---	---	---	---	---	12.97	15.66	18.50	18.96	23.02
56	---	---	---	---	---	13.01	15.75	18.55	19.03	23.10
57	---	---	---	---	---	13.08	15.84	18.57	19.06	23.24
58	---	---	---	---	---	13.15	15.91	18.63	19.11	23.33
59	---	---	---	---	---	13.22	15.99	18.67	19.16	23.43
60	---	---	---	---	---	13.24	16.08	18.70	19.19	23.54
61	---	---	---	---	---	13.36	16.16	18.76	19.25	23.63
62	---	---	---	---	---	13.39	16.23	18.80	19.33	23.72
63	---	---	---	---	---	13.47	16.30	18.82	19.42	23.81
64	---	---	---	---	---	13.53	16.38	18.85	19.50	23.91
65	---	---	---	---	---	13.58	16.46	18.90	19.58	23.98
66	---	---	---	---	---	13.62	16.55	18.93	19.67	24.09
67	---	---	---	---	---	13.73	16.62	18.96	19.77	24.16
68	---	---	---	---	---	13.78	16.65	18.99	19.82	24.24
69	---	---	---	---	---	13.79	16.75	19.02	19.91	24.33
70	---	---	---	---	---	13.80	16.82	19.06	20.00	24.41
Oversized	---	---	---	---	---	28.82	41.78	42.17	43.01	44.28

1. For parcels that originate and destinate in the same BMC service area.
2. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 20 pounds, use 20-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates regardless of weight.
3. Machinable parcels may be eligible for barcode discount of $0.03 per parcel (50-piece minimum).
4. Regardless of weight, a parcel that meets any of the criteria in 101.7.2 (for retail) or 401.2.3.2 (for discount) must pay the nonmachinable rates.
5. Rates include the $2.87 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

Parcel Post (Inter-BMC/ASF)

RETAIL PARCELS

Weight Not Over (pounds)	Machinable[1, 2, 3, 4, 6, 7] Zone 1 & 2	3	4	5	6	7	8	Nonmachinable[1, 2, 4, 5, 6, 7] Zone 1 & 2	3	4	5	6	7	8
1	$4.38	$4.50	$4.50	$4.50	$4.50	$4.50	$4.50	$8.27	$8.39	$8.39	$8.39	$8.39	$8.39	$8.39
2	4.50	4.80	5.20	5.67	6.00	6.15	6.15	8.39	8.69	9.09	9.56	9.89	10.04	10.04
3	4.95	5.60	6.30	7.02	7.05	7.33	7.93	8.84	9.49	10.19	10.91	10.94	11.22	11.82
4	5.60	6.55	7.47	7.78	8.04	8.45	9.25	9.49	10.44	11.36	11.67	11.93	12.34	13.14
5	6.20	7.45	8.23	8.59	8.98	9.50	10.50	10.09	11.34	12.12	12.48	12.87	13.39	14.39
6	6.75	8.15	8.97	9.36	9.83	10.48	11.77	10.64	12.04	12.86	13.25	13.72	14.37	15.66
7	7.25	8.61	9.67	10.09	10.64	11.44	12.88	11.14	12.50	13.56	13.98	14.53	15.33	16.77
8	7.65	8.94	10.36	10.79	11.41	12.32	14.08	11.54	12.83	14.25	14.68	15.30	16.21	17.97
9	8.05	9.27	10.99	11.47	12.14	13.14	15.21	11.94	13.16	14.88	15.36	16.03	17.03	19.10
10	8.40	10.37	11.62	12.12	12.84	13.92	16.17	12.29	14.26	15.51	16.01	16.73	17.81	20.06
11	8.70	10.69	12.22	12.75	13.52	14.68	17.08	12.59	14.58	16.11	16.64	17.41	18.57	20.97
12	8.96	10.97	12.80	13.36	14.17	15.40	17.96	12.85	14.86	16.69	17.25	18.06	19.29	21.85
13	9.14	11.22	13.37	13.95	14.80	16.10	18.80	13.03	15.11	17.26	17.84	18.69	19.99	22.69
14	9.32	11.53	13.91	14.53	15.41	16.77	19.61	13.21	15.42	17.80	18.42	19.30	20.66	23.50
15	9.48	11.79	14.44	15.09	15.99	17.43	20.40	13.37	15.68	18.33	18.98	19.88	21.32	24.29
16	9.62	12.04	14.96	15.64	16.56	18.06	21.16	13.51	15.93	18.85	19.53	20.45	21.95	25.05
17	9.80	12.25	15.46	16.18	17.12	18.67	21.89	13.69	16.14	19.35	20.07	21.01	22.56	25.78
18	9.93	12.48	15.78	16.70	17.66	19.27	22.61	13.82	16.37	19.67	20.59	21.55	23.16	26.50
19	10.10	12.71	16.13	17.21	18.18	19.85	23.30	13.99	16.60	20.02	21.10	22.07	23.74	27.19
20	10.22	12.92	16.42	17.71	18.70	20.41	23.98	14.11	16.81	20.31	21.60	22.59	24.30	27.87
21	10.37	13.14	16.72	18.20	19.19	20.96	24.64	14.26	17.03	20.61	22.09	23.08	24.85	28.53
22	10.49	13.31	17.02	18.69	19.68	21.50	25.28	14.38	17.20	20.91	22.58	23.57	25.39	29.17
23	10.63	13.55	17.33	19.16	20.16	22.02	25.90	14.52	17.44	21.22	23.05	24.05	25.91	29.79
24	10.73	13.72	17.58	19.62	20.62	22.54	26.51	14.62	17.61	21.47	23.51	24.51	26.43	30.40
25	10.87	13.90	17.85	20.08	21.08	23.04	27.11	14.76	17.79	21.74	23.97	24.97	26.93	31.00
26	10.97	14.07	18.10	20.53	21.53	23.53	27.69	14.86	17.96	21.99	24.42	25.42	27.42	31.58
27	11.12	14.25	18.33	20.97	21.97	24.01	28.26	15.01	18.14	22.22	24.86	25.86	27.90	32.15
28	11.21	14.42	18.60	21.40	22.39	24.48	28.82	15.10	18.31	22.49	25.29	26.28	28.37	32.71
29	11.34	14.60	18.84	21.83	22.81	24.94	29.36	15.23	18.49	22.73	25.72	26.70	28.83	33.25
30	11.44	14.74	19.05	22.24	23.23	25.39	29.90	15.33	18.63	22.94	26.13	27.12	29.28	33.79
31	11.57	14.89	19.27	22.66	23.63	25.83	30.42	15.46	18.78	23.16	26.55	27.52	29.72	34.31
32	11.65	15.05	19.49	23.06	24.03	26.27	30.94	15.54	18.94	23.38	26.95	27.92	30.16	34.83
33	11.75	15.21	19.71	23.46	24.42	26.69	31.44	15.64	19.10	23.60	27.35	28.31	30.58	35.33
34	11.87	15.31	19.88	23.86	24.81	27.11	31.93	15.76	19.20	23.77	27.75	28.70	31.00	35.82
35	11.97	15.48	20.09	24.25	25.19	27.53	32.42	15.86	19.37	23.98	28.14	29.08	31.42	36.31

1. For parcels that destinate to different BMC service areas.
2. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 20 pounds, use 20-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates regardless of weight.
3. Machinable parcels may be eligible for barcode discount of $0.03 per parcel (50-piece minimum).
4. Regardless of weight, a parcel that meets any of the criteria in 101.7.2 (for retail) or 401.2.3.2 (for discount) must pay the nonmachinable rates.
5. Rates include the $3.89 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.
6. For OBMC Presort discount, deduct $1.50 per parcel.
7. For BMC Presort discount, deduct $0.26 per parcel.

Retail Mail: Parcel Post (Inter-BMC/ASF)

Retail Mail

Parcel Post (Inter-BMC/ASF)

RETAIL PARCELS

Weight Not Over (pounds)	Machinable[1, 2, 3, 4, 6, 7] Zone 1 & 2	3	4	5	6	7	8	Nonmachinable[1, 2, 4, 5, 6, 7] Zone 1 & 2	3	4	5	6	7	8
36	For parcels over 35 pounds, use nonmachinable rates.							$15.95	$19.50	$24.20	$28.52	$29.45	$31.82	$36.79
37	---	---	---	---	---	---	---	16.05	19.62	24.35	28.90	29.81	32.22	37.26
38	---	---	---	---	---	---	---	16.14	19.79	24.53	29.27	30.17	32.61	37.72
39	---	---	---	---	---	---	---	16.25	19.88	24.70	29.65	30.53	33.00	38.17
40	---	---	---	---	---	---	---	16.34	20.04	24.89	30.01	30.88	33.38	38.62
41	---	---	---	---	---	---	---	16.46	20.17	25.04	30.37	31.22	33.76	39.06
42	---	---	---	---	---	---	---	16.54	20.28	25.21	30.73	31.56	34.12	39.49
43	---	---	---	---	---	---	---	16.60	20.40	25.38	31.08	31.90	34.49	39.92
44	---	---	---	---	---	---	---	16.70	20.49	25.52	31.42	32.23	34.85	40.34
45	---	---	---	---	---	---	---	16.79	20.63	25.69	31.77	32.55	35.20	40.75
46	---	---	---	---	---	---	---	16.88	20.74	25.85	32.11	32.87	35.55	41.16
47	---	---	---	---	---	---	---	16.99	20.87	25.98	32.31	33.19	35.89	41.56
48	---	---	---	---	---	---	---	17.06	20.97	26.15	32.48	33.51	36.23	41.95
49	---	---	---	---	---	---	---	17.12	21.09	26.28	32.65	33.81	36.56	42.35
50	---	---	---	---	---	---	---	17.20	21.17	26.39	32.82	34.12	36.90	42.73
51	---	---	---	---	---	---	---	17.31	21.30	26.55	32.98	34.42	37.22	43.11
52	---	---	---	---	---	---	---	17.37	21.40	26.68	33.13	34.72	37.54	43.48
53	---	---	---	---	---	---	---	17.48	21.48	26.77	33.28	35.01	37.86	43.86
54	---	---	---	---	---	---	---	17.54	21.62	26.93	33.43	35.30	38.17	44.22
55	---	---	---	---	---	---	---	17.61	21.66	27.06	33.58	35.59	38.49	44.58
56	---	---	---	---	---	---	---	17.71	21.82	27.17	33.73	35.87	38.79	44.94
57	---	---	---	---	---	---	---	17.79	21.90	27.30	33.86	36.15	39.09	45.29
58	---	---	---	---	---	---	---	17.85	21.99	27.41	34.00	36.43	39.39	45.64
59	---	---	---	---	---	---	---	17.94	22.08	27.54	34.13	36.71	39.69	45.98
60	---	---	---	---	---	---	---	18.02	22.17	27.67	34.26	36.98	39.98	46.32
61	---	---	---	---	---	---	---	18.13	22.30	27.76	34.38	37.25	40.27	46.66
62	---	---	---	---	---	---	---	18.19	22.36	27.88	34.51	37.51	40.56	46.99
63	---	---	---	---	---	---	---	18.24	22.47	27.99	34.62	37.77	40.84	47.31
64	---	---	---	---	---	---	---	18.31	22.53	28.08	34.74	38.03	41.12	47.64
65	---	---	---	---	---	---	---	18.39	22.64	28.20	34.86	38.29	41.40	47.96
66	---	---	---	---	---	---	---	18.49	22.73	28.29	34.96	38.55	41.67	48.28
67	---	---	---	---	---	---	---	18.57	22.82	28.41	35.08	38.80	41.94	48.59
68	---	---	---	---	---	---	---	18.62	22.90	28.53	35.18	39.05	42.21	48.90
69	---	---	---	---	---	---	---	18.68	22.96	28.62	35.29	39.30	42.48	49.21
70	---	---	---	---	---	---	---	18.78	23.08	28.72	35.38	39.54	42.74	49.51
Oversized	---	---	---	---	---	---	---	50.54	55.19	58.28	69.40	83.99	97.82	127.24

1. For parcels that destinate to different BMC service areas.
2. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 20 pounds, use 20-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates regardless of weight.
3. Machinable parcels may be eligible for barcode discount of $0.03 per parcel (50-piece minimum).
4. Regardless of weight, a parcel that meets any of the criteria in 101.7.2 (for retail) or 401.2.3.2 (for discount) must pay the nonmachinable rates.
5. Rates include the $3.89 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.
6. For OBMC Presort discount, deduct $1.50 per parcel.
7. For BMC Presort discount, deduct $0.26 per parcel.

First-Class Mail

DISCOUNT LETTERS & CARDS

Weight Not Over (ounces)	Automation				Nonautomation
	5-Digit	3-Digit	AADC	Mixed AADC	Presorted
1	$0.312	$0.334	$0.341	$0.360	$0.373[1]
2	0.437	0.459	0.466	0.485	0.543
3	0.562	0.584	0.591	0.610	0.713
3.5	0.687	0.709	0.716	0.735	0.883[2]
Card Rate[3]	0.191	0.204	0.208	0.220	0.241

1. Letters that weigh 1 ounce or less and meet one or more of the nonmachinable characteristics in DMM 201.1.2 are subject to the $0.17 nonmachinable surcharge.
2. The maximum weight for machinable letter preparation is 3.3 ounces.
3. The card rate applies to each single or double postcard when originally mailed; reply half of double postcard must be designed for reply mail purposes only.

Standard Mail Regular

DISCOUNT LETTERS—ENHANCED CARRIER ROUTE & AUTOMATION

	Entry Discount	Enhanced Carrier Route (ECR)[1]			Automation			
		Saturation	High Density	Basic	5-Digit	3-Digit	AADC	Mixed AADC
Letters weighing 3.3 oz. or less	None	$0.177	$0.186	$0.226	$0.218	$0.233	$0.238	$0.252
	DBMC	0.144	0.153	0.193	0.185	0.200	0.205	0.219
per piece rate	DSCF	0.135	0.144	0.184	0.176	0.191	0.196	---
	DDU	---	---	---	---	---	---	---
more than 3.3 oz.[2]	None	0.621	0.621	0.621	0.739	0.739	0.739	0.739
	DBMC	0.462	0.462	0.462	0.580	0.580	0.580	0.580
per pound rate	DSCF	0.418	0.418	0.418	0.536	0.536	0.536	---
	DDU	---	---	---	---	---	---	---
+		+	+	+	+	+	+	+
per piece rate		0.049[3]	0.058[3]	0.098[3]	0.069[3]	0.084[3]	0.089[3]	0.103[3]

1. ECR letters that are not automation-compatible and barcoded (201.3.0) are mailable at the flat-size rates (243.6.4 or 243.6.5). Mailers may not pay ECR flat rates and claim the DDU discount for letter-size pieces.
2. For pieces weighing more than 3.3 ounces, each piece is subject to both a per piece rate and a per pound rate. Multiply the number of pieces in the mailing by per piece rate. Multiply the number of pounds of the mailing by per pound rate. Add both totals.
3. Per piece rate for ECR letters and automation letters that weigh more than 3.3 ounces but less than (or equal to) 3.5 ounces includes a discount that equals the applicable flat-size rate (3.3 ounces or less) minus the applicable letter piece rate (3.3 ounces or less).

Standard Mail Regular

DISCOUNT LETTERS—NONAUTOMATION

	Entry Discount	Machinable		Nonmachinable[1]			
		AADC	Mixed AADC	5-Digit	3-Digit	ADC	Mixed ADC
Letters weighing 3.3 oz. or less	None	$0.246	$0.255	$0.328	$0.411	$0.440	$0.520
	DBMC	0.213	0.222	0.295	0.378	0.407	0.487
per piece rate	DSCF	0.204	---	0.286	0.369	0.398	---
	DDU	---	---	---	---	---	---

1. For pieces over 3.3 ounces, see Standard Mail Not Flat-Machinable rates.

Standard Mail Nonprofit

DISCOUNT LETTERS—ENHANCED CARRIER ROUTE & AUTOMATION

	Entry Discount	Enhanced Carrier Route (ECR)[1]			Automation			
		Saturation	High Density	Basic	5-Digit	3-Digit	AADC	Mixed AADC
Letters weighing 3.3 oz. or less	None	$0.108	$0.117	$0.157	$0.127	$0.142	$0.147	$0.161
	DBMC	0.075	0.084	0.124	0.094	0.109	0.114	0.128
per piece rate	DSCF	0.066	0.075	0.115	0.085	0.100	0.105	---
	DDU	---	---	---	---	---	---	---
more than 3.3 oz.[2]	None	0.432	0.432	0.432	0.622	0.622	0.622	0.622
	DBMC	0.273	0.273	0.273	0.463	0.463	0.463	0.463
per pound rate	DSCF	0.229	0.229	0.229	0.419	0.419	0.419	---
	DDU	---	---	---	---	---	---	---
+		+	+	+	+	+	+	+
per piece rate		0.019[3]	0.028[3]	0.068[3]	0.001[3]	0.016[3]	0.021[3]	0.035[3]

1. ECR letters that are not automation-compatible and barcoded (201.3.0) are mailable at the flat-size rates (243.6.4 or 243.6.5). Mailers may not pay ECR flat rates and claim the DDU discount for letter-size pieces.
2. For pieces weighing more than 3.3 ounces, each piece is subject to both a per piece rate and a per pound rate. Multiply the number of pieces in the mailing by per piece rate. Multiply the number of pounds of the mailing by per pound rate. Add both totals.
3. Per piece rate for ECR letters and automation letters that weigh more than 3.3 ounces but less than (or equal to) 3.5 ounces includes a discount that equals the applicable flat-size rate (3.3 ounces or less) minus the applicable letter piece rate (3.3 ounces or less).

Standard Mail Nonprofit

DISCOUNT LETTERS—NONAUTOMATION

	Entry Discount	Machinable		Nonmachinable[1]			
		AADC	Mixed AADC	5-Digit	3-Digit	ADC	Mixed ADC
Letters weighing 3.3 oz. or less	None	$0.155	$0.164	$0.237	$0.320	$0.349	$0.429
	DBMC	0.122	0.131	0.204	0.287	0.316	0.396
per piece rate	DSCF	0.113	---	0.195	0.278	0.307	---
	DDU	---	---	---	---	---	---

1. For pieces over 3.3 ounces, see Standard Mail Not Flat-Machinable rates.

Discount Flats: First-Class Mail • Media Mail • Library Mail

First-Class Mail
DISCOUNT FLATS

Weight Not Over (ounces)[1]	Automation				Nonautomation
	5-Digit	3-Digit	ADC	Mixed ADC	Presorted
1	$0.383	$0.484	$0.567	$0.686	$0.699
2	0.553	0.654	0.737	0.856	0.869
3	0.723	0.824	0.907	1.026	1.039
4	0.893	0.994	1.077	1.196	1.209
5	1.063	1.164	1.247	1.366	1.379
6	1.233	1.334	1.417	1.536	1.549
7	1.403	1.504	1.587	1.706	1.719
8	1.573	1.674	1.757	1.876	1.889
9	1.743	1.844	1.927	2.046	2.059
10	1.913	2.014	2.097	2.216	2.229
11	2.083	2.184	2.267	2.386	2.399
12	2.253	2.354	2.437	2.556	2.569
13	2.423	2.524	2.607	2.726	2.739

1. Flat-size pieces with certain characteristics (see 301.1.3 through 1.5) are subject to parcel rates.

Media Mail
DISCOUNT FLATS

Weight Not Over (pounds)	5-Digit	Basic
1	$1.30	$1.80
2	1.64	2.14
3	1.98	2.48
4	2.32	2.82
5	2.66	3.16

Library Mail
DISCOUNT FLATS

Weight Not Over (pounds)	5-Digit	Basic
1	$1.24	$1.71
2	1.56	2.03
3	1.88	2.35
4	2.20	2.67
5	2.52	2.99

Discount Flats

Standard Mail Regular

DISCOUNT FLATS

	Entry Discount	Enhanced Carrier Route (ECR)[1]			Automation[1]				Nonautomation[1]			
		Saturation[2]	High Density	Basic	5-Digit	3-Digit	ADC	Mixed ADC	5-Digit	3-Digit	ADC	Mixed ADC
Flats weighing 3.3 oz. or less	None	$0.187	$0.205	$0.249	$0.335	$0.392	$0.424	$0.477	$0.363	$0.427	$0.461	$0.515
	DBMC	0.154	0.172	0.216	0.302	0.359	0.391	0.444	0.330	0.394	0.428	0.482
per piece rate	DSCF	0.145	0.163	0.207	0.293	0.350	0.382	---	0.321	0.385	0.419	---
	DDU	0.136	0.154	0.198	---	---	---	---	---	---	---	---
more than 3.3 oz.[3]	None	0.621	0.621	0.621	0.739	0.739	0.739	0.739	0.739	0.739	0.739	0.739
	DBMC	0.462	0.462	0.462	0.580	0.580	0.580	0.580	0.580	0.580	0.580	0.580
per pound rate	DSCF	0.418	0.418	0.418	0.536	0.536	0.536	---	0.536	0.536	0.536	---
	DDU	0.373	0.373	0.373	---	---	---	---	---	---	---	---
+		+	+	+	+	+	+	+	+	+	+	+
per piece rate		0.059	0.077	0.121	0.186	0.243	0.275	0.328	0.213	0.277	0.311	0.365

1. Flat-size pieces with certain characteristics (see 301.1.3 through 1.5) are subject to not flat-machinable or parcel rates.
2. For ECR flats with a detached address label, add $0.015 per piece.
3. For pieces weighing more than 3.3 ounces, each piece is subject to both a per piece rate and a per pound rate. Multiply the number of pieces in the mailing by per piece rate. Multiply the number of pounds of the mailing by per pound rate. Add both totals.

Standard Mail Nonprofit

DISCOUNT FLATS

	Entry Discount	Enhanced Carrier Route (ECR)[1]			Automation[1]				Nonautomation[1]			
		Saturation[2]	High Density	Basic	5-Digit	3-Digit	ADC	Mixed ADC	5-Digit	3-Digit	ADC	Mixed ADC
Flats weighing 3.3 oz. or less	None	$0.118	$0.136	$0.180	$0.212	$0.269	$0.301	$0.354	$0.237	$0.301	$0.335	$0.389
	DBMC	0.085	0.103	0.147	0.179	0.236	0.268	0.321	0.204	0.268	0.302	0.356
per piece rate	DSCF	0.076	0.094	0.138	0.170	0.227	0.259	---	0.195	0.259	0.293	---
	DDU	0.067	0.085	0.129	---	---	---	---	---	---	---	---
more than 3.3 oz.[3]	None	0.432	0.432	0.432	0.622	0.622	0.622	0.622	0.622	0.622	0.622	0.622
	DBMC	0.273	0.273	0.273	0.463	0.463	0.463	0.463	0.463	0.463	0.463	0.463
per pound rate	DSCF	0.229	0.229	0.229	0.419	0.419	0.419	---	0.419	0.419	0.419	---
	DDU	0.184	0.184	0.184	---	---	---	---	---	---	---	---
+		+	+	+	+	+	+	+	+	+	+	+
per piece rate		0.029	0.047	0.091	0.086	0.143	0.175	0.228	0.111	0.175	0.209	0.263

1. Flat-size pieces with certain characteristics (see 301.1.3 through 1.5) are subject to not flat-machinable or parcel rates.
2. For ECR flats with a detached address label, add $0.015 per piece.
3. For pieces weighing more than 3.3 ounces, each piece is subject to both a per piece rate and a per pound rate. Multiply the number of pieces in the mailing by per piece rate. Multiply the number of pounds of the mailing by per pound rate. Add both totals.

Discount Flats: Bound Printed Matter

Bound Printed Matter

DISCOUNT CARRIER ROUTE & PRESORTED FLATS

Each piece is subject to both a piece rate and a pound rate.[1]		Carrier Route			Presorted[2]		
		Rate per piece	+	Rate per pound	Rate per piece	+	Rate per pound
Zone	Local, 1 & 2	$1.178	+	$0.122	$1.289	+	$0.122
	3	1.178	+	0.148	1.289	+	0.148
	4	1.178	+	0.195	1.289	+	0.195
	5	1.178	+	0.249	1.289	+	0.249
	6	1.178	+	0.311	1.289	+	0.311
	7	1.178	+	0.359	1.289	+	0.359
	8	1.178	+	0.477	1.289	+	0.477
Destination Entry							
DBMC	1 & 2	0.861	+	0.086	0.972	+	0.086
	3	0.861	+	0.124	0.972	+	0.124
	4	0.861	+	0.164	0.972	+	0.164
	5	0.861	+	0.218	0.972	+	0.218
DSCF		0.478	+	0.083	0.589	+	0.083
DDU		0.394	+	0.040	0.505[3]	+	0.040

1. Multiply the number of pounds in the mailing by rate per pound. Multiply the number of pieces in the mailing by rate per piece. Add both totals.
2. For barcode discount, deduct $0.03 per piece (automation-compatible flats only). Barcode discount not available for pieces mailed at presorted DDU rates.
3. Each flat must weigh more than 1 pound to be eligible for presorted DDU rate.

Bound Printed Matter

NONPRESORTED FLATS

Weight Not Over (pounds)[1]	Zone						
	1 & 2	3	4	5	6	7	8
1.0	$1.96	$2.01	$2.07	$2.14	$2.22	$2.29	$2.46
1.5	1.96	2.01	2.07	2.14	2.22	2.29	2.46
2.0	2.05	2.11	2.19	2.29	2.39	2.49	2.71
2.5	2.14	2.22	2.32	2.44	2.57	2.69	2.97
3.0	2.23	2.32	2.44	2.59	2.74	2.89	3.22
3.5	2.32	2.43	2.57	2.74	2.92	3.09	3.48
4.0	2.41	2.53	2.69	2.89	3.09	3.29	3.73
4.5	2.50	2.64	2.82	3.04	3.27	3.49	3.99
5.0	2.59	2.74	2.94	3.19	3.44	3.69	4.24
6.0	2.77	2.95	3.19	3.49	3.79	4.09	4.75
7.0	2.95	3.16	3.44	3.79	4.14	4.49	5.26
8.0	3.13	3.37	3.69	4.09	4.49	4.89	5.77
9.0	3.31	3.58	3.94	4.39	4.84	5.29	6.28
10.0	3.49	3.79	4.19	4.69	5.19	5.69	6.79
11.0	3.67	4.00	4.44	4.99	5.54	6.09	7.30
12.0	3.85	4.21	4.69	5.29	5.89	6.49	7.81
13.0	4.03	4.42	4.94	5.59	6.24	6.89	8.32
14.0	4.21	4.63	5.19	5.89	6.59	7.29	8.83
15.0	4.39	4.84	5.44	6.19	6.94	7.69	9.34

1. For barcode discount, deduct $0.03 per piece (machinable flats only, 50-piece minimum).

First-Class Mail
DISCOUNT PARCELS

Weight Not Over (ounces)[1]	5-Digit	3-Digit	ADC	Single-Piece[2]
1	$0.704	$0.837	$0.891	$1.13
2	0.874	1.007	1.061	1.30
3	1.044	1.177	1.231	1.47
4	1.214	1.347	1.401	1.64
5	1.384	1.517	1.571	1.81
6	1.554	1.687	1.741	1.98
7	1.724	1.857	1.911	2.15
8	1.894	2.027	2.081	2.32
9	2.064	2.197	2.251	2.49
10	2.234	2.367	2.421	2.66
11	2.404	2.537	2.591	2.83
12	2.574	2.707	2.761	3.00
13	2.744	2.877	2.931	3.17

1. A $0.05 surcharge applies to pieces in 3-digit and ADC sacks that:
   - Do not bear a correct POSTNET or UCC/EAN Code 128 barcode (708.5).
   - Weigh less than 2 ounces.
   - Are irregularly shaped, such as tubes, rolls, and triangles.
2. Use single-piece rate for mixed ADC sortation.

Standard Mail Regular

DISCOUNT PARCELS

	Entry Discount	Enhanced Carrier Route (ECR)			Machinable[1]			Irregular[1]			
		Saturation[2]	High Density	Basic	5-Digit	BMC	Mixed BMC	5-Digit	3-Digit	ADC	Mixed ADC
Parcels weighing 3.3 oz. or less	None	$0.369	$0.378	$0.499	---	---	---	$0.607	$0.653	$0.914	$1.129
	DBMC	0.336	0.345	0.466	---	---	---	0.574	0.620	0.881	1.096
per piece rate	DSCF	0.327	0.336	0.457	---	---	---	0.565	0.611	0.872	---
	DDU	0.318	0.327	0.448	---	---	---	0.556	---	---	---
more than 3.3 oz.[3]	None	0.621	0.621	0.621	0.739	0.739	0.739	0.739	0.739	0.739	0.739
per pound rate	DBMC	0.462	0.462	0.462	0.580	0.580	---	0.580	0.580	0.580	0.580
	DSCF	0.418	0.418	0.418	0.536	---	---	0.536	0.536	0.536	---
	DDU	0.373	0.373	0.373	0.491	---	---	0.491	---	---	---
+		+	+	+	+	+	+	+	+	+	+
per piece rate		0.241	0.250	0.371	0.346	0.716	0.909	0.457	0.503	0.764	0.979

1. For nonbarcoded parcels, add $0.05 per piece. The surcharge does not apply to pieces sorted to 5-digit ZIP Codes.
2. For ECR parcels with a detached address label, add $0.015 per piece.
3. For pieces weighing more than 3.3 ounces, each piece is subject to both a per piece rate and a per pound rate. Multiply the number of pieces in the mailing by per piece rate. Multiply the number of pounds of the mailing by per pound rate. Add both totals.

Standard Mail Nonprofit

DISCOUNT PARCELS

	Entry Discount	Enhanced Carrier Route (ECR)			Machinable[1]			Irregular[1]			
		Saturation[2]	High Density	Basic	5-Digit	BMC	Mixed BMC	5-Digit	3-Digit	ADC	Mixed ADC
Parcels weighing 3.3 oz. or less	None	$0.300	$0.309	$0.430	---	---	---	$0.481	$0.527	$0.788	$1.003
	DBMC	0.267	0.276	0.397	---	---	---	0.448	0.494	0.755	0.970
per piece rate	DSCF	0.258	0.267	0.388	---	---	---	0.439	0.485	0.746	---
	DDU	0.249	0.258	0.379	---	---	---	0.430	---	---	---
more than 3.3 oz.[3]	None	0.432	0.432	0.432	0.622	0.622	0.622	0.622	0.622	0.622	0.622
per pound rate	DBMC	0.273	0.273	0.273	0.463	0.463	---	0.463	0.463	0.463	0.463
	DSCF	0.229	0.229	0.229	0.419	---	---	0.419	0.419	0.419	---
	DDU	0.184	0.184	0.184	0.374	---	---	0.374	---	---	---
+		+	+	+	+	+	+	+	+	+	+
per piece rate		0.211	0.220	0.341	0.244	0.614	0.807	0.355	0.401	0.662	0.877

1. For nonbarcoded parcels, add $0.05 per piece. The surcharge does not apply to pieces sorted to 5-digit ZIP Codes.
2. For ECR parcels with a detached address label, add $0.015 per piece.
3. For pieces weighing more than 3.3 ounces, each piece is subject to both a per piece rate and a per pound rate. Multiply the number of pieces in the mailing by per piece rate. Multiply the number of pounds of the mailing by per pound rate. Add both totals.

Standard Mail Regular

NOT FLAT-MACHINABLE

	Entry Discount	Not Flat-Machinable[1] 5-Digit	3-Digit	ADC/BMC	Mixed ADC/BMC
Pieces weighing 3.3 oz. or less	None	$0.460[2]	$0.506	$0.767	$1.028
	DBMC	0.427	0.473	0.734	0.995
per piece rate	DSCF	0.418	0.464	0.725	---
	DDU	0.409	---	---	---
more than 3.3 oz.[3]	None	0.739	0.739	0.739	0.739
per pound rate	DBMC	0.580	0.580	0.580	0.580
	DSCF	0.536	0.536	0.536	---
	DDU	0.491	---	---	---
+		+	+	+	+
per piece rate		0.310	0.356	0.617	0.878

1. For nonbarcoded pieces, add $0.05 per piece. The surcharge does not apply to pieces sorted to 5-digit ZIP Codes.
2. Customized MarketMail pieces pay $0.460 per piece.
3. For pieces weighing more than 3.3 ounces, each piece is subject to both a per piece rate and a per pound rate. Multiply the number of pieces in the mailing by per piece rate. Multiply the number of pounds of the mailing by per pound rate. Add both totals.

Standard Mail Nonprofit

NOT FLAT-MACHINABLE

	Entry Discount	Not Flat-Machinable[1] 5-Digit	3-Digit	ADC/BMC	Mixed ADC/BMC
Pieces weighing 3.3 oz. or less	None	$0.334[2]	$0.380	$0.641	$0.902
	DBMC	0.301	0.347	0.608	0.869
per piece rate	DSCF	0.292	0.338	0.599	---
	DDU	0.283	---	---	---
more than 3.3 oz.[3]	None	0.622	0.622	0.622	0.622
per pound rate	DBMC	0.463	0.463	0.463	0.463
	DSCF	0.419	0.419	0.419	---
	DDU	0.374	---	---	---
+		+	+	+	+
per piece rate		0.208	0.254	0.515	0.776

1. For nonbarcoded pieces, add $0.05 per piece. The surcharge does not apply to pieces sorted to 5-digit ZIP Codes.
2. Customized MarketMail pieces pay $0.334 per piece.
3. For pieces weighing more than 3.3 ounces, each piece is subject to both a per piece rate and a per pound rate. Multiply the number of pieces in the mailing by per piece rate. Multiply the number of pounds of the mailing by per pound rate. Add both totals.

Bound Printed Matter
DISCOUNT PARCELS

Each piece is subject to both a piece rate and a pound rate.[1]		Carrier Route			Presorted[2]		
		Rate per piece	+	Rate per pound	Rate per piece	+	Rate per pound
Zone	Local, 1&2	$1.336	+	$0.122	$1.447	+	$0.122
	3	1.336	+	0.148	1.447	+	0.148
	4	1.336	+	0.195	1.447	+	0.195
	5	1.336	+	0.249	1.447	+	0.249
	6	1.336	+	0.311	1.447	+	0.311
	7	1.336	+	0.359	1.447	+	0.359
	8	1.336	+	0.477	1.447	+	0.477
Destination Entry							
DBMC	1&2	1.019	+	0.086	1.130	+	0.086
	3	1.019	+	0.124	1.130	+	0.124
	4	1.019	+	0.164	1.130	+	0.164
	5	1.019	+	0.218	1.130	+	0.218
DSCF		0.636	+	0.083	0.747	+	0.083
DDU		0.552	+	0.040	0.663	+	0.040

1. Multiply the number of pounds in the mailing by rate per pound. Multiply the number of pieces in the mailing by rate per piece. Add both totals.
2. Machinable presorted parcels may be eligible for barcode discount of $0.03 per parcel (50-piece minimum), except for parcels mailed at presorted DDU or DSCF rates.

Bound Printed Matter
NONPRESORTED PARCELS

Weight Not Over (pounds)[1]	Zone						
	1 & 2	3	4	5	6	7	8
1.0	$2.12	$2.17	$2.23	$2.30	$2.38	$2.45	$2.62
1.5	2.12	2.17	2.23	2.30	2.38	2.45	2.62
2.0	2.21	2.27	2.35	2.45	2.55	2.65	2.87
2.5	2.30	2.38	2.48	2.60	2.73	2.85	3.13
3.0	2.39	2.48	2.60	2.75	2.90	3.05	3.38
3.5	2.48	2.59	2.73	2.90	3.08	3.25	3.64
4.0	2.57	2.69	2.85	3.05	3.25	3.45	3.89
4.5	2.66	2.80	2.98	3.20	3.43	3.65	4.15
5.0	2.75	2.90	3.10	3.35	3.60	3.85	4.40
6.0	2.93	3.11	3.35	3.65	3.95	4.25	4.91
7.0	3.11	3.32	3.60	3.95	4.30	4.65	5.42
8.0	3.29	3.53	3.85	4.25	4.65	5.05	5.93
9.0	3.47	3.74	4.10	4.55	5.00	5.45	6.44
10.0	3.65	3.95	4.35	4.85	5.35	5.85	6.95
11.0	3.83	4.16	4.60	5.15	5.70	6.25	7.46
12.0	4.01	4.37	4.85	5.45	6.05	6.65	7.97
13.0	4.19	4.58	5.10	5.75	6.40	7.05	8.48
14.0	4.37	4.79	5.35	6.05	6.75	7.45	8.99
15.0	4.55	5.00	5.60	6.35	7.10	7.85	9.50

1. For barcode discount, deduct $0.03 per piece (automation-compatible parcels only, 50-piece minimum).

Parcel Post (Local and Intra-BMC/ASF—Single-Piece)

DISCOUNT PARCELS

Weight Not Over (pounds)	Machinable[1, 2, 3, 4]					Nonmachinable[1, 2, 4, 5]				
	Zone					Zone				
	Local	1 & 2	3	4	5	Local	1 & 2	3	4	5
1	$3.42	$3.67	$3.70	$3.78	$3.96	$6.29	$6.54	$6.57	$6.65	$6.83
2	3.80	4.34	4.38	4.47	4.72	6.67	7.21	7.25	7.34	7.59
3	4.15	4.96	5.00	5.11	5.46	7.02	7.83	7.87	7.98	8.33
4	4.47	5.37	5.58	5.69	6.13	7.34	8.24	8.45	8.56	9.00
5	4.76	5.74	6.07	6.21	6.76	7.63	8.61	8.94	9.08	9.63
6	5.03	6.09	6.53	6.67	7.32	7.90	8.96	9.40	9.54	10.19
7	5.24	6.42	6.94	7.10	7.86	8.11	9.29	9.81	9.97	10.73
8	5.42	6.95	7.33	7.50	8.34	8.29	9.82	10.20	10.37	11.21
9	5.60	7.24	7.69	7.90	8.79	8.47	10.11	10.56	10.77	11.66
10	5.77	7.55	8.07	8.53	9.21	8.64	10.42	10.94	11.40	12.08
11	5.93	7.82	8.38	8.86	9.59	8.80	10.69	11.25	11.73	12.46
12	6.09	8.10	8.69	9.18	9.96	8.96	10.97	11.56	12.05	12.83
13	6.25	8.28	8.97	9.48	10.30	9.12	11.15	11.84	12.35	13.17
14	6.39	8.44	9.22	9.81	10.61	9.26	11.31	12.09	12.68	13.48
15	6.53	8.59	9.49	10.07	10.90	9.40	11.46	12.36	12.94	13.77
16	6.68	8.74	9.76	10.33	11.20	9.55	11.61	12.63	13.20	14.07
17	6.80	8.92	10.01	10.61	11.45	9.67	11.79	12.88	13.48	14.32
18	6.93	9.05	10.25	10.84	11.70	9.80	11.92	13.12	13.71	14.57
19	7.05	9.20	10.49	11.08	11.94	9.92	12.07	13.36	13.95	14.81
20	7.19	9.35	10.73	11.28	12.15	10.06	12.22	13.60	14.15	15.02
21	7.30	9.46	10.95	11.49	12.36	10.17	12.33	13.82	14.36	15.23
22	7.42	9.62	11.17	11.71	12.55	10.29	12.49	14.04	14.58	15.42
23	7.53	9.72	11.40	11.93	12.76	10.40	12.59	14.27	14.80	15.63
24	7.65	9.85	11.61	12.15	12.93	10.52	12.72	14.48	15.02	15.80
25	7.76	9.96	11.81	12.35	13.11	10.63	12.83	14.68	15.22	15.98
26	7.86	10.10	12.00	12.56	13.26	10.73	12.97	14.87	15.43	16.13
27	7.97	10.21	12.21	12.76	13.42	10.84	13.08	15.08	15.63	16.29
28	8.07	10.31	12.41	12.94	13.59	10.94	13.18	15.28	15.81	16.46
29	8.18	10.43	12.60	13.13	13.79	11.05	13.30	15.47	16.00	16.66
30	8.29	10.54	12.78	13.31	13.97	11.16	13.41	15.65	16.18	16.84
31	8.38	10.65	12.94	13.49	14.17	11.25	13.52	15.81	16.36	17.04
32	8.46	10.76	13.13	13.67	14.34	11.33	13.63	16.00	16.54	17.21
33	8.57	10.86	13.29	13.83	14.52	11.44	13.73	16.16	16.70	17.39
34	8.63	10.96	13.40	14.00	14.69	11.50	13.83	16.27	16.87	17.56
35	8.70	11.05	13.55	14.16	14.86	11.57	13.92	16.42	17.03	17.73

1. For parcels that originate and destinate in the same BMC service area.
2. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 20 pounds, use 20-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates regardless of weight.
3. Machinable parcels may be eligible for barcode discount of $0.03 per parcel (50-piece minimum).
4. Regardless of weight, a parcel that meets any of the criteria in 101.7.2 (for retail) or 401.2.3.2 (for discount) must pay the nonmachinable rates.
5. Rates include the $2.87 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

Parcel Post (Local and Intra-BMC/ASF—Single-Piece)

DISCOUNT PARCELS

Weight Not Over (pounds)	Machinable[1, 2, 3, 4]					Nonmachinable[1, 2, 4, 5]				
	Zone					Zone				
	Local	1 & 2	3	4	5	Local	1 & 2	3	4	5
36	---	---	---	---	---	$11.65	$14.01	$16.53	$17.18	$17.89
37	---	---	---	---	---	11.70	14.13	16.65	17.34	18.05
38	---	---	---	---	---	11.76	14.22	16.78	17.49	18.21
39	---	---	---	---	---	11.85	14.32	16.91	17.63	18.36
40	---	---	---	---	---	11.93	14.39	17.01	17.78	18.51
41	---	---	---	---	---	12.01	14.52	17.16	17.87	18.66
42	---	---	---	---	---	12.07	14.58	17.26	17.98	18.80
43	---	---	---	---	---	12.15	14.66	17.37	18.05	18.94
44	---	---	---	---	---	12.24	14.77	17.48	18.13	19.07
45	---	---	---	---	---	12.30	14.83	17.57	18.35	19.20
46	---	---	---	---	---	12.35	14.96	17.69	18.42	19.44
47	---	---	---	---	---	12.44	15.05	17.78	18.50	19.83
48	---	---	---	---	---	12.50	15.12	17.90	18.55	20.24
49	---	---	---	---	---	12.56	15.22	18.00	18.61	20.64
50	---	---	---	---	---	12.62	15.26	18.09	18.67	21.06
51	---	---	---	---	---	12.71	15.38	18.17	18.74	21.48
52	---	---	---	---	---	12.75	15.47	18.31	18.80	21.92
53	---	---	---	---	---	12.82	15.51	18.38	18.83	22.37
54	---	---	---	---	---	12.91	15.58	18.43	18.90	22.83
55	---	---	---	---	---	12.97	15.66	18.50	18.96	23.02
56	---	---	---	---	---	13.01	15.75	18.55	19.03	23.10
57	---	---	---	---	---	13.08	15.84	18.57	19.06	23.24
58	---	---	---	---	---	13.15	15.91	18.63	19.11	23.33
59	---	---	---	---	---	13.22	15.99	18.67	19.16	23.43
60	---	---	---	---	---	13.24	16.08	18.70	19.19	23.54
61	---	---	---	---	---	13.36	16.16	18.76	19.25	23.63
62	---	---	---	---	---	13.39	16.23	18.80	19.33	23.72
63	---	---	---	---	---	13.47	16.30	18.82	19.42	23.81
64	---	---	---	---	---	13.53	16.38	18.85	19.50	23.91
65	---	---	---	---	---	13.58	16.46	18.90	19.58	23.98
66	---	---	---	---	---	13.62	16.55	18.93	19.67	24.09
67	---	---	---	---	---	13.73	16.62	18.96	19.77	24.16
68	---	---	---	---	---	13.78	16.65	18.99	19.82	24.24
69	---	---	---	---	---	13.79	16.75	19.02	19.91	24.33
70	---	---	---	---	---	13.80	16.82	19.06	20.00	24.41
Oversized	---	---	---	---	---	28.82	41.78	42.17	43.01	44.28

1. For parcels that originate and destinate in the same BMC service area.
2. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 20 pounds, use 20-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates regardless of weight.
3. Machinable parcels may be eligible for barcode discount of $0.03 per parcel (50-piece minimum).
4. Regardless of weight, a parcel that meets any of the criteria in 101.7.2 (for retail) or 401.2.3.2 (for discount) must pay the nonmachinable rates.
5. Rates include the $2.87 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

Parcel Post (Inter-BMC/ASF—Single-Piece)

DISCOUNT PARCELS

Weight Not Over (pounds)	Machinable[1, 2, 3, 4, 6, 7]							Nonmachinable[1, 2, 4, 5, 6, 7]						
	Zone							Zone						
	1 & 2	3	4	5	6	7	8	1 & 2	3	4	5	6	7	8
1	$4.38	$4.50	$4.50	$4.50	$4.50	$4.50	$4.50	$8.27	$8.39	$8.39	$8.39	$8.39	$8.39	$8.39
2	4.50	4.80	5.20	5.67	6.00	6.15	6.15	8.39	8.69	9.09	9.56	9.89	10.04	10.04
3	4.95	5.60	6.30	7.02	7.05	7.33	7.93	8.84	9.49	10.19	10.91	10.94	11.22	11.82
4	5.60	6.55	7.47	7.78	8.04	8.45	9.25	9.49	10.44	11.36	11.67	11.93	12.34	13.14
5	6.20	7.45	8.23	8.59	8.98	9.50	10.50	10.09	11.34	12.12	12.48	12.87	13.39	14.39
6	6.75	8.15	8.97	9.36	9.83	10.48	11.77	10.64	12.04	12.86	13.25	13.72	14.37	15.66
7	7.25	8.61	9.67	10.09	10.64	11.44	12.88	11.14	12.50	13.56	13.98	14.53	15.33	16.77
8	7.65	8.94	10.36	10.79	11.41	12.32	14.08	11.54	12.83	14.25	14.68	15.30	16.21	17.97
9	8.05	9.27	10.99	11.47	12.14	13.14	15.21	11.94	13.16	14.88	15.36	16.03	17.03	19.10
10	8.40	10.37	11.62	12.12	12.84	13.92	16.17	12.29	14.26	15.51	16.01	16.73	17.81	20.06
11	8.70	10.69	12.22	12.75	13.52	14.68	17.08	12.59	14.58	16.11	16.64	17.41	18.57	20.97
12	8.96	10.97	12.80	13.36	14.17	15.40	17.96	12.85	14.86	16.69	17.25	18.06	19.29	21.85
13	9.14	11.22	13.37	13.95	14.80	16.10	18.80	13.03	15.11	17.26	17.84	18.69	19.99	22.69
14	9.32	11.53	13.91	14.53	15.41	16.77	19.61	13.21	15.42	17.80	18.42	19.30	20.66	23.50
15	9.48	11.79	14.44	15.09	15.99	17.43	20.40	13.37	15.68	18.33	18.98	19.88	21.32	24.29
16	9.62	12.04	14.96	15.64	16.56	18.06	21.16	13.51	15.93	18.85	19.53	20.45	21.95	25.05
17	9.80	12.25	15.46	16.18	17.12	18.67	21.89	13.69	16.14	19.35	20.07	21.01	22.56	25.78
18	9.93	12.48	15.78	16.70	17.66	19.27	22.61	13.82	16.37	19.67	20.59	21.55	23.16	26.50
19	10.10	12.71	16.13	17.21	18.18	19.85	23.30	13.99	16.60	20.02	21.10	22.07	23.74	27.19
20	10.22	12.92	16.42	17.71	18.70	20.41	23.98	14.11	16.81	20.31	21.60	22.59	24.30	27.87
21	10.37	13.14	16.72	18.20	19.19	20.96	24.64	14.26	17.03	20.61	22.09	23.08	24.85	28.53
22	10.49	13.31	17.02	18.69	19.68	21.50	25.28	14.38	17.20	20.91	22.58	23.57	25.39	29.17
23	10.63	13.55	17.33	19.16	20.16	22.02	25.90	14.52	17.44	21.22	23.05	24.05	25.91	29.79
24	10.73	13.72	17.58	19.62	20.62	22.54	26.51	14.62	17.61	21.47	23.51	24.51	26.43	30.40
25	10.87	13.90	17.85	20.08	21.08	23.04	27.11	14.76	17.79	21.74	23.97	24.97	26.93	31.00
26	10.97	14.07	18.10	20.53	21.53	23.53	27.69	14.86	17.96	21.99	24.42	25.42	27.42	31.58
27	11.12	14.25	18.33	20.97	21.97	24.01	28.26	15.01	18.14	22.22	24.86	25.86	27.90	32.15
28	11.21	14.42	18.60	21.40	22.39	24.48	28.82	15.10	18.31	22.49	25.29	26.28	28.37	32.71
29	11.34	14.60	18.84	21.83	22.81	24.94	29.36	15.23	18.49	22.73	25.72	26.70	28.83	33.25
30	11.44	14.74	19.05	22.24	23.23	25.39	29.90	15.33	18.63	22.94	26.13	27.12	29.28	33.79
31	11.57	14.89	19.27	22.66	23.63	25.83	30.42	15.46	18.78	23.16	26.55	27.52	29.72	34.31
32	11.65	15.05	19.49	23.06	24.03	26.27	30.94	15.54	18.94	23.38	26.95	27.92	30.16	34.83
33	11.75	15.21	19.71	23.46	24.42	26.69	31.44	15.64	19.10	23.60	27.35	28.31	30.58	35.33
34	11.87	15.31	19.88	23.86	24.81	27.11	31.93	15.76	19.20	23.77	27.75	28.70	31.00	35.82
35	11.97	15.48	20.09	24.25	25.19	27.53	32.42	15.86	19.37	23.98	28.14	29.08	31.42	36.31

1. For parcels that destinate to different BMC service areas (see 153.1.1).
2. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 20 pounds, use 20-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates regardless of weight.
3. Machinable parcels may be eligible for barcode discount of $0.03 per parcel (50-piece minimum).
4. Regardless of weight, a parcel that meets any of the criteria in 101.7.2 (for retail) or 401.2.3.2 (for discount) must pay the nonmachinable rates.
5. Rates include the $3.89 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.
6. For OBMC presort discount, deduct $1.50 per piece.
7. For BMC presort discount, deduct $0.26 per piece.

Parcel Post (Inter-BMC/ASF—Single-Piece

DISCOUNT PARCELS

Weight Not Over (pounds)	Machinable[1, 2, 3, 4, 6, 7] Zone 1 & 2	3	4	5	6	7	8	Nonmachinable[1, 2, 4, 5, 6, 7] Zone 1 & 2	3	4	5	6	7	8
36	---	---	---	---	---	---	---	$15.95	$19.50	$24.20	$28.52	$29.45	$31.82	$36.79
37	---	---	---	---	---	---	---	16.05	19.62	24.35	28.90	29.81	32.22	37.26
38	---	---	---	---	---	---	---	16.14	19.79	24.53	29.27	30.17	32.61	37.72
39	---	---	---	---	---	---	---	16.25	19.88	24.70	29.65	30.53	33.00	38.17
40	---	---	---	---	---	---	---	16.34	20.04	24.89	30.01	30.88	33.38	38.62
41	---	---	---	---	---	---	---	16.46	20.17	25.04	30.37	31.22	33.76	39.06
42	---	---	---	---	---	---	---	16.54	20.28	25.21	30.73	31.56	34.12	39.49
43	---	---	---	---	---	---	---	16.60	20.40	25.38	31.08	31.90	34.49	39.92
44	---	---	---	---	---	---	---	16.70	20.49	25.52	31.42	32.23	34.85	40.34
45	---	---	---	---	---	---	---	16.79	20.63	25.69	31.77	32.55	35.20	40.75
46	---	---	---	---	---	---	---	16.88	20.74	25.85	32.11	32.87	35.55	41.16
47	---	---	---	---	---	---	---	16.99	20.87	25.98	32.31	33.19	35.89	41.56
48	---	---	---	---	---	---	---	17.06	20.97	26.15	32.48	33.51	36.23	41.95
49	---	---	---	---	---	---	---	17.12	21.09	26.28	32.65	33.81	36.56	42.35
50	---	---	---	---	---	---	---	17.20	21.17	26.39	32.82	34.12	36.90	42.73
51	---	---	---	---	---	---	---	17.31	21.30	26.55	32.98	34.42	37.22	43.11
52	---	---	---	---	---	---	---	17.37	21.40	26.68	33.13	34.72	37.54	43.48
53	---	---	---	---	---	---	---	17.48	21.48	26.77	33.28	35.01	37.86	43.86
54	---	---	---	---	---	---	---	17.54	21.62	26.93	33.43	35.30	38.17	44.22
55	---	---	---	---	---	---	---	17.61	21.66	27.06	33.58	35.59	38.49	44.58
56	---	---	---	---	---	---	---	17.71	21.82	27.17	33.73	35.87	38.79	44.94
57	---	---	---	---	---	---	---	17.79	21.90	27.30	33.86	36.15	39.09	45.29
58	---	---	---	---	---	---	---	17.85	21.99	27.41	34.00	36.43	39.39	45.64
59	---	---	---	---	---	---	---	17.94	22.08	27.54	34.13	36.71	39.69	45.98
60	---	---	---	---	---	---	---	18.02	22.17	27.67	34.26	36.98	39.98	46.32
61	---	---	---	---	---	---	---	18.13	22.30	27.76	34.38	37.25	40.27	46.66
62	---	---	---	---	---	---	---	18.19	22.36	27.88	34.51	37.51	40.56	46.99
63	---	---	---	---	---	---	---	18.24	22.47	27.99	34.62	37.77	40.84	47.31
64	---	---	---	---	---	---	---	18.31	22.53	28.08	34.74	38.03	41.12	47.64
65	---	---	---	---	---	---	---	18.39	22.64	28.20	34.86	38.29	41.40	47.96
66	---	---	---	---	---	---	---	18.49	22.73	28.29	34.96	38.55	41.67	48.28
67	---	---	---	---	---	---	---	18.57	22.82	28.41	35.08	38.80	41.94	48.59
68	---	---	---	---	---	---	---	18.62	22.90	28.53	35.18	39.05	42.21	48.90
69	---	---	---	---	---	---	---	18.68	22.96	28.62	35.29	39.30	42.48	49.21
70	---	---	---	---	---	---	---	18.78	23.08	28.72	35.38	39.54	42.74	49.51
Oversized	---	---	---	---	---	---	---	50.54	55.19	58.28	69.40	83.99	97.82	127.24

1. For parcels that destinate to different BMC service areas (see 153.1.1).
2. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 20 pounds, use 20-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates regardless of weight.
3. Machinable parcels may be eligible for barcode discount of $0.03 per parcel (50-piece minimum).
4. Regardless of weight, a parcel that meets any of the criteria in 101.7.2 (for retail) or 401.2.3.2 (for discount) must pay the nonmachinable rates.
5. Rates include the $3.89 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.
6. For OBMC presort discount, deduct $1.50 per piece.
7. For BMC presort discount, deduct $0.26 per piece.

Discount Parcels

Discount Parcels: Parcel Select

Parcel Select

DISCOUNT PARCELS

Weight Not Over (pounds)	Machinable[1,2]						Nonmachinable[1,2]						
			DBMC/ASF Zone					DSCF		DBMC/ASF Zone[4]			
	DDU	DSCF	1 & 2	3	4	5	DDU	5-Digit	3-Digit[3]	1 & 2	3	4	5
1	$1.40	$1.90	$2.38	$2.72	$3.05	$3.91	$1.40	$1.90	$2.86	$4.52	$4.86	$5.19	$6.05
2	1.47	2.11	2.68	3.35	3.99	4.67	1.47	2.11	3.07	4.82	5.49	6.13	6.81
3	1.52	2.30	2.96	3.95	4.85	5.41	1.52	2.30	3.26	5.10	6.09	6.99	7.55
4	1.58	2.47	3.24	4.52	5.58	6.08	1.58	2.47	3.43	5.38	6.66	7.72	8.22
5	1.63	2.63	3.49	5.05	6.10	6.71	1.63	2.63	3.59	5.63	7.19	8.24	8.85
6	1.68	2.79	3.73	5.54	6.53	7.27	1.68	2.79	3.75	5.87	7.68	8.67	9.41
7	1.72	2.93	3.95	5.99	6.92	7.81	1.72	2.93	3.89	6.09	8.13	9.06	9.95
8	1.76	3.07	4.17	6.43	7.28	8.29	1.76	3.07	4.03	6.31	8.57	9.42	10.43
9	1.81	3.21	4.38	6.84	7.66	8.74	1.81	3.21	4.17	6.52	8.98	9.80	10.88
10	1.85	3.33	4.58	7.24	8.48	9.16	1.85	3.33	4.29	6.72	9.38	10.62	11.30
11	1.88	3.45	4.77	7.63	8.81	9.54	1.88	3.45	4.41	6.91	9.77	10.95	11.68
12	1.92	3.57	4.96	8.00	9.13	9.91	1.92	3.57	4.53	7.10	10.14	11.27	12.05
13	1.96	3.69	5.14	8.33	9.43	10.25	1.96	3.69	4.65	7.28	10.47	11.57	12.39
14	1.99	3.79	5.32	8.59	9.76	10.56	1.99	3.79	4.75	7.46	10.73	11.90	12.70
15	2.03	3.92	5.49	8.87	10.02	10.85	2.03	3.92	4.88	7.63	11.01	12.16	12.99
16	2.06	4.03	5.65	9.14	10.28	11.15	2.06	4.03	4.99	7.79	11.28	12.42	13.29
17	2.09	4.14	5.81	9.35	10.56	11.40	2.09	4.14	5.10	7.95	11.49	12.70	13.54
18	2.13	4.24	5.96	9.54	10.79	11.65	2.13	4.24	5.20	8.10	11.68	12.93	13.79
19	2.16	4.35	6.12	9.71	11.03	11.89	2.16	4.35	5.31	8.26	11.85	13.17	14.03
20	2.19	4.45	6.26	9.89	11.23	12.10	2.19	4.45	5.41	8.40	12.03	13.37	14.24
21	2.22	4.54	6.41	10.07	11.41	12.31	2.22	4.54	5.50	8.55	12.21	13.55	14.45
22	2.25	4.64	6.55	10.22	11.60	12.50	2.25	4.64	5.60	8.69	12.36	13.74	14.64
23	2.27	4.73	6.68	10.40	11.77	12.71	2.27	4.73	5.69	8.82	12.54	13.91	14.85
24	2.30	4.83	6.82	10.55	11.93	12.88	2.30	4.83	5.79	8.96	12.69	14.07	15.02
25	2.33	4.91	6.95	10.70	12.08	13.06	2.33	4.91	5.87	9.09	12.84	14.22	15.20
26	2.36	5.00	7.08	10.82	12.23	13.21	2.36	5.00	5.96	9.22	12.96	14.37	15.35
27	2.38	5.09	7.21	10.99	12.37	13.37	2.38	5.09	6.05	9.35	13.13	14.51	15.51
28	2.41	5.18	7.33	11.15	12.49	13.51	2.41	5.18	6.14	9.47	13.29	14.63	15.65
29	2.43	5.26	7.45	11.28	12.65	13.64	2.43	5.26	6.22	9.59	13.42	14.79	15.78
30	2.46	5.34	7.57	11.41	12.76	13.79	2.46	5.34	6.30	9.71	13.55	14.90	15.93
31	2.48	5.42	7.69	11.51	12.86	13.92	2.48	5.42	6.38	9.83	13.65	15.00	16.06
32	2.51	5.51	7.81	11.65	12.98	14.05	2.51	5.51	6.47	9.95	13.79	15.12	16.19
33	2.53	5.58	7.92	11.76	13.10	14.15	2.53	5.58	6.54	10.06	13.90	15.24	16.29
34	2.55	5.66	8.03	11.88	13.19	14.27	2.55	5.66	6.62	10.17	14.02	15.33	16.41
35	2.58	5.74	8.14	12.00	13.31	14.38	2.58	5.74	6.70	10.28	14.14	15.45	16.52

1. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 20 pounds, use 20-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates (regardless of weight).
2. Regardless of weight, a parcel that meets any of the criteria in 401.2.3.2 must pay the nonmachinable rates.
3. Rates include the $0.96 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.
4. Rates include the $2.14 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

Parcel Select

DISCOUNT PARCELS

Weight Not Over (pounds)	Machinable[1,2]						Nonmachinable[1,2]						
			DBMC/ASF Zone					DSCF		DBMC/ASF Zone[4]			
	DDU	DSCF	1 & 2	3	4	5	DDU	5-Digit	3-Digit[3]	1 & 2	3	4	5
36	---	---	---	---	---	---	$2.60	$5.81	$6.77	$10.40	$14.72	$15.54	$16.62
37	---	---	---	---	---	---	2.62	5.88	6.84	10.51	14.82	15.63	16.72
38	---	---	---	---	---	---	2.64	5.94	6.90	10.61	14.94	15.72	16.82
39	---	---	---	---	---	---	2.66	6.02	6.98	10.72	15.05	15.80	16.91
40	---	---	---	---	---	---	2.69	6.08	7.04	10.82	15.16	15.88	16.98
41	---	---	---	---	---	---	2.71	6.14	7.10	10.92	15.29	15.95	17.07
42	---	---	---	---	---	---	2.73	6.22	7.18	11.02	15.39	16.04	17.15
43	---	---	---	---	---	---	2.75	6.28	7.24	11.12	15.50	16.12	17.52
44	---	---	---	---	---	---	2.77	6.34	7.30	11.21	15.58	16.19	17.88
45	---	---	---	---	---	---	2.79	6.40	7.36	11.31	15.66	16.38	18.28
46	---	---	---	---	---	---	2.81	6.47	7.43	11.40	15.78	16.44	18.66
47	---	---	---	---	---	---	2.83	6.53	7.49	11.50	15.87	16.50	19.05
48	---	---	---	---	---	---	2.85	6.58	7.54	11.58	15.98	16.58	19.46
49	---	---	---	---	---	---	2.87	6.64	7.60	11.67	16.06	16.64	19.86
50	---	---	---	---	---	---	2.89	6.70	7.66	11.77	16.16	16.68	20.28
51	---	---	---	---	---	---	2.90	6.76	7.72	11.85	16.24	16.74	20.70
52	---	---	---	---	---	---	2.92	6.80	7.76	11.94	16.35	16.80	21.14
53	---	---	---	---	---	---	2.94	6.85	7.81	12.03	16.41	16.85	21.59
54	---	---	---	---	---	---	2.95	6.90	7.86	12.11	16.47	16.91	22.05
55	---	---	---	---	---	---	2.96	6.97	7.93	12.19	16.52	16.97	22.24
56	---	---	---	---	---	---	2.98	7.02	7.98	12.28	16.56	17.00	22.32
57	---	---	---	---	---	---	2.99	7.07	8.03	12.36	16.60	17.04	22.46
58	---	---	---	---	---	---	3.00	7.12	8.08	12.44	16.65	17.09	22.55
59	---	---	---	---	---	---	3.01	7.18	8.14	12.52	16.68	17.13	22.65
60	---	---	---	---	---	---	3.02	7.22	8.18	12.60	16.72	17.16	22.76
61	---	---	---	---	---	---	3.04	7.26	8.22	12.68	16.76	17.21	22.85
62	---	---	---	---	---	---	3.05	7.31	8.27	12.76	16.80	17.30	22.94
63	---	---	---	---	---	---	3.06	7.36	8.32	12.83	16.83	17.38	23.03
64	---	---	---	---	---	---	3.07	7.42	8.38	12.91	16.86	17.44	23.13
65	---	---	---	---	---	---	3.08	7.45	8.41	12.99	16.90	17.52	23.20
66	---	---	---	---	---	---	3.10	7.50	8.46	13.06	16.94	17.62	23.31
67	---	---	---	---	---	---	3.11	7.55	8.51	13.13	16.96	17.68	23.38
68	---	---	---	---	---	---	3.12	7.58	8.54	13.20	16.97	17.75	23.46
69	---	---	---	---	---	---	3.13	7.64	8.60	13.28	17.00	17.82	23.55
70	---	---	---	---	---	---	3.14	7.68	8.64	13.35	17.03	17.91	23.63
Oversized	---	---	---	---	---	---	7.36	13.56	13.56	21.08	29.49	39.77	41.33

1. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 20 pounds, use 20-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates (regardless of weight).
2. Regardless of weight, a parcel that meets any of the criteria in 401.2.3.2 must pay the nonmachinable rates.
3. Rates include the $0.96 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.
4. Rates include the $2.14 nonmachinable surcharge. The nonmachinable surcharge does not apply to parcels mailed at oversized rates or parcels sent with special handling.

Media Mail
DISCOUNT PARCELS

Weight Not Over (pounds)	5-Digit	Basic[1]
1	$1.30	$1.80
2	1.64	2.14
3	1.98	2.48
4	2.32	2.82
5	2.66	3.16
6	3.00	3.50
7	3.34	3.84
8	3.68	4.18
9	4.02	4.52
10	4.36	4.86
11	4.70	5.20
12	5.04	5.54
13	5.38	5.88
14	5.72	6.22
15	6.06	6.56
16	6.40	6.90
17	6.74	7.24
18	7.08	7.58
19	7.42	7.92
20	7.76	8.26
21	8.10	8.60
22	8.44	8.94
23	8.78	9.28
24	9.12	9.62
25	9.46	9.96
26	9.80	10.30
27	10.14	10.64
28	10.48	10.98
29	10.82	11.32
30	11.16	11.66
31	11.50	12.00
32	11.84	12.34
33	12.18	12.68
34	12.52	13.02
35	12.86	13.36
36	$13.20	$13.70
37	13.54	14.04
38	13.88	14.38
39	14.22	14.72
40	14.56	15.06
41	14.90	15.40
42	15.24	15.74
43	15.58	16.08
44	15.92	16.42
45	16.26	16.76
46	16.60	17.10
47	16.94	17.44
48	17.28	17.78
49	17.62	18.12
50	17.96	18.46
51	18.30	18.80
52	18.64	19.14
53	18.98	19.48
54	19.32	19.82
55	19.66	20.16
56	20.00	20.50
57	20.34	20.84
58	20.68	21.18
59	21.02	21.52
60	21.36	21.86
61	21.70	22.20
62	22.04	22.54
63	22.38	22.88
64	22.72	23.22
65	23.06	23.56
66	23.40	23.90
67	23.74	24.24
68	24.08	24.58
69	24.42	24.92
70	24.76	25.26

1. Machinable parcels may be eligible for barcode discount of $0.03 per parcel (50-piece minimum).

Library Mail

DISCOUNT PARCELS

Weight Not Over (pounds)	5-Digit	Basic[1]
1	$1.24	$1.71
2	1.56	2.03
3	1.88	2.35
4	2.20	2.67
5	2.52	2.99
6	2.84	3.31
7	3.16	3.63
8	3.48	3.95
9	3.80	4.27
10	4.12	4.59
11	4.44	4.91
12	4.76	5.23
13	5.08	5.55
14	5.40	5.87
15	5.72	6.19
16	6.04	6.51
17	6.36	6.83
18	6.68	7.15
19	7.00	7.47
20	7.32	7.79
21	7.64	8.11
22	7.96	8.43
23	8.28	8.75
24	8.60	9.07
25	8.92	9.39
26	9.24	9.71
27	9.56	10.03
28	9.88	10.35
29	10.20	10.67
30	10.52	10.99
31	10.84	11.31
32	11.16	11.63
33	11.48	11.95
34	11.80	12.27
35	12.12	12.59
36	$12.44	$12.91
37	12.76	13.23
38	13.08	13.55
39	13.40	13.87
40	13.72	14.19
41	14.04	14.51
42	14.36	14.83
43	14.68	15.15
44	15.00	15.47
45	15.32	15.79
46	15.64	16.11
47	15.96	16.43
48	16.28	16.75
49	16.60	17.07
50	16.92	17.39
51	17.24	17.71
52	17.56	18.03
53	17.88	18.35
54	18.20	18.67
55	18.52	18.99
56	18.84	19.31
57	19.16	19.63
58	19.48	19.95
59	19.80	20.27
60	20.12	20.59
61	20.44	20.91
62	20.76	21.23
63	21.08	21.55
64	21.40	21.87
65	21.72	22.19
66	22.04	22.51
67	22.36	22.83
68	22.68	23.15
69	23.00	23.47
70	23.32	23.79

1. Machinable parcels may be eligible for barcode discount of $0.03 per parcel (50-piece minimum).

Periodicals (Rates subject to change on July 15, 2007)

Outside-County—Excluding Science-of-Agriculture

POUND RATES
(Per pound or fraction)
Advertising portion:

LETTERS, FLATS, & PARCELS	
Zone	**Rate**
DDU	$0.167
DSCF	0.214
DADC	0.235
1 & 2	0.261
3	0.281
4	0.332
5	0.410
6	0.491
7	0.589
8	0.672

Nonadvertising portion: $0.203

PIECE RATES (Per addressed piece)

	LETTERS	FLATS	LETTERS, FLATS, & PARCELS
Presort Level	**Automation[1]**	**Automation[1]**	**Nonautomation**
Basic	$0.296	$0.343	$0.393
3-Digit	0.262	0.298	0.341
5-Digit	0.206	0.238	0.270
Carrier Route			
Basic	---	---	0.172
High Density	---	---	0.138
Saturation	---	---	0.118

1. Lower maximum weight applies: letter-size at 3 ounces (or 3.3 ounces for heavy letters); flat-size at 20 ounces (301.3 compatible) and 6 pounds (707.25.3 compatible).

Discounts for each eligible addressed piece:
- Nonadvertising adjustment for each 1% of nonadvertising content: $0.00078.
- Destination delivery unit (DDU): $0.019.
- Destination SCF (DSCF): $0.008.
- Destination ADC (DADC): $0.002.
- Destination entry pallet: $0.016.
- Pallet (other than destination entry pallet): $0.005.

Prefered Rate Discount: Authorized nonprofit and classroom mailers receive a discount of 5% off the total Outside County postage excluding the postage for advertising pounds. The 5% discount does not apply to comingled nonsubscriber copies in excess of the 10% allowance in 707.7.0.

Outside-County—Science-of-Agriculture

POUND RATES
(Per pound or fraction)
Advertising portion:

LETTERS, FLATS, & PARCELS	
Zone	**Rate**
DDU	$0.125
DSCF	0.160
DADC	0.176
1 & 2	0.196
3	0.281
4	0.332
5	0.410
6	0.491
7	0.589
8	0.672

Nonadvertising portion: $0.203

PIECE RATES (Per addressed piece)

	LETTERS	FLATS	LETTERS, FLATS, & PARCELS
Presort Level	**Automation[1]**	**Automation[1]**	**Nonautomation**
Basic	$0.296	$0.343	$0.393
3-Digit	0.262	0.298	0.341
5-Digit	0.206	0.238	0.270
Carrier Route			
Basic	---	---	0.172
High Density	---	---	0.138
Saturation	---	---	0.118

1. Lower maximum weight applies: letter-size at 3 ounces (or 3.3 ounces for heavy letters); flat-size at 20 ounces (301.3 compatible) and 6 pounds (707.25.3 compatible).

Discounts for each eligible addressed piece:
- Nonadvertising adjustment for each 1% of nonadvertising content: $0.00078.
- Destination delivery unit (DDU): $0.019.
- Destination SCF (DSCF): $0.008.
- Destination ADC (DADC): $0.002.
- Destination entry pallet: $0.016.
- Pallet (other than destination entry pallet): $0.005.

Periodicals (Rates subject to change on July 15, 2007)

In-County

POUND RATES

(Per pound or fraction)

LETTERS, FLATS, & PARCELS	
Zone	**Rate**
DDU	$0.109
None	0.142

PIECE RATES (Per addressed piece)

	LETTERS	FLATS	LETTERS, FLATS, & PARCELS
Presort Level	**Automation[1]**	**Automation[1]**	**Nonautomation**
Basic	$0.049	$0.075	$0.103
3-Digit	0.047	0.071	0.095
5-Digit	0.045	0.065	0.085
Carrier Route			
Basic	---	---	0.049
High Density	---	---	0.033
Saturation	---	---	0.027

1. Lower maximum weight applies: letter-size at 3 ounces (or 3.3 ounces for heavy letters); flat-size at 20 ounces (301.3 compatible) or 6 pounds (707.25.3 compatible).

Destination delivery unit (DDU) discount for each addressed piece: $0.006.

Ride-Along Rate—per Ride-Along piece: $0.131

Extra Services

CERTIFICATE OF MAILING

Individual Pieces	Fee
Individual article (Form 3817)	$1.05
Duplicate copies of Form 3817 or mailing bill, per page	1.05
Firm mailing books (Form 3877), per article listed (minimum 3)	0.35
Bulk Quantities	**Fee**
For first 1,000 pieces (or fraction thereof)	$5.50
Each additional 1,000 pieces (or fraction thereof)	0.60
Duplicate copy of Form 3606	1.05

CERTIFIED MAIL Fee—$2.65

COLLECT ON DELIVERY (COD)

Amount to be collected or insurance coverage desired, whichever is higher[1]	Fee
$0.01 to $50	$5.10
50.01 to 100	6.25
100.01 to 200	7.40
200.01 to 300	8.55
300.01 to 400	9.70
400.01 to 500	10.85
500.01 to 600	12.00
600.01 to 700	13.15
700.01 to 800	14.30
800.01 to 900	15.45
900.01 to 1,000	16.60
Additional COD Services	**Fee**
Restricted delivery[2]	$4.10
Notice of nondelivery	3.40
Alteration of COD charges	3.40
Designation of new addressee	3.40
Registered COD[3]	4.55

1. For Express Mail COD shipments valued at $100 or less, the COD fee is based on the amount to be collected. Express Mail insurance automatically provides up to $100 merchandise insurance.
2. Not available with Express Mail COD.
3. Regardless of amount to be collected or insurance value.

CONFIRM

Subscription Level	Subscription Fee and Term	Additional ID Code Fee and Term	Additional Scans Fee and Number
Silver	$2,000 3 months	$750 each 3 months $2,000 annual	$500 block of 2 million scans
Gold	$6,000 12 months	$750 each 3 months $2,000 annual	$750 block of 6 million scans
Platinum	$19,500 12 months	$750 each 3 months $2,000 annual	NA

CONFIRMATION SERVICES

Delivery Confirmation		Fee
First-Class Mail (parcels only)	Retail	$0.75
	Electronic	0.18
Priority Mail	Retail	0.65
	Electronic	0.00
Package Services (parcels only)[1]	Retail	0.75
	Electronic	0.18
Standard Mail (parcels only)	Electronic	0.18

1. No charge for Parcel Select electronic option.

Signature Confirmation		Fee
First-Class Mail (parcels only)	Retail	$2.10
	Electronic	1.75
Priority Mail	Retail	2.10
	Electronic	1.75
Package Services (parcels only)	Retail	2.10
	Electronic	1.75

INSURANCE

Insurance (Amount for Merchandise Insurance Coverage Desired)	Fee[1]
$0.01 to $50	$1.65
50.01 to 100	2.05
100.01 to 200	2.45
200.01 to 300	4.60
300.01 to 400	5.50
400.01 to 500	6.40
500.01 to 600	7.30
600.01 to 5,000 (maximum liability is $5000)	$7.30 plus $0.90 per $100 or fraction thereof over $600 in declared value

1. Bulk insurance discount $0.80 per piece. (See 503.4.4 for eligibility.)

Express Mail Insurance (Amount for Merchandise Insurance Coverage Desired)	Fee[1]
$0.01 to $100.00	$0.00
100.01 to 200.00	0.75
200.01 to 500.00	2.10
500.01 to 5,000.00	$2.10 plus $1.35 for each $500 or fraction thereof over $500

1. Express Mail merchandise maximum coverage: $5,000. Document reconstruction maximum liability: $100.

Extra Services

REGISTERED MAIL

Declared Value	Fee (in addition to postage)
$0.00	$9.50
0.01 to 100	10.15
100.01 to 500	11.25
500.01 to 1,000	12.35
1,000.01 to 2,000	13.45
2,000.01 to 3,000	14.55
3,000.01 to 4,000	15.65
4,000.01 to 5,000	16.75
5,000.01 to 6,000	17.85
6,000.01 to 7,000	18.95
7,000.01 to 8,000	20.05
8,000.01 to 9,000	21.15
9,000.01 to 10,000	22.25
10,000.01 to 11,000	23.35
11,000.01 to 12,000	24.45
12,000.01 to 13,000	25.55
13,000.01 to 14,000	26.65
14,000.01 to 15,000	27.75
15,000.01 to 16,000	28.85
16,000.01 to 17,000	29.95
17,000.01 to 18,000	31.05
18,000.01 to 19,000	32.15
19,000.01 to 20,000	33.25
20,000.01 to 21,000	34.35
21,000.01 to 22,000	35.45
22,000.01 to 23,000	36.55
23,000.01 to 24,000	37.65
24,000.01 to 25,000	38.75
$25,000.01 to $15,000,000	$38.75 + handling charge of $1.10 per each $1,000 or fraction thereof over first $25,000
Over $15,000,000	$16,511.25 + amount determined by USPS based on weight, space, and value

Additional Services	Fee (in addition to postage)
COD Collection Charge (maximum amount collectible is $1,000)	$4.55
Restricted Delivery	4.10
Return Receipts, requested at time of mailing showing to whom, signature, date of delivery, and addressee's address (if different)	2.15
Return Receipts, requested at time of mailing (receive electronically)	0.85
Return Receipts, requested after mailing showing only to whom and date delivered	3.80

1. Fees for articles valued over $25,000 are for handling only. Maximum amount of insurance coverage available is $25,000.

RESTRICTED DELIVERY

Fee, per item, in addition to postage and other fees—$4.10

RETURN RECEIPT FOR MERCHANDISE (FORM 3804)

Requested at time of mailing—$3.50
Delivery record—$3.80

SPECIAL HANDLING

Weight	Fee
Not more than 10 pounds	$6.90
More than 10 pounds	9.60

RETURN RECEIPT

Return Receipt (In conjunction with another service)	Fee
Requested at time of mailing (receive by mail)	$2.15
Requested at time of mailing (receive electronically)	0.85
Requested after mailing (Form 3811-A) (receive by fax, mail, or e-mail)	3.80

Recipient Services

CALLER SERVICE

Fee Group	For Each Separation Provided Per Semiannual (6-month) Period Fee
1	$630.00
2	550.00
3	485.00
4	475.00
5	465.00
6	415.00
7	370.00
Additional Fees and Services	
For each reserved call number, per calendar year	$38.00

POST OFFICE BOX SERVICE

Fee Group	Box Size and Fee per Semiannual (6-month) Period 1	2	3	4	5
1	$42.00	$64.00	$118.00	$242.00	$390.00
2	35.00	54.00	94.00	184.00	326.00
3	28.00	46.00	84.00	150.00	250.00
4	20.00	34.00	52.00	102.00	196.00
5	18.00	26.00	48.00	88.00	148.00
6	13.00	20.00	35.00	62.00	110.00
7	10.00	16.00	28.00	48.00	86.00
E[1]	0.00	0.00	0.00	0.00	0.00

Additional Fees and Services	
Deposit per key issued	$1.00
Key duplication or replacement (after first 2 keys), each	6.00
Post office box lock replacement, each	14.00

1. Eligibility and location determined by USPS.

PREMIUM FORWARDING SERVICE

Enrollment fee—$10.00
Weekly reshipment charge—$11.95

Mailer Services

ADDRESS CORRECTION SERVICE

Per manual notice issued—$0.50

Per electronic notice (or manual notice for electronic option customers) issued:
- First-Class Mail—$0.06
- Other than First-Class Mail—$0.25

Per automated notice issued:
- First-Class Mail letters (first two notices)—$0.00
- First-Class Mail letters (per additional notice)—$0.05
- Standard Mail letters (first two notices)—$0.02
- Standard Mail letters (per additional notice)—$0.15

ADDRESS SEQUENCING SERVICE

Per card removed by the USPS for an incorrect or undeliverable address or added for a missing or new address—$0.33

BULK PARCEL RETURN SERVICE

Annual permit fee—$175.00
Annual account maintenance fee—$550.00
Per piece returned, regardless of weight—$2.10
For Standard Mail machinable parcels only.

MERCHANDISE RETURN SERVICE

Annual permit fee—$175.00
Annual account maintenance fee (for advance deposit account)—$550.00

PICKUP SERVICE FEE

For Express Mail, Priority Mail, and Parcel Post:
Per Pickup on Demand or Custom Designed delivery stop—$14.25

SHIPPER PAID FORWARDING

Annual account maintenance fee—$550.00
For Standard Mail machinable parcels and most Package Services parcels.

BUSINESS REPLY MAIL

Business Reply Mail (BRM)	High Volume	Basic
Annual permit fee	$175.00	$175.00
Annual account maintenance fee	550.00	None
1-ounce letter rate + per piece[1]	0.41 + 0.08	0.41 + 0.70
1-ounce flat rate + per piece[1]	0.80 + 0.08	0.80 + 0.70
1-ounce parcel rate + per piece[1]	1.13 + 0.08	1.13 + 0.70
Card rate + per piece	0.26 + 0.08	0.26 + 0.70
Qualified Business Reply Mail (QBRM)	**High Volume**	**Basic**
Annual permit fee	$175.00	$175.00
Annual account maintenance fee	550.00	550.00
Quarterly fee	1,800.00	None
1-ounce letter rate + per piece[2]	0.380 + 0.005	0.380 + 0.05
Card rate + per piece	0.230 + 0.005	0.230 + 0.05

1. $0.17 each additional ounce; apply Priority Mail rates for pieces over 13 ounces.
2. Second ounce or fraction—$0.17.

Mailer Services

MAILING LIST SERVICE

For correction of name and address on occupant lists, per name on list—$0.33. Minimum per list (30 items)—$9.90

For sorting mailing lists on cards by 5-digit ZIP Code, per 1,000 addresses or fraction—$110.00

For address changes provided to election boards and voter registration commissions, per Form 3575—$0.32

PARCEL RETURN SERVICE

Annual permit fee—$175.00
Annual account maintenance fee—$550.00

PARCEL RETURN SERVICE— RETURN DELIVERY UNIT

LENGTH PLUS GIRTH	RATE
Not over 108 inches	$2.20
Oversized (Over 108 inches up to 130 inches)	8.08

PARCEL RETURN SERVICE— RETURN BMC MACHINABLE

Weight Not Over (pounds)[1]	RBMC Zones 1 & 2	RBMC Zone 3	RBMC Zone 4	RBMC Zone 5
1	$2.22	$2.25	$2.33	$2.51
2	2.89	2.93	3.02	3.27
3	3.51	3.55	3.66	4.01
4	3.92	4.13	4.24	4.68
5	4.29	4.62	4.76	5.31
6	4.64	5.08	5.22	5.87
7	4.93	5.49	5.65	6.41
8	5.50	5.88	6.05	6.89
9	5.79	6.24	6.45	7.34
10	6.04	6.62	7.08	7.76
11	6.19	6.93	7.41	8.14
12	6.38	7.24	7.73	8.51
13	6.55	7.52	8.03	8.85
14	6.71	7.77	8.36	9.16
15	6.84	8.04	8.62	9.45
16	6.98	8.31	8.88	9.75
17	7.15	8.56	9.16	10.00
18	7.26	8.80	9.39	10.25
19	7.42	9.04	9.63	10.49
20	7.54	9.23	9.83	10.70
21	7.66	9.41	10.04	10.91
22	7.79	9.56	10.26	11.10
23	7.90	9.77	10.48	11.31
24	8.00	9.91	10.70	11.48
25	8.11	10.07	10.90	11.66
26	8.23	10.21	11.11	11.81
27	8.34	10.37	11.31	11.97
28	8.42	10.52	11.45	12.14
29	8.53	10.68	11.58	12.34
30	8.64	10.80	11.71	12.52
31	8.74	10.91	11.82	12.72
32	8.86	11.05	11.95	12.89
33	8.93	11.18	12.05	13.07
34	9.04	11.28	12.16	13.21
35	9.11	11.42	12.25	13.33

1. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 20 pounds, use 20-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates (regardless of weight).

Mailer Services

PARCEL RETURN SERVICE—RETURN BMC NONMACHINABLE

Weight Not Over (pounds)[1]	RBMC Zones 1 & 2	RBMC Zone 3	RBMC Zone 4	RBMC Zone 5
1	$5.09	$5.12	$5.20	$5.38
2	5.76	5.80	5.89	6.14
3	6.38	6.42	6.53	6.88
4	6.79	7.00	7.11	7.55
5	7.16	7.49	7.63	8.18
6	7.51	7.95	8.09	8.74
7	7.80	8.36	8.52	9.28
8	8.37	8.75	8.92	9.76
9	8.66	9.11	9.32	10.21
10	8.91	9.49	9.95	10.63
11	9.06	9.80	10.28	11.01
12	9.25	10.11	10.60	11.38
13	9.42	10.39	10.90	11.72
14	9.58	10.64	11.23	12.03
15	9.71	10.91	11.49	12.32
16	9.85	11.18	11.75	12.62
17	10.02	11.43	12.03	12.87
18	10.13	11.67	12.26	13.12
19	10.29	11.91	12.50	13.36
20	10.41	12.10	12.70	13.57
21	10.53	12.28	12.91	13.78
22	10.66	12.43	13.13	13.97
23	10.77	12.64	13.35	14.18
24	10.87	12.78	13.57	14.35
25	10.98	12.94	13.77	14.53
26	11.10	13.08	13.98	14.68
27	11.21	13.24	14.18	14.84
28	11.29	13.39	14.32	15.01
29	11.40	13.55	14.45	15.21
30	11.51	13.67	14.58	15.39
31	11.61	13.78	14.69	15.59
32	11.73	13.92	14.82	15.76
33	11.80	14.05	14.92	15.94
34	11.91	14.15	15.03	16.08
35	11.98	14.29	15.12	16.20
36	12.10	14.43	15.25	16.35
37	12.19	14.52	15.33	16.42
38	12.24	14.61	15.39	16.48
39	12.31	14.71	15.45	16.54
40	12.36	14.77	15.49	16.61
41	12.45	14.88	15.54	16.67
42	12.48	14.95	15.60	16.72
43	12.53	15.03	15.66	16.75
44	12.60	15.10	15.71	16.79
45	12.64	15.16	15.89	16.84
46	12.72	15.25	15.93	16.87
47	12.78	15.30	15.96	16.91
48	12.82	15.39	15.99	16.95
49	12.89	15.46	16.02	16.98
50	$12.90	$15.52	$16.05	$17.02
51	12.99	15.57	16.08	17.07
52	13.03	15.67	16.12	17.10
53	13.05	15.71	16.13	17.14
54	13.11	15.73	16.17	17.17
55	13.15	15.76	16.20	17.21
56	13.20	15.78	16.23	17.25
57	13.26	15.78	16.23	17.29
58	13.31	15.81	16.25	17.33
59	13.35	15.82	16.27	17.37
60	13.41	15.83	16.27	17.40
61	13.45	15.84	16.30	17.44
62	13.49	15.85	16.36	17.47
63	13.54	15.85	16.42	17.52
64	13.59	15.85	16.45	17.56
65	13.62	15.89	16.50	17.59
66	13.68	15.89	16.56	17.63
67	13.73	15.90	16.63	17.67
68	13.73	15.90	16.66	17.70
69	13.80	15.90	16.72	17.75
70	13.84	15.90	16.77	17.79
Oversized	27.39	27.78	28.62	29.89

1. Parcels that measure in combined length and girth:
   - More than 84 inches but not more than 108 inches, and the piece weighs less than 20 pounds, use 20-pound rates (balloon rate).
   - More than 108 inches but not more than 130 inches, use oversized rates (regardless of weight).

Other Fees and Charges

ANNUAL MAILING FEES (per 12-month period)
First-Class Mail Presort, per office of mailing—$175.00
Standard Mail—$175.00
Parcel Select—$175.00
Presorted Media Mail—$175.00
Presorted Library Mail—$175.00
Bound Printed Matter (destination entry)—$175.00

DETACHED ADDRESS LABELS
For Standard Mail, Enhanced Carrier Route, Flats and Parcels:
Per detached address label—$0.015

PARCEL AIRLIFT (PAL)
Weight not more than 2 pounds—$0.50
Weight not more than 3 pounds—$1.00
Weight not more than 4 pounds—$1.45
Weight not more than 30 pounds—$2.00

PERIODICALS APPLICATION FEES
Original entry—$395.00
Additional entry—$65.00
Reentry—$45.00
Registration for news agents—$40.00

PERMIT IMPRINT
Application fee—$175.00

MONEY ORDERS

Service	Fee
Domestic money order	
$0.01 to $500	$1.05
$500.01 to $1,000	1.50
Postal military money order (issued by military facilities)	0.30
Inquiry fee (includes the issuance of a copy of a paid money order)	5.00
Maximum amount per money order—$1,000	

PLAIN STAMPED ENVELOPES
Fee, in addition to the postage value preprinted on the envelope:

TYPE	FEE	
	Each	500
Size 6-3/4	$0.09	$14.50
Size 10	0.09	16.50

PERSONALIZED STAMPED ENVELOPES
Fee, in addition to the postage value preprinted on the envelope:

TYPE	FEE	
	50	500
Size 6-3/4	$4.25	$20.00
Size 10	4.25	23.00

STAMPED CARDS
Fee, in addition to the postage value preprinted on the card:

TYPE	FEE
Single Card	$0.02
Double Card	0.04
Sheet of 40 cards (uncut)	0.80

REPOSITIONABLE NOTES
First-Class Mail letters and flats—$0.005
Periodicals letters and flats—$0.015
Standard Mail letters and flats—$0.015

Postal Explorer

pe.usps.com

Publications
Up-to-date Domestic Mail Manual, Quick Service Guides, International Mail Manual, and more.

Rate Calculators
Use the retail and business rate calculators to compute rates.

Domestic Rate Charts
Rates and Fees Reference is available as a PDF and HTML document.

Zone Charts
Access up-to-date National Zone Charts.

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Federal Register

Friday,
March 30, 2007

Part V

Federal Trade Commission

16 CFR Parts 436 and 437

Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunities; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Parts 436 and 437

Disclosure Requirements and Prohibitions Concerning Franchising

Disclosure Requirements and Prohibitions Concerning Business Opportunities

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (the ''Commission'' or ''FTC'') amends its Trade Regulation Rule entitled ''Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures'' (''Franchise Rule'' or ''Rule'') to streamline the Rule, minimize compliance costs, and to respond to changes in new technologies and market conditions in the offer and sale of franchises. Part 436 sets forth those amendments to the Franchise Rule pertaining to the offer and sale of franchises. Part 437 sets forth a revised form of the original Franchise Rule pertaining solely to the offer and sale of business opportunities. This document provides background on the Franchise Rule and this proceeding; discusses the public comments the Commission received; and describes the amendments the Commission is making based on the record. This document also contains the text of the final amended Rule and the Rule's Statement of Basis and Purpose (''SBP''), including a Regulatory Analysis.

EFFECTIVE DATES: The effective date of the final amended Rule is July 1, 2007. Permission to use the original Franchise Rule, however, will continue until July 1, 2008. After that date, franchisors and business opportunity sellers must comply with the final amended Rule only.

ADDRESSES: Requests for copies of the final amended Rule and the SBP should be sent to: Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580. The complete record of this proceeding is also available at that address. Relevant portions of the proceeding, including the final amended Rule and SBP, are available at www.ftc.gov.

FOR FURTHER INFORMATION CONTACT: Steven Toporoff, (202) 326–3135, Division of Marketing Practices, Room 286, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: The final amended Rule retains most of the original Rule's pre-sale disclosures.[1] Part 436 pertains to franchising—business arrangements that offer purchasers the right to operate under a trademark or other commercial symbol and that typically offer a specific format or method of doing business, such as chain restaurants and hotels.[2] Part 436 modifies the original Rule, however, by reducing inconsistencies with state franchise disclosure laws, by adopting, in large measure, the disclosure requirements and format of the Uniform Franchise Offering Circular (''UFOC'') Guidelines used by the 15 states with pre-sale franchise disclosure laws.[3] Part 436 of the final amended Rule, however, is not identical to the UFOC Guidelines. In several instances, part 436 is narrower. For example, part 436 does not incorporate the UFOC Guidelines' mandatory cover page risk factors, disclosures pertaining to brokers, or detailed disclosures pertaining to franchisees' computer equipment requirements. Part 436 also permits a phase-in of audited financial statements.

Further, part 436 of the final amended Rule corrects a problem with the UFOC Guidelines identified in the rulemaking record. Specifically, the record establishes that the current Item 20 of the UFOC Guidelines—a provision requiring the disclosure of franchisee statistics—results in inflated turnover rates. Part 436 of the final amended Rule corrects this problem, based upon suggestions contained in the record.

In a few instances, part 436 of the final amended Rule is broader than the UFOC Guidelines, addressing franchise relationship issues that the rulemaking record establishes are a prevalent source of franchisee complaints. To that end, part 436 of the final amended Rule provides additional information to prospective franchisees with which to assess the quality of the franchise relationship before they buy, including: (1) franchisor-initiated litigation against franchisees pertaining to the franchise relationship; (2) protected territories; (3) the use of confidentiality clauses; and (4) trademark-specific franchisee associations.

Finally, part 436 of the final amended Rule updates the original Rule and UFOC Guidelines by addressing new marketing techniques and new technologies. For example, part 436 permits franchisors to comply with pre-sale disclosure obligations electronically. It also updates territorial protection disclosures to address sales via the Internet, catalogs, and telemarketing.

Part 437 of the final amended Rule pertains to business opportunity ventures. Business opportunities, such as vending machine routes and rack display ventures, typically do not involve the right to use a trademark or other commercial symbol and the seller must provide purchasers with locations for machines or equipment or with clients.[4] Based upon the rulemaking record, the Commission has proposed that business opportunities covered by the original Rule should be addressed in a separate, narrowly-tailored trade regulation rule. On April 12, 2006, the Commission published a Notice of Proposed Rulemaking (''Business Opportunity NPR'') for a separate Business Opportunity Rule.[5] Pending completion of the proceeding initiated with that notice, business opportunities presently covered by the requirements of the original Rule will remain covered, as set forth as part 437 of the final amended Rule.

Part 437 of the final amended Rule differs from the original Rule in three respects only. First, references to ''franchisor'' and ''franchisee'' in the original Rule have been changed to ''business opportunity seller'' and ''business opportunity purchaser,'' respectively. Second, the original Rule's definition of ''franchise'' set out at section 436.(2)(a) has been changed to ''business opportunity'' and the first part of the original definition—the ''franchise'' elements—have been deleted; the definition now focuses on the second part of the original definition—the business opportunity elements. Third, part 437 sets forth a new exemption for franchises that comply with, or are exempt from, part 436. Except for these three changes, all disclosures and prohibitions in part 437 are identical to those of the original Franchise Rule.

[1] *See* 16 CFR Part 436. Provisions of the original Rule are cited in this document as 16 CFR 436.[ ]. Citations to the final amended Rule are cited simply as 436.[ ] or 437.[ ], respectively. The text of the final amended Rule is set forth in Section VII.

[2] The specific definition of the term ''franchise'' is discussed below in connection with section 436.1(h).

[3] We were assisted in the effort to reduce inconsistencies between the original Rule and UFOC Guidelines by NASAA's submission of a document entitled ''Comparison of UFOC and Proposed FTC Disclosure Requirements'' (''NASAA Comparison'') (Jan. 8, 2002). A copy of this document is on the public record in this proceeding.

[4] The definition of ''business opportunity'' is discussed below in connection with section 437.2(a).

[5] 71 FR 19054 (Apr. 12, 2006).

STATEMENT OF BASIS AND PURPOSE

I. INTRODUCTION

A. Overview of the Original Franchise Rule

The Commission promulgated the original Franchise Rule on December 21, 1978.[6] Based upon the original rulemaking record, the Commission found widespread deception in the sale of franchises and business opportunities through both material misrepresentations and nondisclosures of material facts.[7] Specifically, the Commission found that franchisors and business opportunity sellers often made material misrepresentations about: the nature of the seller and its business operations, the costs to purchase a franchise or business opportunity and other contractual terms and conditions under which the business would operate, the success of the seller and its purchasers, and the seller's financial viability. The Commission also found other unfair or deceptive practices pervasive: franchisors' and business opportunity sellers' use of false or unsubstantiated earnings claims to lure prospective purchasers into buying a franchise or business opportunity, and franchisors' and business opportunity sellers' failure to honor promised refund requests. The Commission concluded that all of these practices led to serious economic harm to consumers.[8]

To prevent deceptive and unfair practices in the sale of franchises and business opportunities and to correct consumers' misimpressions about franchise and business opportunity offerings, the Commission adopted the original Franchise Rule, which is primarily a pre-sale disclosure rule. The original Rule did not purport to regulate the substantive terms of the franchise or business opportunity relationship. Rather, it required franchisors and business opportunity sellers to disclose material information to prospective purchasers on the theory that informed investors can determine for themselves whether a particular deal is in their best interest.[9]

B. The Rule Amendment Proceeding

This Rule amendment proceeding began with a regulatory review of the Franchise Rule in 1995.[10] To initiate the Rule Review, the Commission published a **Federal Register** notice seeking public comment on whether there was a continuing need for the Rule and, if so, how to improve it in light of industry changes since its promulgation in 1978. In response to this notice, the Commission received 75 written comments.[11]

In addition, the Commission staff held two public workshops, in which a total of fifty individuals participated. The workshops were transcribed.[12] The first workshop—held on September 11–13, 1995, in Bloomington, Minnesota—focused on the comments on the Rule, in particular whether the Commission should retain the Rule and, if so, whether the Commission should reduce inconsistencies between federal and state pre-sale disclosure law by incorporating in the Rule the UFOC Guidelines adopted by each of the 15 states with franchise disclosure laws.[13] Participants also discussed issues arising from business opportunity sales. The second workshop—held on March 11, 1996, in Washington, D.C.—focused on the Franchise Rule's application to sales of franchises to be located outside the United States.

As a result of the Rule Review, the Commission determined that the Franchise Rule continues to serve a useful purpose and that it should be retained. The Commission also determined to modify the Rule in order to reduce inconsistencies with the UFOC Guidelines, while updating the Rule to address new technologies developed since the original Rule was promulgated. Accordingly, in February 1997, the Commission published an Advance Notice of Proposed Rulemaking (''ANPR'').[14] The ANPR solicited comment on several proposed Rule modifications which would, among other things, create a separate trade regulation for business opportunity sales, revise the Rule's disclosure requirements to mirror those of the UFOC Guidelines, limit the Rule's application to sales of franchises located in the United States, and permit electronic disclosure. In response to the ANPR, the Commission received 166 written comments.[15] The staff also held six public workshops on the issues raised in the comments, as set forth below.[16]

Topic(s)	Location	Dates
Trade Show Promoters	Washington, D.C.	July 28–29, 1997
Business Opportunities	Chicago, IL	August 21–22, 1997
UFOC, Internet, International, Co-branding, Alternatives to Traditional Law Enforcement	New York, NY	September 18–19, 1997
Business Opportunities	Dallas, TX	October 20–21, 1997

[6] 43 FR 59614 (Dec. 21, 1978). Along with the original Rule, the Commission published a Statement of Basis and Purpose (''original SBP''), 43 FR 59621 (Dec. 21, 1978) and later Final Interpretive Guides to the Rule (''Interpretive Guides''), 44 FR 49966 (Aug. 24, 1979). Since promulgation of the original Rule in 1978, the Commission staff has also issued more than 100 advisory opinions to help assist the public in interpreting various Rule provisions.

[7] Original SBP, 43 FR at 59625.

[8] *Id.*, at 59627–39.

[9] The Commission used the same approach in other trade regulation rules. *See, e.g.,* Funeral Rule, 16 CFR Part 453; Used Car Rule, 16 CFR Part 455.

[10] 60 FR 17656 (Apr. 7, 1995).

[11] Written Rule Review comments are cited as: [Commenter] RR [comment number]. A list of all commenters during the Rule Review and Rule amendment proceeding, and the abbreviations used to identify each, is set forth in Attachment A to this document. Many of the comments in this proceeding are available online at: www.ftc.gov.

[12] Rule Review transcripts are cited as [Commenter] RR, [Sept.95] or [Mar.96] Tr.

[13] The UFOC Guidelines disclosure format is similar in many respects to the original Rule's disclosure requirements. To reduce compliance costs and burdens, the Commission has permitted franchisors to comply with the original Rule by using the UFOC Guidelines format, provided that they did so completely and accurately. *See* 60 FR 51895 (Oct. 4, 1995) (authorizing states to use revised UFOC Guidelines). A copy of the UFOC Guidelines can be found at the corporate finance section of the North American Securities Administrators Association website: www.nasaa.org. It should be noted, however, that the UFOC Guidelines address only required pre-sale disclosures. Other provisions of state law applicable to franchise sales—such as the time for making disclosures, disclosure document updating provisions, and exemptions—vary according to each state's franchise statute or regulations.

[14] 62 FR at 9115 (Feb. 28, 1997).

[15] Written ANPR comments are cited as: [Commenter] ANPR [comment number].

[16] In general, the first day of each public workshop discussed specific issues announced in advance. Participants at these meetings were selected based upon their comments or interest in the subject matter. The second day of each conference was an open forum in which the public was invited to express their views on any franchise or business opportunity issue. ANPR workshop transcripts are cited as: [Commenter] ANPR [date] Tr.

Topic(s)	Location	Dates
UFOC, Internet, International, Co-branding, Alternatives to Traditional Law Enforcement	Seattle, WA	November 6–7, 1997
Business Opportunities	Washington, D.C.	November 20–21, 1997

A total of sixty-five individuals participated in the various ANPR public workshops, including franchisees, franchisors, business opportunity sellers and their representatives, state franchise and business opportunity regulators, and computer consultants.

After the ANPR workshops, the Commission published a Notice of Proposed Rulemaking (''Franchise NPR'') in October 1999.[17] Focusing on franchise sales only, the Franchise NPR included the text of a proposed revised Franchise Rule and a detailed discussion of each proposed Rule revision. Among other things, the Franchise NPR addressed: (1) the application of the Franchise Rule to franchise sales outside the United States; (2) the scope of certain existing disclosure requirements, such as those regarding litigation and franchisee statistics; (3) new disclosure requirements, such as those for franchisee associations; and (4) new instructions permitting disclosure via the Internet. It also proposed creating exemptions from the Franchise Rule for sophisticated prospective franchisees.

The Franchise NPR also specified the process the Commission would follow in amending the Franchise Rule, as it pertains to franchise sales. Pursuant to the Commission's Rules of Practice, 16 CFR 1.20, the Commission determined to use a modified version of the rulemaking process set forth in section 1.13 of those Rules.[18] Specifically, the Commission announced that it would publish an NPR, with a 60-day comment period, followed by a 40-day rebuttal period. In addition, pursuant to Section 18(c) of the FTC Act, the Commission announced that it would hold hearings with cross-examination and rebuttal submissions only if an interested party requested a hearing. The Commission also stated that, if requested to do so, it would contemplate holding one or more informal public workshops in lieu of hearings. Finally, pursuant to 16 CFR 1.13(f), the Commission announced that staff would issue a Report on the Franchise Rule (''Staff Report''), which would be subject to additional public comment.[19]

[17] 64 FR 57294 (Oct. 22, 1999).

[18] 16 CFR 1.13.

[19] Franchise NPR, 64 FR at 57324.

In response to the Franchise NPR, the Commission received 40 comments.[20] Overwhelmingly, the comments supported the proposed revisions, albeit with fine-tuning.[21] No commenters requested a hearing, although, as noted, the Franchise NPR allowed for them.[22] The staff also determined that the record was fully developed for franchise issues, requiring no additional public workshops to explore further Rule amendment issues.

Pursuant to the Rule amendment process announced in the Franchise NPR, the Commission's Bureau of Consumer Protection issued a Staff Report on the Franchise Rule in August 2004.[23] The Staff Report explained in detail the history of the Rule amendment proceeding. It also summarized the issues raised during the various notice and comment periods, in particular those that arose in response to the Franchise NPR. For each Franchise NPR issue, the Staff Report discussed: (1) similarities and differences between the proposed revised Rule approach and both the original Rule and the UFOC Guidelines approaches; (2) pertinent comments; and (3) the staff recommendations on franchise issues for inclusion in a final amended Rule.

Forty-five commenters responded to the Staff Report.[24] For the most part, the commenters supported the proposed Rule revisions pertaining to franchising.[25] Several, however, voiced concern about the scope of one or more Rule provisions, or offered various suggestions to fine-tune the Rule to avoid ambiguities.[26] In other instances, several commenters raised issues for further discussion in anticipated Compliance Guides, or offered interpretations of Rule provisions for inclusion in the Compliance Guides.[27] In several instances, franchisee representatives reiterated views previously expressed during the various comment periods to the effect that the proposed revised Rule is deficient because it does not mandate disclosure of financial performance data[28] or does not adopt various substantive franchise relationship provisions.[29] As explained in greater detail below, the Commission has considered each of these comments in determining the form and content of the final amended Rule.

[20] Franchise NPR comments are cited as: [Commenter] NPR [comment number].

[21] Many commenters enthusiastically supported the Commission's overall approach to revising the Rule. *E.g.*, IL AG, NPR 3, at 10; PMR&W, NPR 4, at 1; Holmes, NPR 8, at 1; H&H, NPR 9, at 2; Baer, NPR 11, at 1; NFC, NPR 12, at 2; Lewis, NPR 15, at 1; IFA, NPR 22, at 3; AFC, NPR 30, at 3; J&G, NPR 32, at 1; Tricon, NPR 34, at 1; Marriott, NPR 35, at 2.

[22] Accordingly, no Presiding Officer was established in this proceeding. *See* Rules of Practice, 16 CFR 1.13(c).

[23] *See* Bureau of Consumer Protection, *Staff Report to the Federal Trade Commission and Proposed Revised Trade Regulation Rule* (16 CFR Part 436) (Aug. 2004) (''Staff Report''). The Staff Report is available at: www.ftc.gov/os/2004/08/0408franchiserulerpt.pdf. In September, 2004, the Commission published a notice in the **Federal Register** announcing the availability of, and seeking comment on, the Staff Report. *See* 69 FR 53661 (Sept. 2, 2004). The announcement is also available at: www.ftc.gov/os/2004/08/040825franchiserulefrn.pdf.

[24] Staff Report comments are cited as ''[Commenter], at _____.'' These comments simply refer to the commenter and not to a specific comment number. After the Franchise NPR, the Commission's Secretary's Office discontinued the practice of assigning a specific comment number to each comment.

[25] *E.g.*, Bundy, at 1; Cendant, at 1 (representing Ramada, Days Inn, Howard Johnson, Travelodge, Knights Inn, Super 8 Motel, Wingate Inn, AmeriHost, Century 21, Coldwell Banker, ERA, Sotherby's Intl Realty, Avis, and Budget); IFA, at 1; IL AG, at 1; J&G, at 1; Kaufmann, at 2 (representing Kaufmann, Feiner, Yamin, Gildin & Robbins; YUM! Brands [Pizza Hut, KFC, Taco Bell, Long John Silvers, and A&W]; 7-Eleven, Inc.; and Arby's [Arby's and T.J. Cinnamons Classic Bakery]); Marriott, at 2; NASAA, at 2; Piper Rudnick, at 1; Spandorf, at 1; Starwood, at 1 (representing Four Points Hotels, Sheraton Hotels,Westin Hotels, and Luxury Collection Hotels); Wiggin and Dana, at 1.

[26] Fourteen comments focused solely on a single issue. For example, eight comments addressed only the original Rule's exclusion for cooperatives (Affiliated Foods; CHS; Graber; IDC; NCBA; NCFC; NGA; Riezman Burger). Additional one-issue comments were received on: the disclosure of franchisee associations (AAFD); the single trademark exclusion (Pillsbury Winthrop); the sophisticated investor exemptions (NADA); the Petroleum Marketing Practices Act (Chevron); the disclosure of parent information (PREA); and integration clauses (Lagarias). Two comments were beyond the scope of the Staff Report: Marks (urging Commission to adopt franchise arbitration standards); Koutsoulis (opposing the proposed merger of two franchisors).

[27] Compliance Guides, which the Commission anticipates staff will issue on part 436, would update existing Interpretive Guides issued in 1979. *See generally* Interpretive Guides, 44 FR 49966. Compliance Guides on part 437 will be issued by staff once any rulemaking on business opportunity ventures is concluded.

[28] *E.g.*, Selden, at 2; Haff, at 1–3; Blumenthal, at 1; Karp, at 2; Steinberg, at 1.

[29] *E.g.*, Blumenthal, at 1; Karp, at 3; Steinberg, at 1–2.

C. Continuing Need for the Rule

Based upon the original rulemaking record and the Commission's law enforcement experience extending nearly 30 years,[30] the Commission concludes that a pre-sale disclosure rule continues to serve a useful purpose. Overwhelmingly, the comments submitted during the Rule amendment proceeding supported the continued need for the Franchise Rule.[31] For example, some commenters emphasized that pre-sale disclosure is still necessary to prevent fraud.[32] Others observed that pre-sale disclosure is a cost-effective way to provide material information to prospective purchasers about the costs, benefits, and potential legal and financial risks associated with entering into a franchise relationship. These commenters also stressed that the Rule assists prospective franchisees in conducting a due diligence investigation of the franchise offering by providing information that is not readily available, such as the franchisor's litigation history and franchisee termination rates.[33] Other commenters noted that pre-sale disclosure helps franchisees understand the franchise relationship they are entering better than they could absent such disclosure, thereby reducing potential conflicts in franchise systems and post-sale litigation costs.[34] Indeed, some commenters expressed the view that repeal of the Franchise Rule might actually increase franchisors' costs and compliance burdens by opening the door for individual states to enact franchise disclosure laws that may be inconsistent, making it difficult for franchisors to conduct business on a national basis.[35] One commenter noted that retaining a uniform pre-sale disclosure rule enables prospective franchisees to comparison shop for the best franchise offering.[36]

On the other hand, many franchisees and their advocates criticized the Rule for not going far enough. They urged the Commission to address in this rulemaking a variety of post-sale franchise contract or ''relationship'' issues, including prohibiting or limiting the use of post-contract covenants not to compete,[37] encroachment of franchisees' market territory,[38] and restrictions on the sources of products or services.[39] Indeed, some franchisees asserted that if the Rule cannot address post-sale relationship issues, then the Commission should abolish the Rule.[40]

To address post-sale relationship issues by adopting rule provisions that prohibit or limit the use of certain contract terms would require record evidence demonstrating specific unfair acts or practices. The FTC Act defines an unfair act or practice as one that is ''likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.''[41] The Act also requires that, to justify an industry-wide rule, such practice be prevalent.[42] This proceeding did not yield adequate evidence to support a finding of prevalent acts or practices that meet each of the three prerequisites for unfairness as articulated in Section 45(n) of the FTC Act.

With regard to the first prerequisite, substantial injury, the record shows that some franchisees in several franchise systems have suffered post-sale harm in the course of operating their franchises, and in some instances this injury may be ascribable to acts or practices of a franchisor.[43] The record, however, leaves open the related questions of whether such franchisor acts or practices are prevalent and whether the injury resulting from acts or practices is substantial, when viewed from the standpoint of the franchising industry as a whole, not from just a particular franchise system.

With regard to avoidability of injury, the unfairness analysis falls short. A franchise purchase is entirely voluntary. The Franchise Rule ensures that each prospective franchisee receives disclosures—expanded in key respects by the current amendments—that explain the terms and conditions under which the franchise will operate. Prospective franchisees can avoid harm by comparison shopping for a franchise system that offers more favorable terms and conditions, or by considering alternatives to franchising as a means of operating a business. Prospective franchisees are also free to discuss the nature of the franchise system with existing and former franchisees, as well as trademark-specific franchisee associations, and the amended Rule facilitates such discussion by providing prospects with contact information. Under these circumstances, the Commission cannot categorically conclude that prospective franchisees who voluntarily enter into franchise agreements, after receiving full disclosure, nonetheless cannot reasonably avoid harm resulting from a franchisor enforcing the terms of its franchise agreement.[44]

The third element requires an analysis of whether injury to franchisees deriving from specific franchisor acts or practices outweighs countervailing benefits to the public at large or to competition. In our law enforcement experience investigating relationship issues in individual franchise systems, it has been the case that the franchisor actions allegedly causing harm to individual franchisees also frequently generate countervailing benefits to the system as a whole or to consumer welfare overall that may or may not be

[30] As of the date of this Notice, the Commission has filed more than 210 suits against more than 650 defendants (both franchises and business opportunities) for Franchise Rule violations since the Rule was promulgated in 1978. *See also* Business Opportunity NPR, 71 FR 19054 (Apr. 12, 2006) (discussing the Commission law enforcement history in combating business opportunity covered by the Franchise Rule).

[31] *E.g.*, H&H, ANPR 28, at 2; Kaufmann, ANPR 33, at 2; NCL, ANPR 35, at 2; SBA Advocacy, ANPR 36, at 2–3; IL AG, ANPR 77, at 1. *See also* Staff Report, at notes 15–16. *But see, generally*, Winslow (opposing the Rule).

[32] *E.g.*, Kaufmann, ANPR 33, at 3 (''Both the Rule and . . . state franchise laws have gone a long way toward eradicating massive franchise frauds and, by doing so, have restored franchising's reputation for integrity and thus cleared the marketplace for the offerings of legitimate franchisors.'').

[33] *E.g.*, Marks, ANPR, 19 Sept. 97 Tr., at 8–9, 29; Wieczorek, RR, Sept.95 Tr., at 62–63. *But see* Winslow, at 21.

[34] *E.g.*, H&H, ANPR 28, at 2; SBA Advocacy, ANPR 36, at 2; Zarco & Pardo, ANPR 134, at 1; ABA Antitrust, RR 22, at 7.

[35] *E.g.*, WA Securities, ANPR 117; Shay, RR, Sept.95 Tr., at 104.

[36] Kaufmann, ANPR 33, at 3.

[37] *E.g.*, Brown, ANPR 4, at 3; AFA, ANPR 62, at 3; Slimak, ANPR 130; Leap, ANPR 147; Vidulich, ANPR, 22 Aug. 97 Tr., at 21.

[38] *E.g.*, Brown, ANPR 4, at 2; Donafin, ANPR 14; AFA, ANPR 62, at 1; Buckley, ANPR 97; Zarco & Pardo, ANPR 134, at 2.

[39] *E.g.*, Brown, ANPR 4, at 2; Weaver, ANPR 17; Colenda, ANPR 71; Haines, ANPR 100; Chiodo, ANPR, 21 Nov. 97 Tr., at 293–94.

[40] *See* AFA, ANPR 62, at 1 (''Our members feel so strongly about the Commission's inability to deal with substantive issues of concern to them, they would rather work to abolish the FTC rule than suffer the abuses of both a government agency *and* their franchisors.'').

[41] 15 U.S.C. 45(n).

[42] 15 U.S.C. 57a.

[43] There are many factors that influence the success or failure of a franchisee, including downturns in the economy, shifting consumer preferences, or even franchisees' own conduct. Accordingly, franchisor conduct post-sale may be only one factor that leads to injury to franchisees. The record is inconclusive, with respect to the franchising overall, as to whether franchisor acts or practices are a direct and primary cause of poor performance or failure by franchisees. In this regard, it is noteworthy that in its 2001 audit of the Commission's Franchise Rule Program, the General Accounting Office (''GAO'') concluded that there are ''no readily available, statistically reliable data on the overall extent and nature of [franchise relationship] problems.'' United States General Accounting Office, *GAO Report to Congressional Requesters, Federal Trade Commission Enforcement of the Franchise Rule*, GAO–01–776, at 29 (July 31, 2001). *See also* Staff Report, at 10–11.

[44] *See FTC v. J.K. Publ'ns, Inc.*, 99 F. Supp. 2d 1176, 1201 (C.D. Cal. 2000) (''With regard to [avoidability], the focus is on 'whether consumers had a free and informed choice that would have enabled them to avoid the unfair practice.'''').

outweighed by the alleged harm to franchisees. Commenters advocating that the Rule include unfairness remedies have asserted injury, but have failed to bring forth evidence that such injury outweighs potential countervailing benefits that arise from the alleged acts or practices. Therefore, the Commission declines to impose industry-wide provisions mandating substantive terms of private franchise contracts that would impact on the entire franchise industry, not just those franchise systems that are the subject of commenters' complaints.[45] Notwithstanding this determination, the Commission, in pursuit of its law enforcement mission can consider whether individual franchisors' conduct constitutes an unfair act or practice on a case-by-case basis.

Nonetheless, the Commission concludes that the record is sufficient to show that misunderstandings about the state of the franchise relationship are prevalent, and some more disclosure is warranted to ensure that prospective franchisees are not deceived about the quality of the franchise relationship before they commit to buying a franchise. Franchisee concerns about relationship issues persuade us that better disclosure is necessary to ensure that prospective franchisees are fully informed about the relationships that they will be entering. To that end, part 436 of the final amended Rule expands the Rule's pre-sale disclosures in a few instances to address franchise relationship issues, as detailed throughout this document.

[45] The Commission notes that it has voiced concern that government-mandated contractual terms may result in affirmative harm to consumer welfare. Contractual terms that are driven by market forces and forged by private parties acting in their own self-interest are the ones most likely to result in products being brought to market quickly and efficiently. The Commission therefore has authorized its staff to file a number of advocacy comments recommending against proposed state bills that would have unduly limited manufacturers in managing their distribution systems, such as by requiring exclusive territories, prohibiting or seriously burdening wholesaler terminations, or limiting the ability to reorganize a distribution system in response to changing competitive conditions. *See, e.g.*, Letter from Maureen Ohlhausen, Dir., Office of Policy Planning, et al., to the Hon. Wesley Chesbro, Cal. State Senate (Aug. 24, 2005) (comment on proposed beer franchise act); Letter from C. Steven Baker, Dir., Chicago Regional Office, to the Hon. Dan Cronin, Ill. State Senate (Mar. 31, 1999) (comment on proposed legislation on wine and spirits distribution); *cf.* Testimony of Jerry Ellig, Deputy Dir., Office of Policy Planning, before joint committee hearings of the Haw. state legislature (recommending against gasoline price control legislation, in part on grounds that repeal of anti-encroachment statute would be a more effective means of reducing prices (Jan. 28, 2003)).

D. Overview of the Final Amended Rule

The final amended Rule maintains the benefits of the original Rule, preventing deceptive and unfair practices identified in the original rulemaking through pre-sale disclosure of material information necessary to make an informed purchasing decision and prohibition of specified misrepresentations. At the same time, part 436 of the final amended Rule reduces unnecessary compliance costs. First, part 436 covers only the sale of franchises to be located in the United States and its territories. Second, based upon the record, the Commission also has created several new exemptions for sophisticated franchise purchasers, including exemptions for large investments and large franchisees with sufficient net worth and prior experience.

Part 436 of the final amended Rule also reduces inconsistencies between federal and state pre-sale disclosure requirements. Since the original Rule was promulgated, NASAA, which represents the 15 states with pre-sale franchise disclosure laws, has developed a standard disclosure document, the UFOC. The Commission, as a matter of policy, has in the past permitted franchisors to comply with the Franchise Rule by furnishing prospective franchisees with a UFOC, even in the 35 states without franchise disclosure laws.[46] The Commission found that the UFOC Guidelines, taken as a whole, offer consumers the same or greater consumer protection as that provided by the original Rule. As a result, the UFOC Guidelines already are used by the vast majority of franchisors to comply with the Rule,[47] and, in fact, the UFOC Guidelines have become the national franchise industry standard.[48] Further, as NASAA noted, the UFOC Guidelines were developed with significant input from franchisors, franchisees, and franchise administrators, and were subject to public hearings and notice and comment.[49] Therefore, the UFOC Guidelines, like the Franchise Rule, reflect a balance of interests among all affected parties.

Overwhelmingly, franchisors, franchisees, and franchise regulators urged the Commission throughout the Rule amendment proceeding to adopt the UFOC Guidelines disclosure format. These commenters include a broad range of interests, such as NASAA, the International Franchise Association (''IFA''), the American Bar Association's Antitrust Section, the American Franchisee Association, the State Bar of California Business Law Section, and major franchisors, such as Cendant, Marriott, YUM! Brands, 7-Eleven, Arby's, and Starwood Hotels and Resorts.[50]

Accordingly, part 436 of the final amended Rule closely tracks the UFOC Guidelines. Nevertheless, part 436 is not identical to the UFOC Guidelines. In a few instances, part 436 omits or streamlines a UFOC Guidelines disclosure requirement that the Commission believes is unnecessary or is overly burdensome—for example, mandatory cover page risk factors, broker disclosures, and detailed computer equipment disclosures. As explained in greater detail below, part 436 of the final amended Rule also avoids problems with Item 20 of the UFOC Guidelines (the disclosure of statistical information on franchisees in the system) that were revealed during the proceeding and that were examined in detail by a number of commenters, including NASAA.

Part 436 of the final amended Rule also retains a few provisions from the original Rule that are not in the UFOC Guidelines, because the Commission believes they are necessary to prevent deception. For example, part 436 of the final amended Rule retains the original Rule's requirement that, in some instances, franchisors disclose information about a parent. Similarly, part 436 retains the original Rule's phase-in of audited financial statements,

[46] Authorization to use the UFOC Guidelines to comply with the original Rule's disclosure requirements was first granted by the Commission in the Interpretive Guides, 44 FR at 49970–71, on the grounds that the UFOC Guidelines, taken in their entirety, provide equal or greater consumer protection as the original Rule. The Commission ratified this position following subsequent amendments to the UFOC requirements by the NASAA, most recently in 1993, 58 FR 69224 (Dec. 30, 1993).

Beginning on July 1, 2008, however, franchisors may use part 436 of the final amended Rule only. Permission to use the UFOC Guidelines will be withdrawn on that date because those Guidelines will no longer afford prospective franchisees equal or greater protection as part 436. This would not preclude consideration of any new or revised UFOC Guidelines promulgated by the states in the future.

[47] *E.g.*, H&H, ANPR 28, at 5–6; Kaufmann, ANPR 33, at 3; Kestenbaum, ANPR 40, at 1; WA Securities, ANPR 117, at 1.

[48] *E.g.*, IFA, NPR 22, at 4–5; Stadfeld, NPR 23, at 2; Karp, ANPR, 19 Sept. 97 Tr., at 90.

[49] NASAA, ANPR 120, at 2. *See also* WA Securities, ANPR 117, at 1.

[50] *E.g.*, PMR&W, NPR 4, at 1; H&H, NPR 9, at 2; 7-Eleven, NPR 10, at 2; Lewis, NPR 15, at 5; NASAA, NPR 17, at 2–4; Bundy, NPR 18, at 6; Gurnick, NPR 21, at 2; IFA, NPR 22, at 4–5; Stadfeld, NPR 23, at 2; J&G, NPR 32, at 2; Marriott, NPR 35, at 2; Brown, ANPR 4, at 1; Duvall, ANPR 19, at 1; Baer, ANPR 25, at 2; Kaufmann, ANPR 33, at 3; SBA Advocacy, ANPR 36, at 3; Kestenbaum, ANPR 40, at 1; AFA, ANPR 62, at 2; IL AG, ANPR 77, at 1; WA Securities, ANPR 117, at 1; Selden, ANPR 133, at 1; Zarco & Pardo, ANPR 134; at 1; Cendant, ANPR 140, at 2.

thereby preserving flexibility not present in the UFOC Guidelines.

At the same time, part 436 of the final amended Rule adds to the UFOC Guidelines a few narrowly tailored disclosures based upon the Commission's law enforcement experience and the rulemaking record, mostly to prevent deception involving the nature of the franchise relationship.[51] For example, as explained in greater detail below, part 436 of the final amended Rule expands the UFOC Guidelines' Item 3 litigation disclosure requirements to include the disclosure of franchisor-initiated litigation. In addition, part 436 of the final amended Rule goes beyond the UFOC Guidelines' Item 20 franchisee statistics disclosures to require disclosure of information about the franchisor's use of confidentiality clauses and the existence of trademark-specific franchisee associations. In addition, in a few instances, part 436 of the final amended Rule requires franchisors to make prescribed statements to clarify issues that the record established are often misinterpreted by prospective franchisees, particularly in the area of protected territories and financial performance representations.

Further, part 436 of the final amended Rule updates the original Rule and UFOC Guidelines by addressing changes in the marketplace and new technologies. For example, as explained below, part 436 of the final amended Rule permits franchisors to furnish disclosures electronically and enables franchisees to use electronic signatures. Part 436 of the final amended Rule also updates the original Rule and UFOC Guidelines to address the impact of the Internet on a franchisor's business operations. Specifically, part 436 requires more disclosure about the affect of the Internet on sales restrictions imposed on franchisees and any right of franchisors to compete online. It also addresses financial performance representations made on the Internet.

Finally, part 436 of the final amended Rule contains a few provisions and prohibitions that are necessary to make the Rule effective, to facilitate compliance, and to prevent deception. For example, part 436 of the final amended Rule prohibits a franchisor from unilaterally altering the material terms and conditions of its franchise agreements, unless the franchise seller informs the prospective franchisee about the changes within a reasonable time before execution. Part 436 of the final amended Rule also prohibits the use of shills, who are persons paid or otherwise given consideration to provide a false favorable report about the franchisor's performance history.

E. Continued Application of Commission and NASAA Precedent

As noted throughout, most of the provisions of the original Rule have been retained in the final amended Rule. Accordingly, the original SBP remains valid, except to the extent of any conflict with the final amended Rule. In the event of any conflict, this document supersedes the original SBP. In the same vein, all former informal staff advisories remain a source of Rule interpretation, except where this SBP contradicts a staff advisory. To the extent that any member of the public is concerned that a previous advisory may no longer be applicable in light of the final amended Rule, we invite that person or entity to seek further clarification from the Commission or the staff.[52]

Further, the Commission anticipates issuance of new Compliance Guides on part 436 that will replace the original Interpretive Guides.[53] Because much of part 436 of the final amended Rule is based upon the UFOC Guidelines, the Commission anticipates that Compliance Guides will likely incorporate, in large measure, the UFOC Guidelines' existing sample answers and NASAA's previously issued commentaries on the UFOC Guidelines, to the extent such sample answers and commentaries do not deviate from the final amended Rule.[54] The Commission intends that the staff coordinate the issuance of Compliance Guides, and future interpretations of part 436 of the final amended Rule, with NASAA's Franchise and Business Opportunity Project Group in order to minimize differences between FTC and state Rule interpretations.

II. THE LEGAL STANDARD FOR AMENDING THE RULE

A. Section 18 Rulemaking

Section 18(d)(2)(B) of the FTC Act states that ''[a] substantive amendment to, or repeal of, a rule promulgated under subsection (a)(1)(B) shall be prescribed, and subject to judicial review, in the same manner as a rule prescribed under such subsection.''[55] Thus, the standard for amendment or repeal of a Section 18 rule is identical to that for promulgating a trade regulation rule pursuant to Section 18.

Additionally, an SBP must address four factors: (1) the prevalence of the acts or practices addressed by the rule; (2) the manner and context in which the acts or practices are unfair or deceptive; (3) the economic effect of the rule, taking into account the effect on small businesses and consumers; and (4) the effect of the rule on state and local laws.[56] These four factors are discussed in detail throughout this document. In the next section, we summarize our findings regarding each of these factors.[57]

1. The effect of the rule on state and local laws

The Commission begins with the effect of the final amended Rule on state and local laws, because that factor is unusually prominent in this proceeding. As noted above, 15 states have pre-sale franchise disclosure laws in the form of the UFOC Guidelines. The rulemaking record shows that, as a practical matter, the UFOC Guidelines are, in fact, the national disclosure standard for the franchise industry. Therefore, by design, the overwhelming effect of the final amended Rule on state franchise law will be to mesh more closely with it and

[51] A decision to retain any portion of the original Rule may be based upon evidence gathered during the original rulemaking and the Commission's subsequent enforcement experience, as well as evidence adduced during the current rulemaking. Indeed, to the extent that nothing supplements evidence from the initial rulemaking, there is a presumption that the existing rule should be retained. *See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983).

[52] The Commission's Rules of Practice prescribe procedures to follow in seeking such advice. 16 CFR 1.3.

[53] Throughout the Rule amendment proceeding, commenters have requested that the Commission explain or interpret various provisions in Compliance Guides. The Commission anticipates that staff will respond affirmatively to those requests. Compliance Guides on part 437 (the business opportunity section) will be issued after the conclusion of the business opportunity rulemaking proceeding.

[54] The Commission also recognizes that over the course of the years, franchisors have developed specific language approved by the states for compliance with the UFOC Guidelines. The Commission anticipates that part 436 of the final amended Rule will be interpreted, where consistent with the public interest, in a manner that conforms with historic industry practices.

[55] 15 U.S.C. 57a(d)(2)(B). The Commission's rulemaking standards applicable to the promulgation and amendment of a Section 18 rule require a preponderance of reliable evidence. *See* Statement of Basis and Purpose, Funeral Rule, 59 FR 1592 (Jan. 11, 1994); Credit Practices Rule, 49 FR 7740 (Mar. 1, 1984).

[56] Rules of Practice, 16 CFR 1.14(a)(1)(i)–(iv). In addition, the SBP must specify how the public may obtain a copy of the Rule's final regulatory analysis. 16 CFR 1.14(a)(v). The current notice does not set forth a separate regulatory analysis. Instead, it incorporates the Commission's regulatory analysis throughout the SBP portion of the notice. This notice, including the SBP, is being published in the **Federal Register** and posted on the FTC's website at: www.ftc.gov.

[57] Support in the record for each factor is set forth in the substantive discussion of each provision of the final amended Rule.

enhance its effectiveness by promoting consistency and extending its reach to nationwide scope.[58] Moreover, the overwhelming majority of commenters throughout the Rule amendment proceeding, including NASAA and other state law advocates, urged the Commission to update the original Rule by adopting the UFOC Guidelines to bring greater uniformity to the field of franchise pre-sale disclosure.[59] Accordingly, in considering the factors outlined above, the Commission has given great weight to state franchise laws and their impact on the market, as well as the desire of all parties in the field to reduce inconsistencies between federal and state franchise disclosure laws.

The Commission has also carefully weighed the benefits of any suggestion to revise the Rule that would compound inconsistencies between the Rule and the UFOC Guidelines. Only in very few instances, an existing weakness in the UFOC Guidelines compels deviation from those Guidelines. The chief example is the revision to the Item 20 franchise statistics disclosures. Part 436 of the final amended Rule adopts a proposal submitted by NASAA to eliminate revealed problems with UFOC Item 20 in a streamlined fashion that provides prospective franchisees with material information about the franchise system, while reducing unnecessary compliance burdens.

The Commission also has adopted several suggestions offered by state regulators, mostly through NASAA, for streamlining the Rule. For example, in part 436 the Commission has revised the financial performance claim disclosures to eliminate the original Rule's requirements that: (1) existing franchise performance data be prepared according to generally accepted accounting principles; (2) financial performance data be presented to a prospective franchisee in a separate financial performance document; and (3) cost information alone trigger the Rule's financial performance disclosure and substantiation requirements.

2. Deceptive practices

The original Rule remedied through pre-sale disclosure five types of harmful material misrepresentations or omissions that were found to be widespread —specifically, misrepresentations about: (1) the opportunity being offered for sale (2) costs; (3) contractual terms; (4) success of the seller and prior purchasers; and (5) the seller's financial viability. Each part 436 disclosure amendment to the original Rule addresses one of these five types of misrepresentations or omissions of material information.[60]

a. Misrepresentations about the franchisor and the franchise system

In the original rulemaking, the Commission found that franchisors and business opportunity sellers routinely misrepresented the nature of the business. For example, franchisors misrepresented how long they had been in business or the extent of their directors' and officers' prior business experience. Such misrepresentations mislead consumers acting reasonably under the circumstances into believing that the franchise offered for sale is a safe or low risk investment.

To prevent such deception, the original Rule required franchisors and business opportunity sellers to disclose background information on the franchisor or business opportunity seller and the business, including: the name and address of the franchisor or business opportunity seller and any parent company; the name under which the franchise or business opportunity seller does or intends to conduct business; its trademarks; the prior business experience of the franchisor or business opportunity seller and its directors and officers; and the business experience of the franchisor or business opportunity seller —*e.g.*, experience selling franchises under the same or different trademarks, as well as the franchisor or business opportunity seller's other lines of business.

Part 436 of the final amended Rule continues to address misrepresentations about the nature of the franchisor and the franchise system by requiring the same disclosures as did the original Rule. In a few instances, part 436 expands on these disclosures to remedy aspects of this type of misrepresentation that have been revealed by our enforcement experience or the record developed here. Specifically, part 436 of the final amended Rule requires franchisors to disclose information about the franchisor's predecessors. Similarly, based upon the Commission's law enforcement experience in over 50 franchise cases, part 436 also remedies misrepresentations about those controlling the franchise system by requiring not only disclosures about directors and officers, but also about other individuals who have management responsibility relating to the sale or operation of the franchises being offered for sale.

b. Misrepresentations about costs

In promulgating the original Rule, the Commission recognized the harm to franchisees and business opportunity purchasers resulting from misleading cost representations. Representing that costs of buying and operating a franchise, for example, are less than they actually are is likely to mislead prospective franchisees, acting reasonably under the circumstances, into believing that the franchise is more financially attractive than is actually the case. Obviously, cost representations are highly material. Thus, the original Rule required franchisors and business opportunity sellers to disclose fully not only the initial fee, but continuing costs throughout the relationship. For example, franchisors must disclose required purchases or leases for, among other things, inventory, signs, supplies, and equipment. In addition, the Commission was concerned about undisclosed indirect payments to the franchisor or business opportunity seller, and therefore required franchisors and business opportunity sellers to disclose the basis for calculating payments to the franchisor or business opportunity seller from suppliers that franchisees or business opportunity purchasers are required to use. Similarly, franchisors and business opportunity sellers must disclose any interest or payments made to celebrity endorsers.

Part 436 of the final amended Rule retains these required cost disclosures. It also adopts a few additional cost disclosures that the states found necessary to address related misrepresentations or omissions, or misrepresentations revealed by our law enforcement experience or the record developed here. These include, for example, a description of laws or regulations specific to the industry in which the franchise operates. Obviously, a franchisee's operating costs

[58] As noted above, part 437 (the business opportunity section) of the final amended Rule is identical in all respects to the original Rule, except for its scope of coverage. Accordingly, the amendments to the original Rule set forth in part 437 will have no effect on state or local business opportunity laws.

[59] The Commission intends to continue working with NASAA and individual states after the final amended Rule goes into effect in order to harmonize federal and state franchise disclosure laws. The Commission recognizes that the states have a wealth of experience in interpreting the UFOC Guidelines that form the basis of the final amended Rule. Accordingly, the Commission anticipates that the staff will coordinate with NASAA and the states in issuing future Compliance Guides and informal staff advisory opinions, in keeping with our goal of federal and state harmonization.

[60] As noted above, part 437 (the business opportunity section) of the final amended Rule is identical in all respects to the original Rule, except for its scope of coverage. Accordingly, there are no amendments in part 437 that must be addressed here.

may increase if he or she must incur hidden costs in the form of compliance with various industry-specific regulations governing the particular field. Part 436 of the final amended Rule also adopts the UFOC Guidelines' required disclosure of fees that the franchisee is expected to pay within the first three months of operation (or other reasonable time for the industry), as well as more details about payments, such as to whom a payment is to be made and whether a payment is refundable. At the same time, part 436 of the final amended Rule updates cost disclosures by requiring, for example, additional information about any required computer systems, based upon the UFOC Guidelines. Each of these UFOC provisions is designed to prevent misrepresentation of the costs required to commence operation of a franchised outlet.

c. Misrepresentations about contractual terms

Another area of deception identified in the original rulemaking record concerns the underlying franchise or business opportunity contract. For example, the Commission found that franchisors may misrepresent the extent of promised assistance, or fail to disclose restrictions and other obligations imposed on the franchisee. Accordingly, the original Rule specified a number of disclosures pertaining to the legal obligations of both parties under their agreement. Specifically, the original Rule required franchisors, for example, to disclose information about contractual requirements to use designated suppliers, financing arrangements, product sales restrictions and protected territories, site selection, and training programs. In addition, franchisors had to disclose basic terms of the contract, such as the duration, renewal and termination rights, assignment rights, and covenants not to compete.

Part 436 of the final amended Rule retains these disclosure requirements. Adopting the UFOC Guidelines approach, however, the contract disclosures are required to be presented in easy-to-read tables, with references to the franchise agreement, rather than in the form of more detailed descriptions. In addition, part 436 updates the disclosures by, for example, requiring franchisors to explain how they use the term ''renewal'' in their system.

d. Misrepresentations about success

False or misleading representations about the success of franchise systems and business opportunities were perhaps the most prevalent misrepresentations identified in the original rulemaking record. These included misrepresentations about: the number of franchisees or business opportunity purchasers, the expected growth of the system, and, most important, the financial performance of existing purchasers.

To remedy misleading success claims, the original Rule required franchisors and business opportunity sellers to disclose statistics about the system, including the number of purchasers in the system, the number of purchasers who left the system in the previous year, and why they left (*i.e.*, termination, cancellation, non-renewal, reacquisition). The original Rule also required franchisors and business opportunity sellers to furnish the names and contact information for at least 10 current purchasers. This information enabled prospective purchasers to verify the seller's claims of success, and it gave prospective purchasers additional sources from which to obtain financial performance data.

The original Rule also remedied misleading success claims by requiring franchisors and business opportunity sellers to disclose lawsuits filed by purchasers against them pertaining to their relationship and counterclaims filed by a franchisor or business opportunity seller in response to a suit filed by a purchaser. The existence of such lawsuits is material because this information would likely influence a prospective purchaser's decision about what can be a sizeable investment in a franchise or business opportunity. The nature of the relations between the seller and the purchaser, as reflected in litigation, is of central importance.

In the original rulemaking, the Commission also sought to ensure the accuracy and reliability of any financial performance claims made by a franchisor or business opportunity seller. Accordingly, the Commission prohibited the making of earnings claims unless the franchisor or business opportunity seller possessed a reasonable basis for the claim, along with written substantiation, at the time the claim was made. In addition, the seller had to set forth the claim in a separate earnings claims statement containing the bases and assumptions underlying the claim. Franchisors and business opportunity sellers were also required to warn prospective purchasers that there is no assurance that they will achieve the same level of earnings.

Part 436 of the final amended Rule retains each of these disclosures, and it expands on them by requiring franchisors to provide, consistent with the UFOC Guidelines, the names of up to 100 franchised outlets, as well as contact information for former franchisees. Part 436 of the final amended Rule also provides additional sources of information about the franchise system, including the disclosure of trademark-specific franchisee associations. These provisions prevent misrepresentations by giving prospective franchisees additional sources of information with which to assess franchisor claims. With respect to financial performance representations, it follows the more streamlined approach of the UFOC Guidelines. Specifically, part 436 of the final amended Rule eliminates the need for a separate earnings claims document. Instead, the required information is incorporated into the text of the disclosure document itself (Item 19).

Finally, as discussed throughout this document, franchisees have brought to the Commission's attention what they believe to be abusive practices in franchising. These practices include encroachment of territories, imposition of source of supply restrictions, modification of original franchise agreements as a precondition for renewal, and the use of disclaimers to limit liability for misrepresentations, among others. As detailed in Section I.C. above, the Commission declines to attempt to promulgate a franchise relationship law and, further, concludes that the record does not support the promulgation of such a law. Nonetheless, the record is sufficient to support requiring additional disclosures that will help inform prospective franchisees about the quality of the franchise relationship. These include: expanded litigation disclosures to include franchisor-initiated litigation against franchisees; a warning of the consequences to a franchisee when a franchisor offers no exclusive territory; a statement of what the term ''renewal'' means in the franchise system; and a disclosure of the use, if any, of confidentiality clauses. Taken together, each of these amended disclosures in part 436 will enable prospective franchisees to better assess the quality of the franchise relationship, and their likely success as franchisees.

e. Misrepresentations about financial viability

In the original rulemaking record, the Commission found that franchisors and business opportunity sellers often misrepresented or failed to disclose material information about their financial viability. As a result, prospective purchasers invested thousands of dollars in systems having

a poor financial history, or even facing bankruptcy. Obviously, a franchisee's investment, for example, is at risk if the franchisor is not able to perform its contractual obligations as promised. To remedy these practices, the original Rule required franchisors and business opportunity sellers to disclose bankruptcy information, as well as to provide audited financial information. The final amended Rule continues to require these disclosures.

3. The economic effect of the rule

At every stage of the Rule amendment proceeding, the Commission solicited comment on the economic impact of the Rule, as well as the costs and benefits of each proposed Rule amendment. In finalizing the final amended Rule, the Commission has carefully weighed these costs and benefits, reducing compliance costs wherever possible. Thus, for example, part 436 reduces compliance costs by limiting the Rule's scope of coverage to the sale of franchises to be located in the United States and its territories.[61]

In the same vein, part 436 of the final amended Rule reduces compliance burdens where the record establishes that the abuses the Rule is intended to address are not likely to be present. Thus, part 436 of the final amended Rule retains the exemptions in the original Rule as the ones for fractional franchises and leased departments. Part 436 of the final amended Rule also incorporates the Commission's long-standing policies exempting from Rule coverage franchises covered by the Petroleum Marketing Practices Act, as well as instances where the only required payments made by the franchisee are for inventory at bona fide wholesale prices. Further, part 436 of the final amended Rule adds new exemptions for large investments of at least $1 million (excluding unimproved land and any amounts financed by the franchisor), investments by large franchisees with five years of business experience and $5 million net worth, and for franchise sales to company insiders who are already familiar with the company's operations.

The Commission also has limited the required disclosures of part 436 in order to minimize compliance burdens. For example, the Commission has declined to adopt two UFOC Guidelines provisions on the grounds that such provisions are unnecessarily burdensome, without corresponding benefits to prospective franchisees. These provisions are mandatory risk factors (choice of law and venue) on the disclosure document cover page and the disclosure of franchise broker information in Items 2, 3, and 4 of the UFOC Guidelines.

Further, for each disclosure item, the Commission considered less costly disclosure alternatives. For example, part 436 of the final amended Rule requires the disclosure of franchisor-initiated litigation. In response to concerns raised by franchisor representatives, Item 3 of part 436 makes clear that this disclosure is limited to a one-year snap-shot in time and franchisors need only update the disclosure on an annual basis. Franchisors also can reduce costs by grouping similar franchisor-initiated suits under a single descriptive heading, in lieu of detailed summaries for each suit.

Similarly, the Commission has adopted in part 436 a narrow requirement to disclose independent trademark-specific franchisee associations. Franchisors must make this disclosure only if the franchisee association asks to be included in the franchisor's disclosure document, and the association's request must be updated on an annual basis.

Part 436 of the final amended Rule also reduces the franchisors' burdens associated with making financial performance claims. Among other things, the original Rule specified that: (1) all financial performance claims must be geographically relevant to the franchise being offered for sale; and (2) all historical earnings data from existing franchisees must be presented using generally accepted accounting principles. Moreover, the original Rule required franchisors to disseminate financial performance information in a separate document. Part 436 of the final amended Rule eliminates these requirements.

Part 436 of the final amended Rule also promotes efficiency and reduces compliance costs by enabling franchisors to use their own judgment in deciding how to disseminate disclosure documents. For example, part 436 permits franchisors to furnish disclosures electronically through a variety of media, including CD–ROM, Internet website, and email. Individual sections of the disclosure document also allow more flexibility than the original Rule, again to promote efficiency and reduced compliance costs. For example, Item 5 permits franchisors to disclose either fixed fees or ranges of fees. Similarly, Item 11 permits franchisors to summarize computer system requirements, in lieu of more extensive disclosures.

In amending the Rule, the Commission has been guided by a preference for an approach that prohibits identified harmful practices and eschews burdensome affirmative compliance obligations that may only be warranted for some few unscrupulous actors. Thus, part 436 of the final amended Rule drops the original Rule's across-the-board obligation to furnish disclosures early in the sales process—at the first personal meeting between the prospective purchaser and the franchise seller. Instead, part 436 of the final amended Rule allows greater flexibility, requiring that franchisors furnish disclosures early in the sales process only if the prospective franchisee requests them at that point. Similarly, part 436 of the final amended Rule eliminates burdensome waiting periods in some instances. Thus, in lieu of the original Rule's mandate that all franchisors furnish copies of their completed franchise agreements at least five business days before execution, part 436 targets potential fraud directly by prohibiting a franchisor from failing to disclose unilateral changes to a franchise agreement seven days prior to its execution. As a final example, part 436 of the final amended Rule prohibits a franchisor from failing to furnish a copy of its most recent disclosure document and any quarterly updates to a prospective franchisee, upon reasonable request, before the prospect signs the franchise agreement. This prohibition is in lieu of suggestions that the Commission impose onerous disclosure updating obligations on an ongoing basis.

Finally, in numerous instances the Commission has rejected suggestions to impose certain additional requirements upon franchisors, and has opted instead to address the underlying issues that prompted those suggestions through redoubled consumer education efforts. For example, several commenters in the rulemaking record urged the Commission to expand the disclosure document to provide prospective franchisees with more general information about the nature of franchising. Others suggested more disclosure on post-termination obligations to third-party vendors, obligations to purchase from specific suppliers, and sources of financing, among others. While there is merit in their suggestions, the Commission has concluded that the appropriate vehicle

[61] In so doing, the Commission specifically rejected the suggestion that franchisors should prepare individual disclosure documents tailored to each specific foreign market. Not only would such a requirement put American franchisors at a competitive disadvantage with franchisors from countries lacking comparable disclosure regulations, the minimal benefits of such a requirement would not likely outweigh the extraordinary costs and burdens involved.

to disseminate such information is through consumer education materials, not through the Rule itself. To that end, the cover page of the disclosure document set forth in part 436 of the final amended Rule references the Commissions' *Consumer Guide to Buying a Franchise*, where such background information is furnished. This approach enables prospective franchisees to obtain desirable information without imposing new compliance burdens on franchisors.

4. Statement of prevalence

The Commission promulgated the original Rule based upon its finding of prevalent deception in the offer and sale of franchises and business opportunity ventures, leading to significant consumer injury. That finding retains its validity and the final amended Rule retains almost all of the original Rule's disclosure requirements for both franchises and business opportunity sellers. In the franchise context, modifications of those requirements have been driven by four considerations: the goal of harmonizing the Rule with the UFOC Guidelines; the need to update the original Rule to address new technologies; to reduce unnecessary compliance burdens; and, based on the record developed here, to remedy prevalent nondisclosure on issues relating to the franchise relationship.[62]

This last category of modifications constitutes the most significant additions to the original Rule. Throughout the Rule amendment proceeding, franchisees have complained repeatedly about various practices in franchising that they believe are abusive. These practices include encroachment of territories, source of supply restrictions, modification of franchise agreements upon renewal, and the use of confidentiality clauses to prevent franchisees from speaking with prospects. To address these issues, franchisees urged the Commission to promulgate a substantive franchise relationship law. As detailed above in Section I.C., the applicable legal standard that could theoretically support promulgation of such a law has not been met. Nonetheless, the Commission is persuaded by evidence in the record that nondisclosure of material information about franchise relationships is prevalent and the record supports additional disclosures that will help obviate deception of prospective franchisees.

To that end, part 436 of the final amended Rule adopts a few new disclosures that provide prospective franchisees with material information about the quality of the franchise relationship or with sources of information about such relationships. For example:

- In section 436.5(c), the Item 3 requirements to disclose information about franchisor litigation have been amended to encompass franchisor-initiated litigation, such as suits to collect royalty payments, in order to ensure prospective franchisees have material information about the nature of the franchisor's relationship with its franchisees;[63]
- In section 436.5(l), the Item 12 requirements to disclose information about territories contain a new warning to prospective franchisees about the consequences of not having an exclusive territory— that, as a result of having no exclusive territory, the franchisee ''may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control;''
- In section 436.5(q), the Item 17 requirements to disclose information about renewal of the franchise mandate that a franchisor describe what the term ''renewal'' means for its system, and state what has been absent from disclosure to date—that franchisees will be required to sign a different agreement when renewing, as opposed to extending the term of their original agreement.

These new disclosure requirements are tailored to address the prevalent franchisor nondisclosure of material information that prospective franchisees need to avoid forming the kind of misconceptions about these three key aspects of the franchise relationship that have prompted the franchisee complaints noted in this record.

III. SECTION–BY–SECTION ANALYSIS OF PART 436

A. Section 436.1: Definitions

In many instances, the part 436 definitions of the final amended Rule are substantively similar to those contained in either the original Rule or UFOC Guidelines. These include the terms: ''affiliate,'' ''fiscal year,'' ''fractional franchise,'' ''franchise,'' ''franchisee,'' ''franchisor,'' ''leased department,'' ''person,'' ''prospective franchisee,'' and ''sale of a franchise.'' Part 436 of the final amended Rule, however, adds several new definitions to the original Rule, including the terms: ''action,'' ''confidentiality clause,'' ''disclose, state, describe, and list,'' ''financial performance representation,'' ''franchise seller,'' ''parent,'' ''plain English,'' ''predecessor,'' ''principal business address,'' ''required payment,'' ''signature,'' ''trademark,'' and ''written.'' At the same time, part 436 of the final amended Rule eliminates four of the original Rule's terms, and their definitions, that are no longer necessary: ''business day,''[64] ''time for making of disclosures,''[65] ''personal meeting,''[66] and ''cooperative association.''[67]

Section 436.1 of the final amended Rule is very similar to the corresponding section of the proposed Rule published in the Franchise NPR, but makes the following revisions: (1) substitutes a definition of ''confidentiality clause'' for the definition of ''gag clause;'' (2) omits proposed definitions of ''Internet,'' ''officer,'' and ''material;'' and (3) makes non-substantive revisions to improve readability, organization, and precision throughout, as well as some substantive revisions in response to the comments. The following sections discuss each definition of part 436 of the final amended Rule.

1. Section 436.1(a): Action

Consistent with the original Rule,[68] section 436.5(c) of the final amended

[62] The Commission is also considering amendments to the original Rule as they pertain to business opportunity sales. *See* Business Opportunity NPR, 71 FR 19054 (Apr. 12, 2006).

[63] Multiple franchisor-initiated suits could indicate franchisees' inability to comply with royalty payment obligations, or possibly a royalty boycott by franchisees. Suits to enforce system standards, on the other hand, could show active involvement by the franchisor in maintaining standards for the benefit of all franchisees within its system. In either case, this is information material to prospective franchisees attempting to determine the nature of the franchisor's relationship with its franchisees.

[64] *See* 16 CFR 436.2(f).

[65] *See* 16 CFR 436.2(g).

[66] *See* 16 CFR 436.2(o). The original Rule required franchisors to provide disclosure documents at the earlier of the first ''personal meeting'' or ''the time for making disclosures,'' which generally meant 10 business days before the prospective franchisee paid any fee or signed any contract in connection with the franchise sale. The final amended Rule streamlines this requirement by eliminating those timing provisions in favor of a clear, bright-line 14 calendar-day provision. Accordingly, the terms ''time for making disclosures,'' ''personal meeting,'' and ''business day'' are obsolete.

[67] *See* 16 CFR 436.2(l). Cooperative associations are one of four non-franchise relationships that the Commission has excluded from the final amended Rule. Unlike Rule exemptions (which are substantive limitations on the Rule's scope), the original Rule exclusions are explanatory, helping the public better distinguish between franchise and non-franchise relationships. Accordingly, the Commission anticipates that staff will address non-franchise relationships—including the four exclusions—in the Compliance Guides instead of in the text of the amended Rule.

[68] *See* 16 CFR 436.1(a)(4).

Rule requires a franchisor to disclose certain legal actions involving the franchisor and its directors and officers. The original Rule did not define the term ''action.'' Section 436.1(a) in the final amended Rule is nearly identical to the definition proposed in the Franchise NPR, and closely tracks the UFOC Guidelines' definition of the term ''action.''[69] That definition is: ''*Action* includes complaints, cross claims, counterclaims, and third-party complaints in a judicial action or proceeding, and their equivalents in an administrative action or arbitration.''[70] The definition differs from the UFOC Guidelines definition only in that it refers to a ''judicial action or proceeding,'' in lieu of just a ''judicial proceeding.'' This modification addresses one commenter's observation that some states may retain the distinction between an ''action'' at law and a ''proceeding'' in equity.[71] Clearly, both types of legal matters must be disclosed.

The Commission has declined to adopt an additional suggestion that ''complaints'' referred to in the definition of ''action'' be limited to ''served complaints.''[72] Such a narrowing of the definition of ''action'' would be inconsistent with the UFOC Guidelines. Moreover, it would effectively enable a franchisor to avoid disclosing potentially material litigation, even though it had notice of an action, merely because it was not served with the papers yet or had successfully avoided service of process. In the Commission's law enforcement experience, it is not uncommon for defendants to know that a Commission action was filed prior to service either by learning of the suit from co-defendants or as a result of an asset freeze.[73]

In the same vein, IL AG suggested that the term ''action'' should refer to both '' filed'' and ''served'' complaints.[74] A reference to ''filed complaints'' is unnecessary, however, and would be inconsistent with the UFOC Guidelines: the definition of action already refers to ''complaints . . . in a judicial action or proceeding'' and ''complaints . . . in . . . an arbitration,'' meaning that a complaint has already been filed. Accordingly, the Commission declines to adopt these additional revisions to the definition of ''action.''

2. Section 436.1(b): Affiliate

Many of the part 436 disclosures pertain to both the franchisor and its affiliates.[75] The original Rule defined the term ''affiliated person'' to mean a person:

> (1) Which directly or indirectly controls, is controlled by, or is under common control with, a franchisor; or
>
> (2) Which directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of a franchisor; or
>
> (3) Which has, in common with a franchisor, one or more partners, officers, directors, trustees, branch managers, or other persons occupying similar status or performing similar functions.[76]

Section 436.1(b), like the corresponding definition in the proposed Rule, harmonizes federal and state law, closely following the UFOC Guidelines by defining ''affiliate'' to mean: ''an entity controlled by, controlling, or under common control with, another entity.''[77] This is slightly broader than the UFOC Guidelines' definition, however. The UFOC Guidelines' definition uses the narrower term ''franchisor'' in place of ''another entity.'' This slight departure from the UFOC Guidelines is necessary for the ''large franchisee'' exemption, section 436.8(a)(5)(ii), as discussed below in the section covering that exemption.[78]

3. Section 436.1(c): Confidentiality clause

Part 436 of the final amended Rule requires franchisors for the first time to disclose the use of confidentiality clauses that prohibit or restrict existing or former franchisees from discussing their experience with prospective franchisees.[79] Accordingly, section 436.1(c) of the final amended Rule adds to the original Rule definitions the term ''confidentiality clause,''[80] defined as follows:

> any contract, order, or settlement provision that directly or indirectly restricts a current or former franchisee from discussing his or her personal experience as a franchisee in the franchisor's system with any prospective franchisee. It does not include clauses that protect a franchisor's trademarks or other proprietary information.

As explained below, the confidentiality clause disclosure requirement is intended to prevent deception in the offer and sale of franchises by assisting prospective franchisees in verifying a franchisor's claims. Specifically, this disclosure requirement is tied to the requirement to disclose contact information for existing franchised outlets.[81] Knowing that a franchisor uses a confidentiality clause enables prospective franchisees to understand that a former or current franchisee may be prohibited from speaking about his or her experience and will make efforts to contact other former or current franchisees not subject to such a clause. This being the disclosure's purpose, the operant definition is limited to confidentiality clauses impinging on communications between current or former franchisees and *prospective franchisees* only.[82] It would not cover clauses that prohibit communications between current or

[69] This definition is also consistent with the Commission's interpretation of the term ''action,'' as discussed in the Interpretive Guides to the Franchise Rule. Interpretive Guides, 44 FR at 49973.

[70] *See* UFOC Guidelines, Item 3 Definitions, ii.

[71] NFC, NPR 12, at 25.

[72] Lewis, NPR 15, at 7.

[73] *E.g.*, *FTC v. Joseph Hayes*, No. 4:96CV02162SNL (E.D. Mo. 1996).

[74] IL AG, at 2.

[75] *E.g.*, Sections 436.5(a) (Item 1); 436.5(c) (Item 3); 436.5(d) (Item 4); 436.5(h) (Item 8).

[76] 16 CFR 436.2(i).

[77] *See* NASAA Commentary on the Uniform Franchise Offering Circular Guidelines (1999), Bus. Franchise Guide (CCH), ¶ 5790, at 8466 (''NASAA Commentary'' or ''Commentary''). The Commentary notes that this general definition of affiliate should be used throughout a UFOC, unless a particular disclosure Item defines it differently or limits its use. The record contains no indication that the UFOC Guidelines' narrower definition is deficient or would impede the Commission's ability to target affiliates in law enforcement actions, where warranted.

[78] *See* Triarc, NPR 6, at 2. The Staff Report recommended that the term ''affiliate'' mean ''controlled by, controlling, or under common control with, the *franchisor or a franchisee.*'' *See* Staff Report, at 21 (emphasis added). While this version was intended to capture franchisee affiliates, for purposes of the ''large franchisee'' exemption, it also had the unintended consequence of broadening affiliate disclosures generally. For example, section 436.5(d) (Item 4) requires a franchisor to disclose a prior bankruptcy of an affiliate. Defining ''affiliate'' expressly to include ''franchisee'' would arguably require a franchisor to list in its Item 4 bankruptcy disclosures the bankruptcy history of its franchisees' affiliates. The final amended Rule does not follow this problematic recommendation.

[79] Section 436.5(t)(7).

[80] Originally, the Commission proposed using the term ''gag clause'' to refer to such provisions. Franchise NPR, 64 FR at 57332. Several commenters, however, opposed the term ''gag clause'' because, in their view, it is pejorative. They prefer a neutral term, such as ''confidentiality agreement,'' ''confidentiality clause,'' ''nondisclosure clause,'' or ''privacy clause.'' *E.g.*, NFC, NPR 12, at 26; BI, NPR 28, at 10. Accordingly, the Commission has adopted the term ''confidentiality clause.''

[81] *See* section 436.5(t)(5). *See also* UFOC Guidelines Item 20 B.

[82] At the same time, the confidentiality clause disclosure requirement is not designed to cover specific settlement terms if the franchisee is otherwise free to discuss his or her experience within the franchise system, including the existence of a litigated action with the franchisor.

former franchisees and, for example, the media.

After carefully considering the comments, the Commission has rejected suggestions to limit the definition of confidentiality clause to cover only broad clauses that prohibit *all* communications by current or former franchisees[83] or only circumstances where all or at least 20% of franchisees are under speech restrictions.[84] These suggestions are narrower than necessary and would defeat the very purpose of the confidentiality clause disclosure. Moreover, as stated throughout this document, the Commission favors bright-line standards that enable franchisors, prospective franchisees, and law enforcers to know when a Rule provision applies without resort to fact-finding. In this instance, the parties should know whether the confidentiality clause is applicable without having to first determine the exact number of franchisees under speech restrictions at any given period.

Finally, the definition expressly excludes confidentiality agreements designed to protect proprietary information. Many commenters—both franchisor and franchisee representatives alike—agreed that proprietary information should be exempted from the definition because a franchisor has a reasonable and legitimate concern about protecting its trademark and business secrets.[85] One commenter suggested that the Commission make clear that the existence of a confidentiality agreement cannot be considered ''proprietary information.''[86] Otherwise, according to this commenter, a franchisor could attempt to circumvent the confidentiality agreement disclosure by having a prospective franchisee sign an agreement stating that the existence of a confidentiality agreement is itself ''proprietary.'' The Commission, however, intends that the term ''proprietary information'' be limited to trade secrets and intellectual property, the type of information that, if disclosed, would put a franchisor at a competitive disadvantage.

4. Section 436.1(d): Disclose, state, describe, and list

Section 436.1(d) sets forth the definition of the terms ''disclose,'' ''state,'' ''describe,'' and ''list,'' which are used throughout part 436. This is another definition not contained in the original Rule. The proposed definition published in the Franchise NPR was taken from the UFOC Guidelines, stating that these terms mean ''to present all material facts accurately, clearly, concisely, and legibly in plain English.''[87]

The Commission is persuaded that franchisors should have flexibility in presenting their disclosures, provided that the disclosures are clear and legible. The Staff Report recommended that franchisors should be required to make disclosures in at least 12 point upper and lower case type.[88] This recommendation generated two comments, however, asserting that the Commission should not mandate 12 point type. The commenters noted that 12 point type may result in some of the Rule's charts being split into two sections. They suggested that smaller fonts, especially in charts, can be very readable and result in reduced compliance costs.[89] The Commission agrees. Accordingly, part 436 of the final amended Rule does not mandate any specific font size: franchisors may choose any font size, provided that their disclosures are clear and likely to be noticed, read, and understood by a reasonable prospective franchisee.

Two additional Staff Report commenters sought refinements to section 436.1(d), as proposed therein. One commenter opined that the definition could be interpreted to mean that a franchisor must disclose ''every material fact regarding the offered franchise, rather than disclosing all material facts pertaining specifically to the disclosures required pursuant to the Rule.''[90] The Commission believes that this reading of the definition is strained and expressly notes that it does not intend such a reading. Throughout the final amended Rule, the topic on which the franchisor is required to ''present all material facts accurately, clearly, concisely, and legibly in plain English'' is clear. Moreover, nothing in the record suggests that a virtually identical definition in the UFOC Guidelines has generated the problems anticipated by this commenter. This being the case, the Commission is disinclined to deviate from the UFOC Guidelines on this issue. Therefore, the Commission adopts the definition as quoted above.

Another commenter urged that the definition specify that the meaning of ''disclose,'' ''state,'' ''describe,'' and ''list'' incorporates the concept that the language must be ''understandable by a person unfamiliar with the franchise business.''[91] The Commission believes that the final amended Rule's definition of ''plain English'' in section 436.1(o) gives more direction to franchisors in preparing their disclosures than the more general phrase ''understandable by a person unfamiliar with the franchise business.'' Therefore, we decline to adopt this suggestion.

Finally, we note that three commenters urged the Commission to define separately the term ''material.''[92] In particular, they asserted that it is unclear whether materiality should be determined from the franchisor's or the prospective franchisee's viewpoint. For example, isolated instances of franchisee-initiated lawsuits might not be material to a franchisor (*i.e.*, not affecting the franchisor's financial status), but could be highly material to a prospective franchisee seeking information on the quality of the franchise relationship.[93]

The original Rule defined ''material, material fact, and material change.''[94] The Commission, however, believes that such definitions are not necessary. An understanding of materiality under the final amended Rule can best be gained by looking to long-established Commission jurisprudence. ''Materiality'' is a cornerstone concept of that jurisprudence. To be clear on this important point, the Commission, when interpreting Section 5, regards a representation, omission, or practice to be deceptive if: (1) it is likely to mislead consumers acting reasonably under the circumstances; and (2) it is material; that is, *likely to affect consumers' conduct or decisions with respect to the product at issue*.[95] Accordingly, it is amply clear that ''materiality'' is determined by the reasonable consumer standard, or in franchise matters, by the reasonable prospective franchisee standard. Moreover, since violations of the Franchise Rule constitute violations of Section 5, we believe that the Section

[83] PMR&W, NPR 4, at 15.

[84] NFC, NPR 12, at 33.

[85] *E.g.*, Baer, ANPR 25, at 3; AFA, ANPR 62, at 3; Zarco & Pardo, ANPR 134, at 4.

[86] Bundy, NPR 18, at 3.

[87] *See* UFOC Guidelines, General Instruction 150. The phrase ''plain English'' is defined separately in section 436.1(o), consistent with the UFOC Guidelines.

[88] This presentation requirement would be consistent with the Commission's approach in the original Rule. *See* 16 CFR 436.1(b)(4).

[89] Gust Rosenfeld, at 2–3; Wiggin & Dana, at 6–7.

[90] J&G, at 2.

[91] IL AG, at 2.

[92] Bundy, at 3; Cendant, at 3; IL AG, at 3. The Staff Report recommended deletion of this definition based on use of the term in the Rule text in at least two distinguishable ways, creating unnecessary confusion. Staff Report, at 68–9.

[93] *See* Cendant, at 3.

[94] 16 CFR 436.2(n).

[95] *See generally Federal Trade Commission Policy Statement on Deception*, appended to *Cliffdale Assocs.*, 103 FTC 110 (1984).

5 deception jurisprudence provides adequate guidance on what the term ''material'' means in the Franchise Rule context.

5. Section 436.1(e): Financial performance representation

This section of part 436 defines the term ''financial performance representation'' to mean:

> any representation, including any oral, written, or visual representation, to a prospective franchisee, including a representation in the general media, that states, expressly or by implication, a specific level or range of actual or potential sales, income, gross profits, or net profits. The term includes a chart, table, or mathematical calculation that shows possible results based on a combination of variables.[96]

This definition comes into play in one of the most important sections of the final amended Rule, section 436.5(s), corresponding to Item 19 of the UFOC Guidelines. Like Item 19, it governs the making of financial performance representations.[97] The definition incorporates the original Rule's approach, in that it specifies that a financial performance representation may be in an ''oral, written, or visual'' format.[98] To ensure that part 436 covers implied financial performance representations, the definition also refers to financial performance representations that are made both ''expressly or by implication.''[99] It also retains the original Rule's reference to financial performance representations made in the general media.[100] At the same time, section 436.1(e) adopts several aspects of the UFOC Guidelines definition, including references to ''actual'' and ''potential'' performance (to capture both historical financial performance and projections),[101] as well as the use of charts, tables, and mathematical calculations.[102]

Two aspects of the definition of the term ''financial performance representation'' generated significant comment: whether the Commission should treat information about costs and expenses as financial performance representations;[103] and whether the Commission should interpret the definition's express inclusion of any ''representation in the general media'' to include all financial information available on a franchisor's website or through a franchisor's speeches and press releases.[104] Each of these interpretive issues is discussed in the sections immediately below.

a. Treatment of cost and expense information

In the Franchise NPR, the Commission made it clear that the section 436.1(e) definition of ''financial performance representation'' is not intended to reach disclosures of expense information, and specifically sought comment on this issue.[105] Most commenters who responded on this issue felt that disclosures of expense information should not fall within the definition.[106] Some, however, sought additional clarification. For example, the IL AG urged the Commission to modify the definition of ''financial performance representation'' to expressly exclude expense disclosures mandated in Items 5–7 of the final amended Rule (initial fees, ongoing costs, and initial investment), offering the following additional sentence: ''Expenses required in Items 5, 6, and 7 of the disclosure document are not to be considered performance claims and do not contradict Item 19 requirements.''[107] Others went further, arguing that the dissemination of any expense information should not trigger the Item 19 disclosure requirements.[108]

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[96] The part 436 definition is nearly identical to the definition as proposed in the Franchise NPR, with slightly modified language in some places to improve clarity and precision. No commenter raised any concerns about the basic ''financial performance representation'' definition. Nevertheless, IL AG posed a number of questions about how the definition would be applied in various situations, such as representations based upon earnings of a franchisor's affiliates or representations based upon industry data. IL AG, at 2. Questions such as these are best addressed in the Compliance Guides or in staff advisory opinions, where they can be analyzed in the context of specific facts.

[97] The final amended Rule uses the broad term ''financial performance representation,'' rather than the original Rule's more limited term ''earnings claim.'' This modification recognizes that some industries, such as hotels, use variables other than earnings to measure performance, such as room occupancy rates. *See* Franchise NPR, 64 FR at 57297.

[98] The original Rule described performance information as ''any oral, written, or visual representation to a prospective franchisee which states a specific level of potential sales, income, gross, or net profit for the prospective franchisee, or which states other figures which suggest such a specific level.'' 16 CFR 436.1(b) and (c).

[99] To address implied claims, the original Rule used the term ''suggests.'' The proposed definition of ''financial performance representation'' published in the Franchise NPR similarly used that term. One franchisee representative observed that the word ''suggests'' in this context is flawed: it would not reach the furnishing of fragments of financial data from which a prospect may readily estimate or calculate earnings. Bundy, NPR 18, at 1. The Commission agrees that a franchisor can imply a performance claim by giving a prospect a few pieces of financial information from which the prospect can fill in the blanks and draw his or her own conclusion about a specific level of potential earnings. In addition, a franchisor can imply that a prospect can earn a specific level of income, such as by using a proxy for earnings (for example, ''You will do so well that you can buy that Porsche.''). *See* Interpretive Guides, 44 FR at 49982. Both types of implied claims constitute financial performance representations that are, and should be, covered by the final amended Rule. To clarify this policy, the final amended Rule uses the phrase ''states, expressly or by implication.'' This phrase is widely used, for example, in connection with representations challenged under Section 5. *E.g., FTC v. Prophet 3H, Inc.*, 06 CV 1692 (N.D. Ga. 2006); *FTC v. Morrone's Water Ice, Inc.*, No. 02–3720 (E.D. Pa. 2002).

[100] *See* 16 CFR 436.1(e).

[101] This streamlines the original Rule, which addressed historical performance representations and projections in two distinct Rule provisions, 16 CFR 436.1(b) (projections) and 436.1(c) (historical information).

[102] The staff of the Commission has adopted the same position in several informal advisory opinions. *E.g.*, Handy Hardware Centers, Bus. Franchise Guide (CCH) ¶ 6426 (1980) (The Rule's ''earnings claim requirements are applicable to 'any oral, written, or visual representation.'''); Diet Center, Inc., Bus. Franchise Guide (CCH) ¶ 6437 (1983) (table with arithmetic calculations uniformly demonstrating net profits constitutes a financial performance representation).

[103] *See* Interpretive Guides, 44 FR 49982.

[104] *See* Interpretive Guides, 44 FR at 49984–85.

[105] Neither the original Rule nor the final amended Rule includes mention of expenses in the definition of ''financial performance representation,'' but the Commission indicated its intended interpretation in the Franchise NPR's discussion of the definition of the term. Specifically, it stated that ''[w]hile the Commission does not consider the disclosure of such expense information alone to constitute the making of a financial performance claim, others arguably may interpret some expense information as implying a financial performance representation, such as a break-even point. To avoid any confusion, the proposed definition of 'financial performance representation' . . . specifically omits expense information.'' Franchise NPR, 64 FR at 57329. This interpretation is a departure from the Commission's former policy, as articulated in the Interpretive Guides. The Guides expressed the view that cost information alone could be a financial performance claim because a prospective franchisee could use such information to calculate likely profits by simply selecting arbitrary sales figures. Interpretive Guides, 44 FR at 49982. It also departs from UFOC Guidelines Item 19, which expressly lists costs among the items of information that constitute an earnings claims. *See also* UFOC Guidelines, Item 19, Instructions i. Nevertheless, in light of the comments and the Commission's long law enforcement history, the Commission, reiterating its Franchise NPR statement quoted immediately above, states its intent that expense information not be included in the part 436 definition of ''financial performance representation.'' As discussed above, the states agree. *See* NASAA, NPR 17, at 2.

[106] *E.g.*, IL AG, NPR 3, at 3; Baer, NPR 11, at 7; NFC, NPR 12, at 13; NASAA, NPR 17, at 2; BI, NPR 28, at 10. *But see* Bundy, NPR 18, at 2 (arguing that expense disclosures inevitably will lead prospective franchisees to extrapolate earnings without the protection of an Item 19 disclosure).

[107] IL AG, NPR 3, at 8–9. *See also* Baer, NPR 11, at 7.

[108] NFC, NPR 12, at 13. The NFC also suggested that the Commission modify the Rule to exclude from the definition of ''financial performance representation'' financial data furnished to existing franchisees. *Id.* The Commission concludes, however, that part 436 need not be revised to address this issue. A franchisor is always free to furnish truthful information about its system to

Notwithstanding language to the contrary in the original Interpretive Guides,[109] the Commission is persuaded that expense information alone is insufficient to enable prospective franchisees to gauge their potential earnings with any degree of specificity that could rise to the level of a financial performance claim.[110] The Commission explained in the Franchise NPR and now reiterates here that mere disclosure of cost information does not, in its view, constitute a financial performance representation triggering Item 19 disclosure obligations. The Commission intends that the explanation that mere expense disclosures alone do not constitute a financial performance representation, coupled with the deliberate omission of any mention of expense information from section 436.1(e) of the final amended Rule, will be enough to address this issue.

b. General media claims

Section 436.1(e) of the final amended Rule retains the original Rule's provision governing the making of financial performance representations in the general media. Under the original Rule, a general media financial performance representation, like all other financial performance representations, must have a reasonable basis and state the number and percentage of outlets earning the claimed amount, among other substantiation and disclosure requirements.[111] There is no comparable provision in the UFOC Guidelines.[112]

In the Franchise NPR, the Commission proposed that the term ''financial performance representation'' should broadly include the dissemination of financial performance information via the Internet.[113] The majority of commenters who addressed this issue, however, questioned whether financial performance information posted online should constitute ''financial performance representations,'' thus triggering the Rule's disclosure and substantiation requirements.[114] These commenters asserted that the Commission should not deem financial performance information posted on a franchisor's website to be financial performance representations under the Rule, unless the information is located in a section of a website that solicits franchise purchasers or otherwise specifically targets prospective franchisees.[115] In their view, financial performance information on a franchisor's website—including links to press releases, interviews, or articles—is intended to educate the general public about the company, rather than to attract prospective franchisees.[116] Indeed, some posted information may consist of copies of publicly filed reports, such as 10–Qs and 10–Ks, that are submitted to the SEC.[117] At least one commenter feared that equating online financial performance information with financial performance representations under the Rule would have a chilling effect, unreasonably restricting the kinds of materials a franchisor could have on its website: ''Does this mean that a franchise company, unlike any other business, must choose between taking advantage of articles or press releases about itself on its own web site page or risk the claim that a prospective franchisee has been given unauthorized non-Item 19 financial data?''[118]

Two Staff Report commenters broadened this argument beyond the online context to encompass franchisors' speeches and news releases. In the Interpretive Guides, the Commission described ''general media'' broadly to include: ''advertising (radio, television, magazines, newspapers, billboards, etc) as well as those contained in speeches or press releases.''[119] David Kaufmann, for example, asserted that the inclusion of speeches and news releases harms franchisors by making it difficult for them to disseminate financial performance information in ''speeches, press interviews, and other forums not specifically geared to the franchise sales process.''[120] He urged the Commission to permit franchisors and their executives to disseminate financial performance information to the public freely, unless copies are subsequently used in the franchisor's franchise marketing effort.

Based upon the comments, the Commission is persuaded that it is unwarranted to sweep broadly into the part 436 definition of ''financial performance representation'' all financial performance information posted online or appearing in press releases or speeches. The dissemination of financial information online and in press stories and releases is for the benefit of more than prospective franchisees, including investors, potential suppliers, and members of the general public.[121] Further, the Commission believes that the commenters' concerns are well-founded with respect to publicly filed reports required by the SEC. The Commission agrees that such filings are already publicly available and, more important, have indicia of reliability. Indeed, the dissemination of false financial data by publicly traded franchisors is already illegal. Thus, to impose the Rule's substantiation and disclosure requirements with respect to SEC filing

existing franchisees, especially if no additional franchise sales are contemplated. If the franchisor contemplates an additional franchise sale under materially different terms and conditions than the franchisee's original purchase, then the existing franchisee, like any prospective franchisee, could be misled and therefore should receive financial performance disclosures in the form of an Item 19 disclosure. For example, an Item 19 disclosure will assist an existing franchisee operating in a shopping mall or urban area in the northeast to understand an earnings projection for an additional stand-alone outlet or outlet to be located in a rural section of the southwest.

[109] Interpretive Guides, 44 FR at 49982.

[110] At any rate, according to NASAA, franchisors do not routinely disseminate individualized expense information geared to a specific offering that might be used to insinuate an earnings level. NASAA, 17 NPR, at 2.

[111] *See* 16 CFR 436.1(b)(5)(i); 436.1(c)(6)(i); 436.1(e)(5)(ii). Unlike other financial performance claims, a claim made in the general media need not be geographically relevant to the market in which franchises are being offered for sale.

[112] Although the UFOC Guidelines do not address general media claims, many of the states with disclosure laws require franchisors to register their advertisements in advance of their use. *E.g.*, Cal. Corp. Code § 31156 (1997) (franchisor must register advertising at least three business days before first publication); Md. Code Ann., Bus. Reg. § 14–225 (1998) (franchisor must register advertising at least seven business days before publication).

[113] In the proposed Rule, the term ''financial performance representation'' expressly included ''a representation disseminated in the general media *and Internet*.'' Franchise NPR, 64 FR at 57297, 57332. (emphasis supplied.) In accordance with the discussion in this section of the SBP, the Commission has deleted this phrase to dispel potential readings that financial information posted on the Internet is *per se* a financial performance representation.

[114] *E.g.*, PMR&W NPR 4, at 16; H&H, NPR 9, at 14; NFC, NPR 12, at 23–24.

[115] *E.g.*, Gust Rosenfeld, at 7; Quizno's, NPR 1, at 3; PRM&W, NPR 4, at 16; NFC, NPR 12, at 24; BI, NPR 28, at 9.

[116] *E.g.*, Quizno's, NPR 1, at 3. *See also* BI, NPR 28, at 9.

[117] *E.g.*, Quizno's, NPR 1, at 3; PMR&W, NPR 4, at 16; H&H, NPR 9, at 14; BI, NPR 28, at 9.

[118] Quizno's, NPR 1, at 3.

[119] Interpretive Guides, 44 FR at 49984–85. The Commission excluded, however, ''communications to financial journals or the trade press in connection with bona-fide news stories, or directly to lenders in connection with arranging financing for the franchisee.'' *Id.* at 49985.

[120] Kaufmann, at 6. *See also* Cendant, at 2.

[121] Indeed, the staff previously has advised that the dissemination of financial performance information through bona fide news stories may generate benefits to the public that outweigh potential harm to prospective franchisees. ''For example, such information may be useful to potential suppliers seeking growing businesses as customers; shopping center or mall developers seeking promising franchised systems as tenants; and financial analysts who follow market or industry trends. Accordingly, the exemption from the general media earnings claims disclosure requirements ensures that the Rule does not chill the free flow of newsworthy information about franchising or particular franchise systems.'' Advisory 97–5, Bus. Franchise Guide (CCH) ¶ 6485 at 9687 (July 31, 1997).

would be pointless, unworkable, and unduly burdensome.

With respect to the dissemination of other financial performance information, the Commission believes that a distinction should be made between information disseminated in advertisements directed at franchisees—be it in print, radio, television, or Internet—and information disseminated to the general public. We are convinced that deeming financial performance information disseminated publicly to be ''financial performance representations'' under the Rule would have a chilling effect, discouraging franchisors from furnishing truthful information to the public. However, where a franchisor utilizes financial performance information disseminated, or intended to be disseminated, to the general public in its franchise promotional materials (*e.g.*, in a brochure or franchisee section of a website), includes in its franchise promotional materials a reference to general financial information on its website, or otherwise repeats the general financial information to prospective franchisees (such as in a face-to-face meeting with an audience of prospective franchisees), such information will be deemed ''financial performance representations,'' triggering part 436's disclosure and substantiation requirements.[122]

The Commission anticipates that staff will address the narrowed scope of general media financial performance representations in the Compliance Guides. This is consistent with the approach historically adopted, whereby the Commission explained the scope of general media claims in the Interpretive Guides, providing illustrative examples and more detailed discussion than is possible in the text of the Rule itself. As an initial matter, the Commission anticipates that staff will retain in the Compliance Guides the original Interpretive Guides' determination that communications about financial performance made to the trade press and directly to lenders do not constitute general media financial performance representations.[123] At the same time, the Commission anticipates that staff will add SEC filings, speeches, and news releases to the list of communications not constituting financial performance representations under the final amended Rule. There is one important caveat, however. Where the franchisor directs the speeches or news releases to prospective franchisees or uses copies of speeches or news releases in marketing materials aimed at prospective franchisees, then such materials will constitute general media financial performance representations under the Rule.

6. Section 436.1(f): Fiscal year

Several Rule disclosures are based upon the franchisor's fiscal year.[124] Section 436.1(f) retains the original Rule definition of the term ''fiscal year,'' making clear that it ''refers to the franchisor's fiscal year.''[125] This issue generated no comment.

7. Section 436.1(g): Fractional franchise

Section 436.1(g) of the final amended Rule adopts the definition of the term ''fractional franchise'' that was proposed in the Franchise NPR with only minor language changes to improve clarity. This definition comes into play in section 436.8(a)(2) of the final amended Rule, which retains the original Rule's exemption for fractional franchises.[126] In most instances, the fractional franchise exemption arises where an existing business seeks to expand its product line through a franchise meeting two criteria: (1) the franchisee or its principals have more than two years of experience in the same line of business; and (2) the parties reasonably expect that the franchisee's sales from the new line of business will not exceed 20% of its total sales.[127]

Section 436.1(g) clarifies the scope of the original ''fractional franchise'' exemption by adding greater precision and specificity.[128] First, it incorporates the Commission's long-standing policy that the parties must ''anticipate that sales arising from the relationship will not exceed 20% of the franchisee's total volume in sales during the first year of operation.''[129] Second, it makes explicit what previously has been only implied: that the parties must have ''a reasonable basis'' to assert the exemption.[130]

During the Rule amendment proceeding, a few commenters suggested that the Commission broaden the fractional franchise exemption. Two commenters urged the Commission to broaden the first prong of the fractional franchise exemption —''experience in the same type of business''—to exempt franchisees with experience in the same industry or selling similar or complementary goods or services.[131] The suggestion that the exemption be broadened to ''experience in the same industry'' goes far beyond the underlying rationale that supports the fractional franchise exemption—namely, the notion that prior experience in the same line of business reduces the likelihood of fraud or deception because the fractional franchisee likely will be familiar with the products to be offered for sale through the franchise relationship.

The Commission does not believe that a franchisee in any particular economic sector necessarily has sufficient experience to operate a different franchise within the same sector. For example, we would not necessarily expect a muffler shop franchisee to automatically understand the financial risks of operating a quick-lube service station, although both operations are in the automotive repair industry. Nor would we expect a franchisee operating a small fast-food kiosk in a mall to necessarily appreciate the risks of operating a large, sit-down full-service restaurant, although both are in the food service industry.

Nevertheless, the Commission has never required experience in the identical type of business. Rather, the sale of similar goods may qualify for the exemption. As explained in the current

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[122] *See* Advisory 97–5, Bus. Franchise Guide (CCH) at 9687 (''By disseminating copies of [news articles containing earnings claims], the franchisor effectively ratifies the journalist's words as its own and, in so doing, converts the article into an advertising piece designed to solicit prospective franchisees.'').

[123] Interpretive Guides, 44 FR at 49984–85 ('''General media claim' does not include communications to financial journals or the trade press in connection with bona-fide news stories, or directly to lenders in connection with arranging financing for franchisees.'').

[124] *E.g.*, section 436.5(a) (Item 1); section 436.5(c) (Item 3); section 436.5(e) (Item 5); section 436.5(t) (Item 20); section 436.5(u) (Item 21).

[125] 16 CFR 436.2(m).

[126] The fractional franchise is one of several exemptions contained in the original Rule that are retained in the final amended Rule. In contrast, the UFOC Guidelines contain no exemptions. State exemptions, which vary from state to state, are set out in state statutes or regulations. In general, state franchise laws do not exempt franchisors from the basic obligation to furnish prospects with UFOCs. At most, states may exempt franchisors from state registration requirements.

[127] In the original SBP, the Commission reasoned, with respect to fractional franchisees, that pre-sale disclosure is unwarranted where the prospective franchisee already is familiar with the products and services to be sold through the franchise and where the prospective franchisee faces a minimal investment risk. Original SBP, 43 FR at 59707.

[128] The Commission believes that greater precision in the Rule text is warranted in light of numerous requests for advisory opinions on the scope of the fractional franchise exemption since the original Rule was promulgated. *See*, *e.g.*, Advisory 93–5, Bus. Franchise Guide (CCH),¶ 6449 (1993); Advisory 94–4, *id.*, at ¶ 6460 (1994); Advisory 95–2, *id.*, at ¶ 6467 (1995); Advisory 96–1, *id.*, at ¶ 6476 (1996); Advisory 97–1, *id.*, at ¶ 6481 (1997).

[129] *See* Interpretive Guides, 44 FR at 49968.

[130] The proposed definition in the Franchise NPR formulated this as ''The parties reasonably anticipate . . .'' The final language is more precisely in line with basic concepts of FTC jurisprudence.

[131] Piper Rudnick, at 4 (suggesting experience in the same basic industry should suffice); H&H, NPR 9, at 4 (complementary experience should suffice).

Interpretive Guides, ''the required experience may be in the same business selling competitive goods or in a business that would ordinarily be expected to sell the type of goods to be distributed under the franchise.''[132] This approach is reasonable because a prospective franchisee who is already familiar with the goods or services of the franchise can better assess the financial risk involved in entering into a relationship with the franchisor.

Our reluctance to expand the fractional franchise exemption also holds true with respect to the sale of ''complementary goods.'' What may be viewed as ''complementary goods'' in any particular line of business may be quite subjective. For example, reasonable minds may differ whether the introduction of ice cream sales at a donut/coffee shop is ''complementary.'' While certain products may make complementary sales combinations—such as ice cream and donuts—it does not necessarily follow that a donut shop franchisee is experienced with the risks involved with marketing and selling ice cream.

While the Commission declines to revise the Rule to broaden the types of experience needed to qualify for the fractional franchise exemption, we agree that the exemption should be expanded with respect to the types of individuals whose experience can qualify for the exemption.

The original definition specified that, in determining whether a relationship qualified as a the fractional franchise exemption, a franchisor could consider the prior experience of the franchisee ''or any of the current directors or executive officers thereof.''[133] Marriott recommended that the prior experience of an officer or director of an affiliate or parent of the franchisee should also be deemed a sound basis for the ''experience'' prong of the definition. Marriott noted that the Staff Report recommended the same approach in connection with the prior experience prerequisite of the ''large franchisee'' exemption.[134]

We are persuaded by Marriott's arguments that a broad reading of the fractional franchise exemption is warranted when determining which individuals may qualify as having the requisite prior experience. The principal factor in applying the fractional franchise exemption of part 436 is whether the business seeking to expand can obtain practical guidance and direction from someone within the business with prior experience. It makes little difference whether the business can call upon its own directors or officers for guidance or whether the business can call upon those of a subsidiary, as long as those individuals have prior experience in the same line of business. As in the large franchisee exemption, we recognize that franchisors may establish subsidiaries for limited liability or tax purposes. In such instances, the operations of the franchisor and its subsidiaries are likely to be close, such that the prior experience of one is available to help direct the business decisions of the other. We believe the same is no less true in the fractional franchise context.

Finally, one commenter, focusing on the second prong of the fractional franchise exemption, recommended that any franchise arrangement that accounts for less than 25% of the franchisee's business in the next year should be exempt from the Rule, even if the fractional franchisee has had no prior experience with the products or services being added to his or her product line.[135] In short, this commenter would delete the prior experience prong from the fractional franchise definition. We reject this suggestion.

The Commission believes that prior experience is a necessary component of the fractional franchise exemption. A business owner seeking a new opportunity is no different from a novice when it comes to entering into a type of business with which he or she is unfamiliar.[136] It is precisely in such circumstances that the prospective franchisee needs the material disclosures the Rule affords in order to make an informed decision whether to invest in the opportunity. What distinguishes a fractional franchisee from novices and business owners generally is that the fractional franchisee has prior experience with the goods and services being offered for sale, and thus is less in need of the Rule's protections. Indeed, the record is devoid of any data from which we could conclude that ongoing businesses seeking to expand into unfamiliar areas do not continue to need the Rule's protections. Accordingly, we believe retaining the prior experience prerequisite for the fractional franchise exemption is a sound approach.

8. Section 436.1(h): Franchise

The original Rule defined ''franchise'' broadly to encompass both franchises and business opportunity ventures. A franchisor was covered by the original Rule if it represented that the business arrangement it offered entailed the following three elements: (1) permission to use the franchisor's trademark; (2) significant franchisor control over the franchise operation or significant franchisor assistance to the franchisee; and (3) a required payment from the franchisee to the franchisor.[137] Similarly, a business opportunity seller was covered by the original Rule if the seller represented that the business arrangement it offered entailed: (1) supplying the buyer with goods or services to market to the public; (2) providing location assistance or accounts for vending machines or other equipment; and (3) charging a required payment from the opportunity purchaser.[138]

Like the proposed section 436.1(h) published in the Franchise NPR, this section of the final amended Rule focuses exclusively on franchise sales, eliminating the business opportunity section of the definition. The amended definition is also more precise than the original definition. Specifically, the amended definition clarifies two issues that the Commission's Rule enforcement experience suggests are not well understood: (1) that a business relationship will be deemed a franchise if it satisfies the three elements of a franchise, regardless of the nomenclature used to label or describe it;[139] and (2) that a business relationship will be deemed a franchise if the franchisor *represents* that the relationship being offered has the characteristics of a franchise, regardless of any failure on the franchisor's part to perform as promised.[140]

[132] Interpretive Guides, 44 FR at 49968.

[133] 16 CFR 436.2(h).

[134] Marriott, at 4.

[135] J&G, NPR 32.

[136] The Commission recognizes, however, that in some instances, prior experience or the ability to consult those with prior experience, can be assumed. That is the basis of the new large investment exemption from the final amended Rule, discussed below. *See* section 436.8(a)(5)(i). Where an investment is sufficiently large—$1 million excluding the cost of unimproved land and any franchisor financing—we believe that the prospective franchisee is sophisticated and can obtain the information necessary to assess the franchise offering without our mandating that it be provided.

[137] *See* 16 CFR 436.2(a)(1)(i) and 436.2(a)(2). The UFOC Guidelines do not define what constitutes a franchise. Rather, definitions of the term ''franchise'' are set forth in individual state statutes. For a discussion of state definitions of the term ''franchise,'' see Staff Report, at 37–41, available online at: www.ftc.gov/os/2004/08/0408franchiserulerpt.pdf.

[138] *See* 16 CFR 436.2(a)(1)(ii) and 436.2(a)(2).

[139] *See* Interpretive Guides, 44 FR at 49966. *See also FTC v. Morrone's Water Ice, Inc.*, No. 02–3720 (E.D. Pa. 2002). The staff has provided the same advice in several informal advisory opinions. *E.g.*, Con-Wall Corp. Bus. Franchise Guide (CCH) ¶ 6427 (1981).

[140] This is not a change of policy. The original definition of ''franchise'' added that ''[a]ny

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Early in the Rule amendment proceeding, a few commenters offered suggestions for modifying the definition of ''franchise.'' For example, one commenter urged the Commission to adopt the states' definition of the term ''franchise.''[141] However, there is no single state definition of the term ''franchise.''[142] Nevertheless, the Rule's definition is entirely consistent with the principles underlying the various state definitions, and the Commission concludes that there is no persuasive argument to modify the definition further.

Another commenter voiced concern over the Commission's policy that a business relationship will be deemed a franchise ''if it is offered or represented as having the characteristics of a franchise, irrespective of whether or not the relationship independently meets the actual . . . definition of a franchise.''[143] He stated that such an approach would be a mistake, ''raising the form of a description of a business relationship to a level which would control over the actual substance of the relationship.''[144]

There are two distinct issues here: (1) whether the Rule should apply to a business relationship that the parties *call* a ''franchise,'' even if the relationship does not satisfy the three definitional elements of a franchise; and (2) whether the Rule should apply to a business relationship that is *represented* as satisfying the three definitional elements of the term ''franchise,'' even if the relationship, in fact, does not satisfy those elements—*e.g.*, because of the seller's non-performance. The commenter correctly asserted that the Rule should not cover situations where the parties mistakenly use the term ''franchise'' to describe their business relationship. A business relationship constitutes a franchise only if, as promised or represented, it satisfies the three elements of the term ''franchise,'' and nothing in the ''franchise'' definition is to the contrary.

The clarification in the amended definition addresses the second issue—whether *representing* a business relationship as satisfying the three definitional elements of the ''franchise'' definition (as opposed to merely *calling* a relationship a franchise) is sufficient to bring a business relationship under the Rule. The original Rule took the position that it was sufficient, and the Commission believes that position remains sound.[145] A prospect seeking to purchase an opportunity that is represented as being a franchise should receive a disclosure document in order to make an informed investment decision. The prospect should not have to investigate whether or not the seller, post-sale, actually delivers a franchise or some other type of opportunity. For example, a start-up company may seek to sell its first franchised outlet, advertising that, for a $500 fee, it will license its mark and provide significant assistance to buyers. Under these circumstances, a prospect should receive a disclosure document before the sale because, as represented, the business offered satisfies each of the three elements of a franchise. This is true, even if the franchisor, in fact, lied and has no ability to perform as promised, such as having no right to the trademark offered or having no staff to provide promised assistance, facts that may only be discovered by the purchaser post-sale. In short, the seller should not be able to raise as a defense to a post-sale Rule violation that it, in fact, offered a non-franchise business arrangement if, at the time of sale, its representations about the business satisfied the definition of a franchise.[146]

9. Section 436.1(i): Franchisee

The original Rule defined ''franchisee'' as: ''any person (1) who participates in a franchise relationship as a franchisee . . . or (2) to whom an interest in a franchise is sold.''[147] The definition proposed in the Franchise NPR was ''any person who is granted an interest in a franchise.'' Section 436.1(i) of the final amended Rule adopts an even more precise version: ''*Franchisee* means any person who is granted a franchise.''[148] This narrowing of the definition is in response to commenters who voiced concern that the phrase ''an interest in a franchise'' is too broad, arguably sweeping in shareholders of publicly traded companies and other investors.[149] The amended definition's focus on the granting of a *franchise* (as opposed to *an interest* in a franchise) is also consistent with the states' approach, thereby reducing unnecessary inconsistencies.[150]

10. Section 436.1(j): Franchise seller

Section 436.1(j) of the final amended Rule defines the term ''franchise seller.'' This term and its definition are needed in order to delineate easily all parties subject to one or more provisions of the final amended Rule.[151] Consistent with

relationship which is represented . . . to be a franchise (as defined in the original Rule) is subject to the requirements of this part.'' 16 CFR 436.2(a)(5). However, this provision was set out in the original ''franchise'' definition *after* exemptions and exclusions, and, therefore, was largely overlooked or ignored. The final amended Rule makes the definition of ''franchise'' more precise by including this policy in the introductory part of the amended definition. *See also United States v. Protocol, Inc.*, Bus. Franchise Guide (CCH) [1996–97 Transfer Binder], ¶ 11184 at 29550, 29555 (D. Minn. 1997); *FTC v. Wolf*, Bus. Franchise Guide (CCH), ¶ 10401 (S.D. Fla. 1994); *FTC v. Int'l Computer Concepts*, No. 1:94cv1678 (N.D. Ohio 1994); *FTC v. Sage Seminars, Inc.*, No. C–95–2854–SBA (N.D. Cal. 1995). The staff of the Commission has provided the same advice in several informal advisory opinions. *E.g.*, Real America Real Estate Corp., Bus. Franchise Guide (CCH) ¶ 6428 (1982) (''the applicability of the rule will not be defeated by a franchisor's subsequent failure to live up to any such commitment'').

[141] Baer, NPR 11, at 7.

[142] *See* Staff Report, at 37–41.

[143] Holmes, NPR 8, at 1. *See also* Gurnick, NPR 21A; IL AG, NPR 3.

[144] *Id.*, at 2.

[145] 16 CFR 436.1 (''any relationship which is represented . . . to be a franchise''); 436.2(a)(5) (''Any relationship which is represented either orally or in writing to be a franchise [as defined in the Rule] is subject to the requirements of this part.'').

[146] With respect to required payments, the Commission will also consider any obligation to make a payment imposed by the franchisor post-sale, as long as the payment must be made within six months after the franchisee commences operation of the business. *See* section 436.8(a)(1) (minimum payment exemption).

[147] 16 CFR 436.2(d).

[148] The phrase ''granted a franchise'' is intended to be interpreted consistent with ordinary contract law principles. Accordingly, a prospective franchisee becomes a ''franchisee'' at the point when he or she enters into a valid and enforceable contractual relationship. This clarification is necessary to avoid circumvention of the Rule, especially the Rule's financial performance requirements. In our experience, we are aware of instances where a franchisor obtains full payment from a prospective franchisee before the prospective franchisee actually enters into a franchise agreement. Once payment is made, the franchisor then proceeds to furnish the individual with earnings information without the accompanying disclosures on the mistaken belief that the individual has become a franchisee, to whom earnings information can be provided without the benefit of an Item 19 disclosure. An individual becomes a ''franchisee,'' however, only after the franchise is ''granted,'' meaning both payment of consideration and the signing or acceptance of the franchise agreement. Otherwise, any franchisor could avoid the Rule's financial performance requirements by simply delaying the furnishing of financial performance data until after the prospective franchisee either makes a ''payment to the franchisor'' or simply agrees to the terms of the franchise arrangement.

[149] *E.g.*, H&H, NPR 9, at 25; BI, NPR 28, at 2. The phrase ''an interest in a franchise'' has been deleted elsewhere in the final amended Rule text for the same reason.

[150] *E.g.*, Mich. Comp. Laws. 445.1502(4); Wis. Stat. Ann. 553.03(5). In response to the Staff Report, one commenter, IL AG, suggested that the definition of ''franchisee'' make clear that a franchisee who sells franchises is also a subfranchisor. IL AG, at 3. This is unnecessary. The definition of ''franchisor'' includes a subfranchisor, which is defined as any person who functions as a franchisor by engaging in both pre-sale activities and post-sale performance. Section 436.1(k). By its terms, this would include a franchisee that also engages in franchise sales activities, if he or she also has post-sale performance obligations.

[151] The original Rule uses the terms ''franchisor'' and ''franchise broker'' throughout the Rule, and, in some instances, references employees and agents.

long-standing Commission policy, the definition also makes explicit that an individual franchisee seeking to sell his or her own outlet is excluded from Rule coverage:[152]

> *Franchise seller* means a person that offers for sale, sells, or arranges for the sale of a franchise. It includes the franchisor and the franchisor's employees, representatives, agents, subfranchisors, and third-party brokers who are involved in franchise sales activities. It does not include existing franchisees who sell only their own outlet and who are otherwise not engaged in franchise sales on behalf of the franchisor.

The definition incorporates several suggestions submitted during the Rule amendment proceeding. First, the definition expressly includes ''subfranchisors,'' a category of franchise sellers not mentioned in the Franchise NPR's proposed definition of ''franchise seller.''[153] The inclusion of subfranchisors in the definition is entirely consistent with current Commission policy[154] and the UFOC Guidelines.[155]

Second, the definition narrows the express exclusion of sales of a franchise by an existing franchisee. One commenter noted that this exclusion should apply only in those situations where an existing franchisee transfers ownership in his or her franchise to a purchaser without any continuing obligation to the purchaser. He suggested that the Rule make clear that the exclusion does not apply where an existing franchisee is engaged in repeated franchise sales.[156] The Commission agrees. If an existing franchisee engages in repeated franchise sales, he or she will be covered by the final amended Rule as either the franchisor's agent, broker, or subfranchisor. To clarify this point, the definition narrows the existing franchisee exemption to those existing franchisees ''who are otherwise not engaged in franchise sales on behalf of the franchisor.''[157]

Finally, the definition addresses one commenter's concern that the term ''franchise seller'' should exclude a franchisor's employees who are not actively involved in franchise sales.[158] We agree. To that end, the definition makes clear that the franchisor's employees, representatives, agents, subfranchisors, and third-party brokers are covered only if they ''are involved in franchise sales activities.''

The Commission has considered, but declines to adopt, two additional suggestions with respect to the ''franchise seller'' definition. J&G suggested that the Commission define the term ''broker'' in the Rule itself and proposed the following, narrow definition: individuals who: (1) are not employed by franchisors or subfranchisors; (2) are compensated pursuant to a written agreement for qualifying prospects; and (3) are active participants in the sales process.[159] The commenter also proposed that the definition specifically exclude certain individuals who arguably might be involved in a franchise sale, including franchisees,[160] trade show promoters, website owners, the mass media, or others who may be paid for referrals, but ''who do not spend more than an hour with a prospective franchisee, or engage in substantive discussions with a prospective franchisee about the terms of a franchise agreement.''[161]

The Commission believes that a separate definition of the term ''broker'' is unnecessary in part 436. In the original Rule, franchise brokers were jointly and severally liable with franchisors to prepare and to furnish prospective franchisees with disclosure documents.[162] In contrast, under part 436 of the final amended Rule, brokers are no longer obligated to prepare or to furnish disclosure documents, as explained later in this document. The preparation and distribution of the disclosure document is the sole responsibility of the franchisor. Rather, coverage of brokers under the final amended Rule is limited to prohibitions.[163] For example, any franchise seller, including brokers, cannot make statements that are inconsistent with those found in the franchisor's disclosure document.[164] Because brokers are no longer liable for the preparation and distribution of disclosure documents and the term ''broker'' does not appear in the final amended Rule outside the definition of ''franchise seller,'' no separate definition of the term ''broker'' is warranted.

In a similar vein, Frannet, a franchise referral company, urged the Commission to distinguish between franchise brokers and middlemen. The company agreed that anyone who sells franchises should be included in the definition of a franchise seller.[165] According to Frannet, middlemen or finders who just arrange for prospects to meet franchisors—but do not negotiate price or terms for the franchisor, or sign franchise agreements on behalf of a franchisor—should not be deemed brokers.

With respect to ''brokers,'' we reject the suggestion that brokers are distinguishable from middlemen or finders. When promulgating the original Rule, the Commission defined the term ''broker'' broadly to mean ''any person other than a franchisor or a franchisee who sells, offers for sale, or arranges for the sale of a franchise.''[166] Similarly, in the original SBP, the Commission clarified that a broker acts on behalf of a franchisor and receives compensation for arranging a franchise sale.[167] The term ''broker,'' therefore, has not been limited to those persons who negotiate contract terms or sign franchise agreements and accept payments on behalf of a franchisor.[168]

The term ''franchise seller'' streamlines the Rule by referencing all such individuals, where appropriate, through the use of a single term. *But see* Winslow, at 85 (suggesting that the term ''seller'' in the context of franchising is inappropriate).

[152] *See* Interpretative Guides, 44 FR at 49969.

[153] *See* Franchise NPR, 64 FR at 57298.

[154] Interpretive Guides, 44 FR at 49969.

[155] The UFOC Guidelines provide that ''[i]n offerings by a subfranchisor, 'franchisor' means both the franchisor and subfranchisor.'' UFOC Guidelines, General Instructions 240.

[156] Bundy, NPR 18, at 3.

[157] *See* IL AG, at 3.

[158] Tricon, NPR 34, at 3.

[159] J&G, NPR 32. *See also* IL AG, at 2; Michael Seid.

[160] *See also* Lewis, NPR 15, at 8 (''broker'' definition should not ''include a franchisee merely because the franchisee receives a payment from the franchisor or subfranchisor in consideration of the referral or a prospective franchisee to the franchisor or subfranchisor, if the franchisee does not otherwise participate in the sale of the franchise to the prospective franchisee. A franchisee does not participate in the sale of a franchise merely by participating in initial conversations or communications with a prospective franchisee about a franchise.'').

[161] J&G, NPR 32, at 10. *But see* Baer, NPR 11, at 9 (''If any party offers to sell a franchise on behalf of a franchisor, that person should be considered a franchise seller.'').

[162] Interpretive Guides, 44 FR at 49969.

[163] Moreover, the final amended Rule includes a separate definition of ''franchisor,'' to whom the affirmative disclosure requirements apply.

[164] Section 436.9(a).

[165] Frannet, NPR 2, at 1.

[166] 16 CFR 436.2(j).

[167] Original SBP, 43 FR at 59717 and nn. 176 and 178. Staff advisory opinions have interpreted the term ''arranges'' to include, for example, discussions with prospective franchisees about their specific business interests, pre-screening prospects through interest questionnaires, recommending specific franchise options, and assisting prospects in completing a franchisor's application form. These opinions are based upon the original SBP, in which the Commission stated that group discussions about franchising and pre-screening of prospects may constitute a first personal meeting that would require a franchisor or broker to furnish disclosure documents. *See* Informal Staff Advisories 99–6 and 99–7, Bus. Franchise Guide (CCH), ¶¶ 6503–04 (1999).

[168] *See generally FTC v. Entrepreneur Media, Inc.*, Bus. Franchise Guide (CCH), ¶ 10583 (C.D. Cal.

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The Commission declines to follow a different approach in adopting the final amended Rule. As noted above, the final amended Rule prohibits franchise sellers from engaging in certain conduct that may deceive prospective franchisees during the sales process. In order to prevent deceptive sales practices, the prohibitions section of the final amended Rule is broad, covering all persons engaged in sales activity. Accordingly, the Commission intends that the term broker in the ''franchise seller'' definition to mean a person who: (1) is under contract with the franchisor relating to the sale of franchises; (2) receives compensation from the franchisor related to the sale of franchises; and (3) arranges franchise sales by assisting prospective franchisees in the sales process.[169]

11. Section 436.1(k): Franchisor

The original Rule defined ''franchisor'' as: ''any person who participates in a franchise relationship as a franchisor, as denoted in paragraph (a) of this subsection.''[170] The final amended Rule streamlines the original definition: ''any person who grants a franchise and participates in the franchise relationship.''[171] Consistent with the UFOC Guidelines, the definition also makes clear that, ''[u]nless otherwise stated, it includes subfranchisors.''[172]

In considering revisions to the ''franchisor'' definition, the Commission has rejected three additional suggestions. First, one commenter opined that it is unclear whether the phrase ''and participates in the franchisor relationship'' is intended to modify ''any person who grants a franchise,'' or is intended to include persons other than those who grant a franchise. She urged the Commission to revise the definition narrowly to mean the person who signs the agreement granting a franchise.[173]

The commenter's suggested change is unwarranted. The two definitional phrases are read conjunctively. To be considered a ''franchisor,'' a person must satisfy two definition elements: (1) granting a franchise; *and* (2) participating in the franchise relationship. Further, the second definitional element—participating in the franchise relationship—is necessary to distinguish a franchisor (who has post-sale performance obligations), from others involved solely in the initial franchise sales process (such as a broker). Indeed, this commenter's proposed substitute definition could inappropriately sweep within the definition of ''franchisor'' third-party brokers or other agents who are authorized by the franchisor to sign the franchise agreement, but who have no post-sale performance obligations. We therefore decline to adopt this suggestion.

Second, NASAA urged the Commission to expand the definition to include shareholders of privately-held corporations.[174] Although NASAA did not elaborate, its suggestion is apparently designed to make it easier to hold owners of closely-held corporations liable for violations of the final amended Rule. We do not believe, however, that a mere showing that an individual is a shareholder in a privately held corporation can suffice, without more, as a legal basis for subjecting that individual to liability to pay potentially significant civil penalties or consumer redress[175] for Rule violations committed by the corporation or those actively in control of it. At any rate, where warranted, the Commission's enforcement experience indicates no difficulty in proving up the necessary level of participation in the violative conduct to justify civil penalties, or the requisite control over the corporation and knowledge of its violative activity to justify recovery of consumer redress. We therefore decline to adopt NASAA's suggestion on this issue.

12. Section 436.1(l): Leased department

The final amended Rule retains the original Rule's exemption for leased department arrangements.[176] A leased department is created when a retailer rents space from a larger retailer in order to conduct business. For example, a jeweler may rent space from a department store to sell jewelry and watches. Technically, this relationship may be a franchise because the jeweler becomes associated with the department store's trademark, and the department store may impose what arguably could be considered control over the operation, such as operating hours. As noted in the original SBP, these types of relationships need not be protected by the Rule because the likelihood of deception is not great, the retailer-lessee typically being experienced and able to assess the value of the location. Moreover, the risk is small because the retailer-lessee's financial liability to the retailer-grantor is limited to rent.[177]

Section 436.1(l) of the final amended Rule defines the term ''leased department'' as:

> an arrangement whereby a retailer licenses or otherwise permits a seller to conduct business from the retailer's location where the seller purchases no goods, services, or commodities directly or indirectly from: (1) the retailer; (2) a person the retailer requires the seller to do business with; or (3) a retailer-affiliate if the retailer advises the seller to do business with the affiliate.[178]

No commenter raised any substantive concerns about the leased department exemption. One commenter, however, suggested that the Commission expand the definition of leased department to

1994); *FTC v. Shulman Promotions, Inc.*, Bus. Franchise Guide (CCH), ¶ 10584 (S.D. Ohio 1994) (trade show promoters held jointly and severally liable as brokers under the original Rule for financial performance claims made by franchisor-exhibitors on the trade show floor).

[169] *See* Gust Rosenfeld, at 2 (supporting the above-noted interpretation of the term ''broker''). This interpretation is sufficiently narrow to exclude existing franchisees who may refer potential franchisees to the franchisor because they are not under contract with the franchisor to sell franchises. In most instances, it also would exclude trade show promoters and the media who, typically, are not under contract with the franchisor, do not receive compensation from the franchisor for franchise selling, and who do not pre-screen or otherwise assist prospects in identifying specific franchise systems, or otherwise advance the franchise sale.

[170] 16 CFR 436.2(c).

[171] The Franchise NPR proposed that a franchisor include a person who grants an ''interest in a franchise.'' The reference to granting ''an interest'' is deleted. As BI observed, granting an interest is too broad, arguably including a franchisee who sells an ownership interest in her own business. BI, NPR 28, at 2. The amended definition is also consistent with the language used in several state franchise statutes, namely ''grants a franchise,'' or ''grants or offers to grant a franchise.'' *E.g.*, Mich. Comp. Laws. 445.1502(5); Wash. Rev. Code 19.100.010(8).

[172] *See* Lewis, NPR 15, at 11 (suggesting that the definition address ''subfranchisors,'' noting comparable language in the Illinois and California Franchise Acts).

[173] Spandorf, at 2.

[174] NASAA, at 4; NASAA, NPR 17, at 3.

[175] *E.g., FTC v. Morrone's Water Ice, Inc.*, No. 02–3720 (E.D. Pa. 2002) (naming Stephen D. Aleardi and John J. Morrone, III, individually and as officers of corporate defendants); *FTC v. Car Wash Guys Int'l, Inc.*, No. 00–8197 ABC (RNBx) (C.D. Cal. 2000) (naming Lance Winslow, III, individually and as an officer of the corporate defendants).

[176] *See* 16 CFR 436.2(a)(3)(ii).

[177] Original SBP, 43 FR at 59708. *See also* Interpretive Guides, 44 FR at 49968.

[178] Originally, the Commission proposed in the Franchise NPR a much more streamlined version of the definition, as follows: *Leased department* means ''an arrangement whereby a retailer licenses or otherwise permits an independent seller to conduct business from the retailer's premises.'' Franchise NPR, 64 FR 57332. However, one commenter voiced concern that this proposed definition could be misinterpreted as broadening the exemption to include even arrangements where the retailer-grantor requires the retailer-lessee to purchase goods from, for example, a specific third-party supplier. J&G, NPR 32, Attachment 6, at 13. This was not the Commission's intent, and the revised definition corrects that possible misinterpretation.

include ''co-branding'' arrangements.[179] Co-branding, a relatively new marketing development in franchising, enables a franchisee to use the trademarks and sell the goods or services of more than one franchise system. For example, an outlet that sells Taco Bell foods might also sell Pizza Hut pizza, or a gasoline franchise, such as Shell, may operate an on-site Subway Shop or 7-Eleven store.

The Commission declines to adopt this suggestion. The issue of Rule compliance in co-branded arrangements was raised in the ANPR[180] and discussed in detail at the staff's New York public workshop conference on September 18, 1997. The ANPR commenters generally agreed that the current Rule and UFOC Guidelines are sufficient to address any deception issues that may arise in co-branded franchise arrangements. The same view was expressed by the participants at the New York workshop.[181] Indeed, no franchisee or state regulator voiced any concerns to the contrary.[182] Therefore, taken as a whole, the record does not support the need to adopt new rule provisions specifically addressing co-branding.[183]

13. Section 436.1(m): Parent

Section 436.1(m) of the final amended Rule defines the term ''parent'' as ''an entity that controls another entity directly, or indirectly though one or more subsidiaries.'' Several commenters suggested that because several Rule provisions address parent disclosures,[184] the Commission should expressly define that term.[185] Although the Rule proposed in the Franchise NPR did not define this term, the Commission believes this point is well-taken. Accordingly, part 436 of the final amended Rule expressly defines the term ''parent.''[186]

One commenter suggested an alternative definition: ''Parent means an entity that directly or indirectly has an 80% or greater ownership interest in the franchisor.''[187] The commenter, however, did not state the basis for his recommendation. Indeed, in promulgating the original Rule, the Commission did not adopt an ownership test, but focused on control.[188] We believe that is the proper approach.[189] It is the control and resulting influence over the direction of the franchisor—not mere ownership—that is material to a prospective franchisee.

14. Section 436.1(n): Person

Section 436.1(n) of the final amended Rule retains the original Rule's definition of the term ''person''—''any individual, group, association, limited or general partnership, corporation, or any other entity.''[190] This is identical to the proposed version of this definition in the Franchise NPR. During the Rule amendment proceeding, a few commenters offered suggestions to modify the definition. Warren Lewis, for example, suggested that the Commission add the following to the definition: ''An individual is not an entity.''[191] Mr. Lewis maintained that this change would make it clear throughout the Rule that ''person'' means an individual or business entity; while entity means only a business entity. As another example, IL AG and J&G suggested that the definition of ''person'' reference limited liability companies.[192]

The term ''person'' is defined in many Commission rules, as referring to a party, regardless of whether the party is an individual, organization, or business entity.[193] Where necessary, the rule text distinguishes between parties by using the more specific terms—individual, organization, or entity. We believe that these more specific terms are clear, and, therefore, we need not distinguish between individuals and entities in the definition of ''person,'' as suggested. The Commission also finds that the term ''entity'' is sufficient to cover limited liability companies, as well as other forms of business arrangements.

15. Section 436.1(o): Plain English

Part 436 of the final amended Rule adopts the UFOC Guidelines requirement that disclosure documents be prepared in plain English.[194] Section 436.1(o) defines ''plain English'' as:

> the organization of information and language usage understandable by a person unfamiliar with the franchise business. It incorporates short sentences; definite, concrete, everyday language; active voice; and tabular presentation of information, where possible. It avoids legal jargon, highly technical business terms, and multiple negatives.[195]

This definition is one of several features of the final amended Rule that are designed to preserve the integrity of

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[179] J&G, NPR 32, Attachment at 6, 13. Two other commenters suggested that the Commission provide more guidance about co-branding generally, but not in the leased department context. Selden, at 3; Quizno's, ANPR 16, at 2. None of these commenters identified specific problems posed by co-branding arrangements—other than noting that co-branded arrangements can be complex—nor did they offer any solutions for the Commission's consideration.

[180] In the ANPR, the Commission noted its uncertainty as to whether the purchaser of a co-branded franchise acquires two individually-trademarked franchises (and thus should receive separate disclosures from each franchisor) or acquires a hybrid franchise arrangement that has its own risks and, thus, should receive a single unified document that discloses information specific to the co-branding arrangement. The ANPR asked whether franchisors have sufficient guidance under the Rule to determine their disclosure obligations with respect to the sale of co-branded franchises and whether new or different disclosures should apply to the sale of co-branded franchises. ANPR, 62 FR at 9122. Ten ANPR commenters addressed co-branding. Quizno's, ANPR 16, at 2; Baer, ANPR 25, at 7; H&H, ANPR 28, at 9; Kaufmann, ANPR 33, at 16; Kestenbaum, ANPR 40, at 2–3; IL AG, ANPR 77, at 4–5; IFA, ANPR 82, at 4; Kirsch, ANPR 98; Jeffers, ANPR 116, at 9; WA Securities, ANPR 117, at 4. With the exception of Quizno's, the ANPR commenters maintained that the Commission's current pre-sale disclosure approach is sufficient to address co-branded franchise arrangements.

[181] *E.g.*, Kirsch, ANPR, 18 Sept. 97 Tr., at 176; Wieczorek, *id.*, at 177–78; Kestenbaum, *id.*, at 178–79; Simon, *id.*, at 179.

[182] For example, Dale Cantone, of Maryland Securities, stated: ''We haven't had too many problems on the issue of co-branding. We've had franchisors file disclosures and we really haven't had too many issues with it.'' Cantone, ANPR, 18 Sept. 97 Tr., at 182.

[183] To the extent that franchisors may be uncertain how to apply the final amended Rule in a specific co-branded arrangement, they can always seek further guidance from Commission staff through an informal advisory opinion. To date, no such requests have been submitted, suggesting limited, if any, confusion over this issue.

[184] *See* section 436.5(a) (Item 1); section 436.5(c) (Item 3); section 436.5(d) (Item 4).

[185] *E.g.*, PMR&W, NPR 4, at 9; H&H, NPR 9, at 12.

[186] The final amended Rule's definition of ''parent'' is consistent with the definition of the term ''parent'' in the Interpretive Guides: ''an entity that controls the franchisor directly, or indirectly through one or more subsidiaries.'' Interpretive Guides, 44 FR at 49972. However, because the term parent is also used in the final amended Rule to refer to a franchisee's parent—*e.g.*, section 436.8 (Exemptions)—the definition of ''parent'' deletes the reference to ''franchisor'' and replaces it with the broader term ''another entity.'' This is the identical approach taken in defining the term ''affiliate.'' *See* section 436.1(b) above.

[187] Lewis, NPR 15, at 9. This suggested definition appears to derive from the following language in UFOC Item 21: ''a company controlling 80% or more of a franchisor may be required to include its financial statements.'' Item 21, however, does not specifically purport to define the term ''parent.'' Rather, it merely suggests that a large controlling interest may give rise to financial disclosure obligations.

[188] Interpretive Guides, 44 FR at 49972.

[189] The Staff Report's discussion of the ''parent'' definition generated one comment. Gust Rosenfeld suggested that a second sentence should be added to the definition to the effect that a parent entity is an affiliate, but is separately defined because certain requirements apply to a parent, but not to other types of affiliates. Gust Rosenfeld, at 2. We agree, but believe issues such as this are more appropriately addressed in Compliance Guides.

[190] *See* 16 CFR 436.2(b).

[191] Lewis, NPR 15, at 10.

[192] IL AG, at 3; J&G, NPR 32, Attachment, at 14.

[193] *E.g.*, Telemarketing Sales Rule, 16 CFR 310.2(v).

[194] Section 436.6(a).

[195] This definition is based upon the definition of ''plain English'' used in the securities context. *See* Registration Form Used by Open-Ended Management Investment Companies, SEC Release No. 33–7512, 63 FR 13916, at 13939 (Mar. 23, 1998). *See also* UFOC General Instruction 150.

disclosure documents. Application of these writing standards will enhance the legibility and understandability of disclosure documents, thereby reducing the likelihood of franchisee deception, confusion, or misunderstandings.

16. Section 436.1(p): Predecessor

Section 436.1(p) adopts the UFOC Guidelines' definition of ''predecessor'' as: ''a person from whom the franchisor acquired, directly or indirectly, the major portion of the franchisor's assets.''[196] This definition comes into play in several substantive provisions of the final amended Rule, where the Commission is adopting the UFOC Guidelines requirement that franchisors disclose material information about their predecessors.[197] The original Rule did not require the disclosure of predecessor information. However, as discussed later in this document—in particular in connection with Item 3 litigation disclosures and Item 4 bankruptcy disclosures—predecessor disclosures are necessary to prevent fraudulent franchise sales.[198] Our law enforcement experience demonstrates that, in some instances, franchisors reincorporate under a new name as a simple way to avoid disclosing damaging information.[199] The disclosure of predecessor information will prevent such efforts to circumvent the final amended Rule.

17. Section 436.1(q): Principal business address

The final amended Rule requires the disclosure of the principal business address of the franchisor, as well as any parent, predecessors, and affiliates.[200] Section 436.1(q) defines the term ''principal business address'' to mean: ''the street address of a person's home office in the United States. A principal business address cannot be a post office box or private mail drop.''[201] This definition was not included in the original Rule. Nevertheless, the Commission finds that this definition is necessary to enable a prospective franchisee to contact the franchisor easily, as well as to facilitate effective law enforcement.

The proposed version of section 436.1(q) has been slightly revised to improve its precision, as suggested in one Staff Report comment. Initially, the definition of principal business address referred to the *franchisor's* home office. J&G correctly observed, however, that the disclosure of a principal business address applies not only to a franchisor, but to others, such as a predecessor, as well.[202] Accordingly, the definition has been revised to refer to the more general ''person's home office''—be it the franchisor, parent, predecessor, or affiliate.

18. Section 436.1(r): Prospective franchisee

The final amended Rule retains a streamlined version of the definition of the term ''prospective franchisee'' set forth in the original Rule at 16 CFR 436.2(e). Specifically, section 436.1(r) defines the term to mean ''any person (including any agent, representative, or employee) who approaches or is approached by a franchise seller to discuss the possible establishment of a franchise relationship.''[203] This is identical to the version of this definition proposed in the Franchise NPR.

The amended definition addresses several comments raised during the Rule amendment proceeding. First, one commenter voiced concern about who may receive a disclosure document, suggesting that the Commission permit any representative of the franchisee to receive the disclosures.[204] The Commission agrees that representatives of a prospective franchisee should be permitted to accept delivery of the disclosure document on the prospective franchisee's behalf. Indeed, in some instances a prospective franchisee may be a corporation or other entity, not an individual. Thus, delivery in such circumstances can only be made upon a representative. Even individuals may wish to have their attorney or other agent receive the disclosures on their behalf, and the Rule should accommodate that possibility. We believe that the reference to agent, representative, or employee in section 436.1(r) is sufficient for this purpose. Further detail about who may accept disclosures for a prospective franchisee is best addressed in the Compliance Guides.[205]

One commenter also questioned the use of the word ''approaches'' in the definition. Specifically, the commenter feared that the definition would include someone surfing the Internet who ''approaches'' a franchisor's website.[206] We believe this concern is unwarranted. The ''prospective franchisee'' definition states that the parties must ''discuss the possible establishment of a franchise relationship.'' This limiting language makes clear that for an individual to become a ''prospective franchisee'' he or she must communicate with the franchisor about a franchise offering. Merely perusing a franchisor's website alone does not turn an ordinary Internet surfer into a prospective franchisee. Accordingly, no further revision to the ''prospective franchisee'' definition is warranted.

19. Section 436.1(s): Required payment

The making of a ''required payment'' (or a commitment to make a ''required payment'') is one of the definitional elements of the term ''franchise.''[207] Section 436.1(s) defines the term ''required payment'' to mean:

> all consideration that the franchisee must pay to the franchisor or an affiliate, either by contract or by practical necessity,[208] as a condition of obtaining or commencing operation of the franchise. A required payment does not include payments for the purchase of reasonable amounts of inventory at bona fide wholesale prices for resale or lease.

The only substantive difference between the provision as proposed in the

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[196] UFOC Guidelines, Item 1 Instructions, iii. *See also* NASAA Commentary, Bus. Franchise Guide (CCH), ¶ 5790, at 8465 (''The definition of predecessor in instruction iii to Item 1 should be applied throughout the UFOC.'').

[197] *E.g.*, section 436.5(a)(2) (Item 1); section 436.5(c) (Item 3); section 436.5(d) (Item 4).

[198] Initially, the Commission proposed in the Franchise NPR a broader definition that would include as a predecessor a person ''from whom the franchisor obtained a license to use the trademark or trade secrets in the franchise operation.'' Franchise NPR, 64 FR at 57332. This proposal was widely criticized as overbroad, H&H, NPR 9, at 15; BI, NPR 28, at 2, and would result in burdensome disclosures that are immaterial to prospective franchisees, PMR&W, NPR 4, at 8; Baer, NPR 11, at 11; NFC, NPR 12, at 3–4; Snap-On, NPR 16, at 2; Marriott, NPR 35, at 13–14. *See also* Gust Rosenfeld, at 2. Commenters also observed that information about the franchisor's trademark is already disclosed in Items 12–13. *E.g.*, Baer, NPR 11, at 10; Lewis, NPR 15, at 10. The staff of the Commission agreed. Accordingly, the proposal was deleted in the revised proposed Rule set forth in the Staff Report.

[199] *E.g.*, *FTC v. Wolf*, Bus. Franchise Guide (CCH) ¶ 10401 (S.D. Fla. 1994); *FTC v. Inv. Dev., Inc.*, Bus. Franchise Guide (CCH) ¶ 9326 (E.D. La. 1989). *See also United States v. Lasseter*, No. 3:03–01177 (M.D. Tenn. 2003).

[200] *See* section 436.5(a).

[201] *See* UFOC Guidelines, Item 1C, Instructions, i.

[202] J&G, at 2.

[203] The final amended Rule definition uses the term ''franchise seller'' in lieu of ''franchisor, or franchise broker, or any representative, agent, or employee thereof.'' *See* section 436.1(i).

[204] BI, NPR 28, at 3.

[205] *See also* Piper Rudnick, at 5 (seeking clarification in the Compliance Guides on whether the phrase ''agent, representative, or employee'' also includes an individual on behalf of a family member (spouse, children, siblings), other general and limited partners, shareholders, and/or the individual's corporate employer).

[206] J&G, NPR 32, at 7.

[207] *See* section 436.1(h)(3).

[208] The ''required payment'' definition incorporates the Commission's long-standing policy that a payment can be required by contract or by practical necessity. *See* Interpretive Guides, 44 FR at 49967.

Franchise NPR and the final amended Rule provision is the addition of the second sentence. There is no corresponding definition in the original Rule.

During the Rule amendment proceeding, several commenters raised concerns about the scope of the ''required payment'' definition. Specifically, commenters voiced concern whether the definition: (1) covers royalty payments; (2) covers payments to obtain or commence the franchise relationship; (3) excludes payments for inventory; and (4) includes payments to third parties. Each of these issues is discussed in greater detail below.

a. Royalty payments

As noted above, the definition of ''required payment'' uses the phrase ''consideration that the franchisee must pay.'' IL AG interpreted the word ''consideration'' as excluding royalty payments. It urged the Commission to clarify that royalties can constitute a required fee. Otherwise, ''it will be too simple, even for traditional franchisors, to evade franchise laws.''[209]

The Commission has always considered royalty payments to be a form of required payment under the Rule and nothing in the definition of ''required payment'' is to the contrary.[210] Royalty payments constitute a direct form of consideration flowing to the franchisor in exchange for the ability to conduct business. Indeed, if royalties were excluded from the required payment definition, then any franchisor could avoid Rule coverage by charging a large post-sale royalty fee in lieu of an initial franchise or related fee. The Rule uses the term ''consideration'' not to imply that only an upfront franchise fee constitutes a required payment under the Rule, but to avoid the circular use of the word ''payment'' in the definition of ''required payment.'' Also, alternatives such as ''funds, or moneys'' are too limited because they would preclude payments in-kind.

b. Payments to obtain or commence a franchise

One commenter voiced concern that because the definition of ''required payment'' covers payments made ''as a condition of obtaining or commencing operation of the franchise,'' it would encompass ordinary business expenses paid to the franchisor. He urged the Commission to narrow the definition by specifying that a required payment must be made ''for the right to enter into the franchise relationship.''[211]

The Commission declines to adopt this suggestion. The phrase ''right to enter into a franchise relationship'' is too narrow, suggesting that the required payment definitional element should be limited to payments made solely for the right to enter into the business, such as an up-front franchise fee. However, the Commission has made clear that the required payment element is not limited to up-front fees alone: ''Often, required payments are not limited to a simple franchise fee, but entail other payments which the franchisee is required to pay to the franchisor or an affiliate.''[212] The Interpretive Guides further provide as examples of required payments equipment rentals and real estate leases.[213] Thus, expenses incurred in the ordinary course of business and paid to a franchisor or its affiliate may constitute a required payment. Otherwise, unscrupulous franchisors could easily circumvent the Rule by refraining from imposing any up-front fee in favor of charging for ordinary business expenses, such as training or other services, or purchases of equipment or unreasonable amounts of inventory.[214]

c. Payments for inventory

As a matter of Commission policy, reasonable amounts of inventory purchased at bona fide wholesale prices have not been interpreted to constitute a ''required payment'' under the original Rule.[215] This is commonly referred to as ''the inventory exemption.'' David Gurnick urged the Commission to update the Rule by incorporating the inventory exemption into the definition of ''required payment.''[216] (As noted above, the definition proposed in the Franchise NPR did not exclude payments for inventory.) Another commenter agreed with Mr. Gurnick and urged further expansion of the exemption to include not only inventory for resale, but inventory for lease. Otherwise, the situation could arise where inventory obtained from a company is intended for resale—thus taking it outside of the Rule—but later on leased to a customer—thus arguably creating a franchise relationship retroactively.[217]

The Commission has concluded that the definition of ''required payment'' should incorporate the inventory exemption as these commenters suggested. Since the Rule's inception, the Commission's policy has been that reasonable purchases of inventory for resale at bona fide wholesale prices are not construed to be a ''required payment.'' The Interpretive Guides state that it is ''virtually impossible to draw a clear line between start-up inventory that is purchased at the franchisee's option, and that which is purchased as a matter of practical or contractual necessity.''[218] Therefore, the final amended Rule provision incorporates this policy, and extends it to encompass inventory purchased for lease as well as resale, there being no distinction, as a practical matter, between the two categories.

d. Payments to third parties

Howard Bundy urged expansion of the concept of ''required payment'' to include payments made to third parties. According to Mr. Bundy, franchisors can effectively ''hook'' a prospective franchisee if they can get the prospect to expend funds early in the sales process, such as paying travel expenses:

> In franchising, it has become common to use the ''takeaway close'' to entice prospects to travel to the franchisor's headquarters as a condition precedent to receiving a disclosure document. Likewise, we see instances of franchisors requiring a franchisee to contract with or pay for demographic or real estate services with technically ''unaffiliated'' entities as a condition precedent to being ''approved'' as a franchisee.[219]

To address this concern, Mr. Bundy suggested that the Commission modify the definition of ''required payment'' to include, after the word affiliate: ''or to a vendor, financing provider or other third party that the prospective

[209] IL AG, NPR 3, at 5. *See also* J&G, NPR 32, Attachment, at 15 (questioning whether ''consideration'' excludes royalty payments).

[210] *See* Interpretive Guides, 44 FR at 49967 (''Among the forms of required payments are . . . continuing royalties on sales.'').

[211] Baer, NPR 11, at 8.

[212] Interpretive Guides, 44 FR at 49967.

[213] *Id.*

[214] *See* Original SBP, 43 FR at 59703 and note 51 (discussing problem of ''indirect or disguised'' franchise fees).

[215] *See* Interpretive Guides, 44 FR at 49967. In the Franchise NPR, the Commission proposed incorporating the inventory exemption into the current minimum payment exemption. *See* Franchise NPR, 64 FR at 57345. The minimum payment exemption applies where the total required payment made by the franchisee ''from any time before to within six months after commencing operation of the franchisee's business, is less than $500.'' 16 CFR 436.2(a)(3)(iii). Accordingly, the amount of any ''required payment'' must be known before determining the applicability of the minimum payment exemption. Because the inventory exemption helps to define what constitutes a ''required payment,'' we conclude that it should be included directly in the definition of ''required payment.'' *See* Staff Report, at 61–62.

[216] Gurnick, NPR 21A, at 10.

[217] Baer, NPR 11, at 8.

[218] Interpretive Guides, 44 FR at 49967.

[219] Bundy, NPR 18, at 4.

franchisee is required to deal with either by contract or practical necessity or to any third party as a condition precedent to obtaining the Franchise Disclosure Document.''[220]

Mr. Bundy's suggestion generated one rebuttal comment. David Gurnick observed that defining ''required payment'' to include third-party payments would be: ''a radical departure from the Commission's long-standing policy regarding the definition of a franchise, would create a major inconsistency between the Franchise Rule and the state franchise laws, and would extend coverage to arrangements which the Rule was never intended to regulate.''[221] Observing that all businesses make payments to vendors and service providers, he also asserted that the Bundy proposal would be overbroad: ''For example, 'practical necessity' may dictate that a business use a Microsoft software product or that an employee of the business fly to an airport that is served by only one airline.''[222] Mr. Gurnick added that if a franchisor establishes a company to receive some monetary benefit from prospects, those funds would already fall within the ''required payment'' definition as a payment to an affiliate.[223]

It is true that the Commission has never considered ordinary business payments to third parties as a ''required payment'' under the Rule. Indeed, doing so could sweep very broadly. Ordinary business expenses paid to third parties, such as the cost of installing telephone lines, insurance, and occupancy fees—expenses typically incurred by all businesses—can hardly be deemed a precondition imposed *by the franchisor* for obtaining or commencing operation of a franchise. Rather, a third-party payment constitutes a required payment only if the third party collects and remits the payment on behalf of the franchisor.[224]

Nonetheless, a franchisor may direct or encourage a prospective franchisee to incur some costs in order to advance the franchise sale. The prospective franchisee may incur these costs and make these kinds of payments without the benefit of pre-sale disclosures. Encouraging a prospect to incur expenses to advance the franchise sale could conceivably increase the likelihood that he or she will go through with the deal without a thorough due-diligence investigation. Therefore, the Commission has incorporated into the final amended Rule an express prohibition barring a franchisor from failing to furnish a copy of its disclosure document to a prospective franchisee early in the sales process, upon reasonable request.[225] This prohibition enables a prospective franchisee to ask to see a copy of the franchisor's disclosure document before agreeing to travel to company headquarters or purchase demographic data, for example. The Commission believes this approach will better address concerns about pre-disclosure third-party payments than would an unworkable alteration of the definition of the term ''required payment.''

20. Section 436.1(t): Sale of a franchise

The part 436 disclosure obligations are triggered only when there is an offer for the sale of a franchise.[226] Section 436.1(t) defines the term ''sale of a franchise'' as follows:

> an agreement whereby a person obtains a franchise from a franchise seller for value by purchase, license, or otherwise. It does not include extending or renewing an existing franchise agreement where there has been no interruption in the franchisee's operation of the business, unless the new agreement contains terms and conditions that differ materially from the original agreement. It also does not include the transfer of a franchise by an existing franchisee where the franchisor has had no significant involvement with the prospective transferee. A franchisor's approval or disapproval of a transfer alone is not deemed to be significant involvement.

Like the original Rule provision, the final amended provision embodies the concept that franchisees extending or renewing an existing franchise agreement, where there is no interruption in business operations, will not be deemed to be entering into a sale, unless their new agreement contains terms and conditions materially different from their original agreement.[227]

The final amended Rule provision differs substantively from the provision as proposed in the Franchise NPR[228] because it incorporates the Commission policy, as stated in the Interpretive Guides, that the term ''sale of a franchise'' does not encompass the transfer of a franchise by an existing franchisee where the prospective purchaser has no significant contact with the franchisor.[229] Under long-standing Commission policy, a franchisor or subfranchisor must provide disclosures to *prospective franchisees*, but ''a person who purchases a franchise directly from an existing franchisee, without significant contact with the franchisor, is not a prospective franchisee.''[230] Where a franchisor is not involved in the private sale of an existing franchise, the franchisor makes no representations to the prospective new purchaser. If there is any fraud in the private sale, it could be only by the current franchisee owner, and pre-sale disclosure by the franchisor would not likely prevent it. Accordingly, section 436.1(t) of part 436 makes clear that a transfer without significant involvement of the franchisor is not the sale of a franchise within the ambit of the Rule. Further, the franchisor's mere approval or disapproval of the purchaser alone is not considered to be significant involvement.[231]

At the same time, the Commission declines to adopt several suggested narrowing modifications to the definition of ''sale of a franchise.'' H&H urged the Commission to exclude from the definition of ''sale of a franchise'' the modification of an existing franchise agreement where there is no interruption in the franchisee's business operation.[232] The firm observed that material modifications to existing franchise agreements typically arise in two situations: (1) a settlement of litigation or other disputes with franchisees, in which the franchisor makes concessions; and (2) management initiative with the involvement of independent franchisee associations or franchisee advisory councils.[233] According to H&H, these modifications typically entail no new investment and both sides are familiar with the

[220] *Id.*

[221] Gurnick, NPR Rebuttal 36, at 2.

[222] *Id.*, at 3.

[223] *Id.*, at 3–4. Mr. Gurnick also disputed the view that franchisors entice prospects to incur costs, such as airline tickets. ''No data is [sic] provided to support this claim, and frankly I question whether companies really have an interest in enticing prospects to buy, for example, airline tickets.'' *Id.*, at 4.

[224] *See* Interpretive Guides, 44 FR at 49967.

[225] *See* section 436.9(e).

[226] *See* section 436.2.

[227] 16 CFR 436.2(k). *See also* Interpretive Guides, 44 FR at 49969.

[228] Franchise NPR, 64 FR at 57333.

[229] *See* H&H, NPR 9, at 11.

[230] Interpretive Guides, 44 FR at 49969.

[231] *See* Interpretive Guides, 44 FR at 49969–70. In contrast, a franchisor who actively participates in a franchise transfer must make disclosures to a potential transferee, no less than to a prospective franchisee. In such an event, the prospective transferee may rely on the franchisor's representations in deciding to purchase the franchise, and therefore, should receive the benefit of pre-sale disclosure.

[232] H&H, NPR 9, at 9–10.

[233] H&H, NPR 9, at 10.

franchise terms: ''An offer to exchange different forms of agreement or add an addendum to existing franchise agreements does not establish a new franchise relationship—that relationship already exists and will continue regardless of the decision the franchisee makes.''[234]

The Commission agrees that disclosure is unwarranted where an existing franchisee and the franchisor merely seek to amend their ongoing contractual relationship. In such circumstances, the material information the franchisee needs is the actual revised franchise agreement itself that spells out the terms and conditions that will govern the parties' ongoing relationship. Requiring franchisors to furnish a new disclosure document whenever there may exist agreed upon material changes in a contract is likely to be an unwarranted formality, the cost of which is probably not outweighed by any tangible benefit to the existing franchisee. In any event, franchise agreement modifications, most obviously those without any new payment, would not constitute a ''sale.'' The definition of ''sale of a franchise,'' therefore, need not be revised to address this concern.

H&H further contended that disclosure is never warranted for renewals, asserting that a renewing franchisee makes no investment decision: ''His decision relates to whether to continue a relationship, with which he should be intimately familiar at that point, under the terms of a new form of franchise agreement. The UFOC does little to help him understand the terms of that agreement.''[235] After considering this suggestion, we are unconvinced that renewals should always be excluded from the definition of ''sale of a franchise.''

As discussed in greater detail below in connection with section 436.5(q)—Item 17's renewal disclosure—franchisees and their representatives have voiced concern about renewals, arguing that franchisors control the governing terms and conditions and offer renewals on a take-it-or-leave-it basis.[236] Franchisees, they have asserted, not only lack bargaining power over the renewal agreement, but also often must accept new onerous terms because they are frequently subject to covenants not to compete that effectively prevent them from continuing in the same business independently. Especially in an age of new technologies and changes in franchise marketing, renewal contracts may be significantly different from original contracts that franchisees signed 10 to 20 years ago. A renewing franchisee, for example, may reasonably wish to see Item 20 closure rates for franchises operating under the new franchise agreement. Accordingly, the Commission concludes that where the franchise agreement contains terms and conditions materially different from the original agreement, the renewing franchisee needs advance disclosures in order to make an informed renewal decision.[237]

21. Section 436.1(u): Signature

The original Rule contained no definition of ''signature.'' To facilitate the use of electronic signatures, however, section 436.1(u) of the final amended Rule updates the UFOC Guidelines by adding such a definition: ''a person's affirmative step to authenticate his or her identity. It includes a person's handwritten signature, as well as a person's use of security codes, passwords, electronic signatures, and similar devices to authenticate his or her identity.'' No comments were submitted on this definition, but the Commission has refined the language of the proposed definition to achieve greater precision and clarity, expressly including the descriptor ''handwritten,'' substituting ''electronic'' for ''digital,'' and adding the phrase ''to authenticate his or her identity.''

22. Section 436.1(v): Trademark

Section 436.1(v) of the final amended Rule defines the term ''trademark.'' The original Rule did not define this term. Consistent with long-standing Commission interpretation of the term and the UFOC Guidelines, the final amended Rule definition is broad, including ''trademarks, service marks, names, logos, and other commercial symbols.''[238] No comments were submitted on this definition, and it is identical to the version of the definition published in the Franchise NPR.

23. Section 436.1(w): Written or in writing

The final amended Rule updates the original Rule and UFOC Guidelines to permit the use of electronic disclosures.[239] To that end, section 436.1(w) of the final amended Rule defines the term ''written or in writing'' to include not only printed documents, but:

> any document or information . . . in any form capable of being preserved in tangible form and read. It includes: type-set, word processed, or handwritten document; information on computer disk or CD–ROM; information sent via email; or information posted on the Internet. It does not include mere oral statements.[240]

No comments were submitted on the Franchise NPR's proposed definition, and only minor non-substantive changes in language were made to improve clarity.

B. Section 436.2: Obligation To Furnish Documents

Section 436.2 of the final amended Rule retains the original Rule's requirement that franchisors provide prospective franchisees with advance written disclosures.[241] It also retains, in streamlined form, elements of the original Rule's requirement that a franchisor ''furnish the prospective franchisee with a copy of the franchisor's franchise agreement . . . prior to the date the agreements are to be executed.''[242] The final amended Rule provision follows the basic concepts of the corresponding provision of the proposed Rule published in the Franchise NPR, but, as explained below, it reflects important refinements suggested by the comments, and its language has been reorganized to improve clarity.

Section 436.2 of part 436 covers four issues relating to the basic obligation to provide a disclosure document. First, it describes the geographical scope within which the disclosure obligation applies. Second, it establishes the time frame for fulfilling that obligation. Third, it limits the obligation of the franchisor to furnish to the prospective franchisee an advance copy of the completed franchise agreement—apart from the disclosure document—to only those circumstances when the franchisor makes material unilateral changes to the agreement while the offer is still under consideration. Fourth, and finally, the provision sets forth the specific actions

[234] *Id.*

[235] *Id.*, at 11.

[236] See discussion of section 436.5(q) below. *See also* Staff Report, at 153–156; Franchise NPR, 64 FR at 57308–09.

[237] This assumes, of course, that there is a ''sale,'' meaning the existing franchisee makes a *required payment* for the right to enter into a *new* franchise agreement. Entering into a new franchise agreement without any required payment or extending an existing franchise agreement for a fee would not be deemed a ''sale of a franchise'' for Rule purposes.

[238] *See* Interpretive Guides, 44 FR at 49966–967. *See also* UFOC Guidelines, Item 13 Instructions, i.

[239] *See* section 436.6 of the final amended Rule.

[240] *See also* section 436.8(a)(7), which retains the original Rule's exemption for oral statements at 16 CFR 436.2(a)(3)(iv).

[241] 16 CFR 436.1(a).

[242] 16 CFR 436.1(g).

that constitute the furnishing of disclosures. Each of these aspects of section 436.2 generated comments. The following sections discuss those issues and the various views of the commenters.

1. Geographical scope of the Rule's application

Section 436.2 of the final amended Rule makes clear that the part 436 disclosure requirements and prohibitions are limited to ''the offer or sale of a franchise to be located in the United States of America or its territories.''[243] This provision of part 436 is substantively identical to the corresponding provision in the proposed Rule. The original Rule did not address whether pre-sale disclosure is required for sales of franchises to be located outside the United States and its territories, and this issue has remained an unsettled area of franchise law. This issue was raised early in the proceeding and, based upon the record developed, the Commission concludes that application of part 436 to franchises to be located outside the United States and its territories is unwarranted at this time.[244]

The record reveals overwhelming support among various franchise interests for limiting the reach of the part 436 to sales of domestic franchises.[245] Among other things, the commenters noted that foreign franchise purchasers are large sophisticated investors represented by counsel and do not need the Rule's protections. Some commenters made the point that the Commission developed the Franchise Rule in response to problems occurring in the domestic market.[246] Indeed, a disclosure document addressing the American market may be irrelevant and potentially misleading when applied to a purchase of a franchise to be located outside the United States, due to the vast differences between American and foreign markets, cultures, and legal systems.[247] Further, many risks to the prospective franchisee arise from economic conditions and cultural values in those countries, not in the United States. To be relevant, a franchisor arguably would have to prepare individual disclosure documents tailored to each specific foreign market. Not only would such a requirement put American franchisors at a competitive disadvantage with franchisors from countries lacking comparable disclosure regulations, but it is likely that any possible benefits of such a requirement would not outweigh the extraordinary costs and burdens involved.[248]

At the same time, the Commission has rejected suggestions to limit the scope of the Rule further to exclude sales of franchises to be located in American territories.[249] The FTC Act gives the Commission authority to promulgate trade regulation rules involving unfair or deceptive acts or practices[250] ''in or affecting commerce.''[251] The FTC Act includes multiple references to territories in its definition of commerce,[252] including commerce ''in any territory of the United States.''[253] The record does not suggest any convincing rationale for contraction of the exercise of that authority as expressed through part 436 of the final amended Rule. Residents of American territories rely on American law for protection, and the Franchise Rule is part of that protection.

2. Section 436.2(a): Time frame for making disclosures

Part 436 of the final amended Rule substantially revises the original Rule's timing for making franchise disclosures. Under the original Rule, franchisors and brokers had to furnish prospective franchisees with disclosure documents at the earlier of two time periods: (1) the first personal (face-to-face) meeting; or (2) ''the time for making disclosures,'' which was defined as 10 business days before the execution of the franchise agreement or payment of any fees in connection with the franchise sale.[254] The final amended Rule streamlines the timing provision in two respects. First, part 436 eliminates the first personal meeting disclosure trigger. Second, part 436 replaces the original 10-business day trigger with a 14 calendar-day disclosure trigger. Both of these revisions were included in the Rule proposed in the Franchise NPR, but have been slightly revised for clarification and better organization. Each is discussed in greater detail below.

a. Elimination of the first personal meeting trigger

The Franchise NPR's proposal to eliminate the first personal meeting disclosure trigger prompted overwhelming support from franchisors and their representatives, as well as NASAA.[255] These commenters asserted

[243] Limitation of the geographic scope of part 436 of the final amended Rule is not intended to limit the FTC's jurisdiction, as set forth in section 5(a) of the FTC Act, 15 U.S.C. 45(a), and section 3 of the U.S. SAFE WEB Act of 2006, Pub. L. No. 109–455, 120 Stat. 3372.

[244] The Staff Report recommended limitation of the Rule's scope to sales of franchises to be located in the United States. Staff Report, at 72–5.

[245] *E.g.*, MSA, at 3–4; PMR&W, NPR 4, at 1; 7-Eleven, NPR 10, at 1; IFA, NPR 22, at 5; AFC, NPR 30, at 1–2; Duvall, ANPR 19, at 2–3; SBA Advocacy, ANPR 36, at 9; Tifford, ANPR 78, at 7; NASAA, ANPR 120, at 8–9. Five commenters, however, urged the Commission to enforce the Rule with respect to foreign franchises, raising essentially three points. First, many American foreign franchise sales contracts require disputes to be resolved in the United States. It would be inconsistent for a franchisor to subject a foreigner to American law and American courts without simultaneously extending the benefits of American law, namely pre-sale disclosure. Brown, ANPR 6; Argentine Embassy, ANPR 132; Selden, ANPR 133, at 2–3. Second, limiting the Rule's applicability to sales of domestic franchises would mean that American citizens who purchase a franchise to be located abroad from an American franchisor would not be protected by American law. Stadfeld, ANPR 23, at 3; Selden, ANPR 133, at 2–3. *See also* Stubbings, ANPR 21. Third, the Commission has jurisdiction over sales of foreign franchises and should not willingly restrict its own jurisdiction. Brown, ANPR 4. None of the commenters, however, have shown that limiting the reach of part 436 to franchises to be located in the United States or its territories, as a matter of policy, compromises the Commission's jurisdiction over foreign sales under the FTC Act. The Commission retains its jurisdiction over such sales, and may exercise its discretion to bring an action in appropriate cases.

[246] As H&H observed, a close reading of the text of both the original Rule and UFOC Guidelines indicates an intent to require disclosures involving only domestic franchises. For example, UFOC Item 20 refers to the number of franchise sales ''in this state.'' The firm added: ''Other disclosures about the franchise offering, including litigation and bankruptcy history, franchisor's and franchisee's obligations, royalty rates, initial investment, fees, and trademarks, are U.S.-specific.'' H&H, ANPR 28, at 3–4.

[247] *E.g.*, Miolla, 11 Mar.96 Tr., at 74–79; Shay, *id.*, at 84–85; Forseth, *id.*, at 103; Papadakis, *id.*, at 139; Zwisler, *id.*, at 163–64. *See also* Konigsberg, *id.*, at 97 (franchisees in foreign countries look to their own laws, not to anything contained in an American disclosure document).

[248] *See* Cendant, ANPR 140, at 4–5 (''Creating a disclosure document for . . . international master license transactions . . . would be nightmarish. . . . The cost of compliance would be high and American franchisors placed at an extreme disadvantage when competing with foreign franchisors.''). *See also* Winslow, at 140.

[249] For example, Marriott asserted that the same policy concerns about applying the Rule to franchises located abroad are also relevant to Puerto Rico. Marriott apparently treats Puerto Rico as a foreign country. It contended that furnishing prospective franchisees in this context with a copy of the franchisor's disclosure document may be irrelevant or misleading. Marriott, NPR 35, at 4–5. *See also* J&G, NPR 32, at 3.

[250] *See* section 18(a)(1) of the FTC Act (''The Commission may prescribe . . . rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce (within the meaning of section 45(a)(1) of this title).''

[251] 15 U.S.C. 45(a).

[252] 15 U.S.C. 44 ('''Commerce''' means commerce . . . in any Territory of the United States . . ., or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.'').

[253] 15 U.S.C. 44.

[254] *See* 16 CFR 436.1(a), 436.2(g), and 436.2(o).

[255] *See, e.g.*, PMR&W, NPR 4, at 1; Holmes, NPR 8, at 3; NFC, NPR 12, at 13; NASAA, NPR 17, at 3; Marriott, NPR 35, at 9. The Commission also raised this issue in the ANPR, prompting favorable

that the first personal meeting trigger has become obsolete in the electronic age, where even large investments are made by telephone or via the Internet.[256]

Some franchisees and their advocates, however, maintained that the first personal meeting trigger continues to serve a useful purpose. For example, one franchisee representative asserted that there is no basis to believe that personal meetings will completely become a thing of the past, and warned that eliminating the current first personal meeting disclosure trigger would enable franchisors to induce a high level of commitment on the part of prospects through protracted discussions without providing the disclosure document, with the result that ''the 14 day cooling off period will then start when the franchisee has already decided to make the investment.''[257]

The Commission believes that a first personal meeting trigger alone does little to ensure that a prospective franchisee will receive disclosures early in the sales process.[258] While at the time the Rule was promulgated it may have been routine, or perhaps necessary, to have a face-to-face meeting early on, that is no longer true. Nowadays, a franchisor and a prospect may have numerous telephone conversations or send documents to each other via fax or email long before any personal meeting occurs. Therefore, after carefully considering the comments, the Commission is persuaded that the first personal meeting trigger has become largely obsolete and should be deleted.

Nonetheless, the Commission shares commenters' concern about a franchisor influencing a prospective franchisee's decision before the prospect receives the franchisor's disclosures.[259] To address this concern, the Staff Report recommended adoption of a new provision to prohibit franchise sellers from refusing to honor a prospective franchisee's reasonable request for a copy of the franchisor's disclosure document during the sales process.[260] The Commission has determined to follow this recommendation. Accordingly, 436.9(e) of the final amended Rule specifies that it is an unfair or deceptive practice to ''[f]ail to furnish a copy of the franchisor's disclosure document to a prospective franchisee earlier in the sales process than required under § 436.2 of this part, upon reasonable request.'' This prohibition does not mean that a franchisor must tender a disclosure document to any person who may desire a copy. Rather, it applies where the parties have already conducted specific discussions or negotiations or otherwise taken steps to begin the sales process. This promotes the goal of early disclosure in the sales process without reliance on the obsolete personal meeting trigger. It also is likely to impose only a *de minimis* burden, if any, on franchisors, who presumably have a disclosure document already prepared when discussing a sale with a prospective franchisee.

b. Fourteen calendar-days

Section 436.2(a) of the final amended Rule requires franchisors to furnish disclosures ''at least 14 calendar-days before the prospective franchisee signs a binding agreement with, or makes any payment to, the franchisor or an affiliate in connection with the proposed franchise sale.'' The Franchise NPR proposed this modification of the original Rule's ''10 business day'' disclosure trigger. Commenters who addressed this issue unanimously agreed that a 14 calendar-day disclosure trigger is clearer than the original Rule's ''10 business day'' trigger.[261] One commenter, however, urged the Commission to clarify further how to count the 14 days to ''resolve any question as to whether or not the day on which the documents are delivered, or the day on which they are signed, may be counted for purposes of compliance with the Rule.''[262] The Commission intends that the 14 days commence the day after delivery of the disclosure document and that the signing of any agreement or receipt of payment can take place on the 15th day after delivery. This ensures that prospective franchisees have at least a full 14 days in which to review the disclosures.[263]

Section 436.2(a) of the final amended Rule also tightens the language used in the proposed version of this provision to describe the events that trigger the 14-day disclosure requirement.[264] The original Rule required a franchisor to provide its disclosure document:

> ten (10) business days prior to the earlier of (1) the execution by a prospective franchisee of any franchise agreement or any other agreement imposing a binding legal obligation on such prospective franchisee, about which the franchisor, franchise broker, or any agent, representative, or employee thereof, knows or should know, in connection with the sale or proposed sale of a franchise, or (2) the payment by a prospective franchisee, about which the franchisor, franchise broker, or any agent, representative, or employee thereof, knows or should know, of any consideration in connection with the sale or proposed sale of a franchise.[265]

In the proposed Rule, section 436.2(a) would have altered this formulation by eliminating the franchisor's knowledge as a triggering factor, and rephrasing the remaining factors. Specifically, the proposed provision would have conditioned the disclosure obligation on either ''the prospective franchisee sign[ing] a binding agreement or pay[ing] any fee in connection with the proposed franchise sale.''

Several commenters, focusing on the use of the terms ''binding agreement'' and ''pays any fee,'' criticized the perceived overbreadth of this proposed provision. For example, H&H and

franchisor comment. *See* Duvall, ANPR 19, at 3; Baer, ANPR 25, at 6; Tifford, ANPR, 18 Sept. 97 Tr., at 158–59; Staff Report, at 76–8.

[256] *E.g.*, IFA, NPR 22, at 9; Stadfeld, NPR 23, at 4. Kennedy Brooks, for example, observed that franchise sales can occur entirely electronically ''where the contact is made over the Web, where E-mail is exchanged, where telephone [calls] are exchanged, where documents are sent out by Federal Express, and where, in fact, there never is a face-to-face meeting.'' Brooks, ANPR, 18 Sept. 97 Tr., at 160. *See also* NCL, ANPR 35, at 4–5; SBA Advocacy, ANPR 36, at 9; IL AG, ANPR 77, at 3–4.

[257] Karp, NPR 24, at 5–6. *See also* Bundy, NPR 18, at 5–6; Turner, NPR 13, at 1.

[258] In the Interpretive Guides, the Commission acknowledged that the term ''first personal meeting'' is imprecise:

''Even where a face to face meeting occurs, it is not necessarily a ''first'' personal meeting. In interpreting this term, the Commission will consider such factors as whether the franchisor clearly indicated at the outset of the discussion that it was not prepared to discuss the possible sale of a franchise at that time, whether the meeting was initiated by the prospective franchisee rather than the franchisor, whether the meeting was limited to a brief and generalized discussion and whether earnings claims were made. The Commission believes that by using common sense precautions, franchisors can defer the first personal meeting until such time as they are prepared to provide the required disclosures.''

Interpretive Guides, 44 FR at 49970.

[259] Karp, at 6. *See also* Original SBP, 43 FR at 59639 (''[O]nce a prospect has been 'hooked,' it is difficult, if not impossible, to 'extricate himself.'").

[260] Staff Report, at 77–8.

[261] *E.g.*, Gust Rosenfeld, at 3; Baer, NPR 11, at 10; NFC, NPR 12, at 13; AFC, NPR 30, at 2; Marriott, NPR 35, at 9. *See also* Winslow, at 76.

[262] Holmes, NPR 8, at 3. *See also* Baer, NPR 11, at 10.

[263] This approach is consistent with current industry practice. *See, e.g.*, www.msaworldwide.com/index.cfm/franchise/calendar (2006). *But see* J&G, at 2 (noting that this approach is inconsistent with the approach used in the Federal Rules of Civil Procedure).

[264] The Commission also has decided to clarify the provision further by specifying that the described time period is measured in ''calendar-days'' rather than the possibly ambiguous ''days.''

[265] 16 CFR 436.2(g). *See also* Interpretive Guides, 44 FR at 49970.

Tricon urged inclusion of the phrase ''with the franchisor or an affiliate of the franchisor,'' arguing that these limiting words are needed because ''the franchisor cannot control whether a prospective franchisee proceeds to commit with independent third parties (*e.g.*, lessor of real estate) before expiration of the cooling off period.''[266]

On the other hand, Howard Bundy urged broadening the Rule so that a franchisor would be required to provide the disclosure document at least 14 days before the prospective franchisee signs a binding agreement, pays any fee in connection with the proposed franchise sale, or is required to travel or make other financial commitments as a precondition to receiving additional information.[267] Mr. Bundy's concern was that prospective franchisees may risk losing significant sums of money to pursue a franchise before they receive any disclosures about the franchise offer.

The Commission believes that the concern that prompts Mr. Bundy's suggestion is adequately addressed by section 436.9(e) —the new prohibition barring franchisors from failing to furnish disclosures earlier in the sales process upon reasonable request. A prospect can always ask the franchisor for a disclosure document before undertaking such obligations as signing a binding agreement, paying any fee in connection with the proposed franchise sale, or incurring travel or other costs. Thus, a broad disclosure trigger such as Mr. Bundy advocates is not necessary.

Furthermore, the Commission agrees with the commenters who suggested that this provision should be more carefully tailored so as not to be overly inclusive or imprecise. Accordingly, the final provision specifies that disclosure must be made at least 14 calendar-days ''before the prospective franchisee signs a binding agreement *with, or makes any payment to, the franchisor or an affiliate in connection with the proposed franchise sale*.'' Addition of the underscored language adds clarity and precision, and puts appropriate limits on the provision's reach.

3. Section 436.2(b): Modified contract review period

Part 436 of the final amended Rule significantly narrows the circumstances under which a franchisor must furnish a prospective franchisee with a copy of the completed franchise agreement in advance of the date of execution. The original Rule required that franchisors and brokers furnish prospective franchisees with a copy of the completed franchise and related agreements at least five business days before the date of execution.[268] The proposed Rule published in the Franchise NPR retained this requirement.[269] During the Rule amendment proceeding, several franchisors and their supporters, as well as NASAA, urged the Commission to eliminate the contract review period.[270] PMR&W, for example, asserted that the delay resulting from the mandatory disclosure period often harms prospective franchisees:

> In practice, the 5-day rule typically hurts rather than aids franchisees, since the ''price'' of an additional concession by the franchisor is an additional 5-day delay. Franchisees often are more time sensitive than franchisors, either because of a financing commitment or a lease option that might be expiring or the need to attend a training program. As a result, the 5-day rule can discourage a franchisee from requesting last-minute changes. Thus, the current provision, especially now that business opportunities are not covered, has little potential benefit to either franchisor or franchisee and may, in fact, discourage, rather than promote, last minute negotiations.[271]

Similarly, Marriott noted that the timing of closing the deal is often critical to the franchisee:

> as loan commitments may expire, options to acquire sites may expire or financial commitments may be required to prevent the site from being sold or leased to a different entity. Securities offerings may be held up until franchise agreements are executed. Interest rates may change so as to make a project unavailable unless commitments are promptly made.[272]

The Staff Report recommended that the contract review period be restricted to instances where the franchisor unilaterally modifies its standard franchise agreement. It also recommended substituting ''seven calendar-days'' for the Franchise NPR provision's ''five days,'' to be consistent with the revision of the former 10-day disclosure trigger to 14 calendar-days.[273] After careful consideration of the record, the staff recommendation, and the rationale for that recommendation, the Commission has decided to modify the text of this Rule requirement in the manner recommended in the Staff Report. Section 436.2(b) of the final amended Rule specifies that it is a Rule violation for any franchisor:

> to alter unilaterally and materially the terms and conditions of the basic franchise agreement or any related agreements attached to the disclosure document without furnishing the prospective franchisee with a copy of each revised agreement at least seven calendar-days before the prospective franchisee signs the revised agreement. Changes to an agreement that arise out of negotiations initiated by the prospective franchisee do not trigger this seven calendar-day period.

The Commission intended the original Rule's five business day review requirement to advance two goals: (1) to ensure that prospective franchisees would have time to review and understand the franchise and any related agreement before undertaking significant financial and legal obligations; and (2) to prevent fraud by discouraging a franchisor from unilaterally substituting pages or

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[266] H&H, NPR 9, at 21. *See also* Tricon, NPR 34, at 3–4. In a related but distinct vein, Piper Rudnick urged the Commission to clarify in the Compliance Guides that the 14-day deadline for disclosure is not triggered by a confidentiality agreement. The firm maintained that prospective franchisees often sign confidentiality agreements in the course of negotiations with franchisors. Piper Rudnick, at 5. While the signing of a confidentiality agreement is ''in connection with the proposed franchise sale,'' it does not bind the prospective franchisee to purchase the franchise or to undertake other obligations, such as the signing of a lease. The firm urged clarification that the term ''binding agreement'' in the 14-day rule is limited to franchise agreements or other agreements that commit the prospective franchisee to purchase a franchise. *Id.* The Commission agrees. A confidentiality agreement—often signed by prospective franchisees before being granted access to the franchisor's operations manual and other proprietary information—may be a necessary initial step in the sales process, but is not the type of agreement that triggers disclosure obligations. This assumes, however, that the confidentiality agreement contains no other agreements that, in the absence of the confidentiality agreement, would trigger disclosure, such as a lease agreement.

[267] Bundy, NPR 18, at 5.

[268] *See* 16 CFR 436.1(g).

[269] The proposed rule provision used the term ''days'' instead of the original Rule's ''business days.''

[270] The UFOC Guidelines contain no comparable provision requiring advanced disclosure of the completed franchise agreement.

[271] PMR&W, NPR 4, at 4. *See also* IFA, NPR 22, at 9; J&G, NPR 32, at 6; Marriott, NPR 35, at 9; GPM, NPR Rebuttal 40, at 2.

[272] Marriott, NPR 35, at 9–10. *See also* Marriott, at 4.

[273] Staff Report, at 80–2. As a practical matter, five business days typically amounts to seven calendar-days.

otherwise altering agreements presented to the prospective franchisee for signing.

The first concern—providing time to study the franchise and related agreements—is already served by the Rule's basic disclosure requirement.[274] Attached to each disclosure document is a copy of the franchisor's basic agreement and any related agreements. At the very least, these documents enable prospects to review the basic terms and conditions governing the franchise system. Based upon the Commission's experience in enforcing and administering the Rule, it also appears that franchisors routinely use standardized franchise agreements. Last-minute changes to a franchise agreement, therefore, most likely arise at the franchisee's initiation. When a prospective franchisee is the party introducing contract modifications, redisclosure by the franchisor is hardly warranted. Thus, section 436.2(b) expressly states that ''[c]hanges to an agreement that arise out of negotiations initiated by the prospective franchisee do not trigger this seven calendar-day period.''

Further, the Commission does not believe that the Rule should impede a prospective franchisee's ability to negotiate agreement changes. The delay inherent in a mandatory contract review period may discourage negotiations if a prospective franchisee believes that he or she will suffer as a result of the delay. As Marriott noted, the timely signing of a franchise agreement may be a prerequisite for other parts of the overall deal, such as obtaining leases and loans. Indeed, in most instances a prospective franchisee is in the best position to judge how much review time is warranted and, as a practical matter, can seek additional review time, if desired.

Nonetheless, the possibility of fraud remains a concern. To prevent a franchisor from substituting at the last minute provisions that differ materially from those in the agreements previously attached to the disclosure document, the final amended Rule includes two safeguards. First, section 436.2(b) retains a mandatory contract review period of seven full days[275] in situations where the franchisor has materially altered the terms and conditions of the standard agreements attached to the disclosure document.[276] The Commission intends that this not include situations where the only differences between the standard agreements and the completed agreements are ''fill-in-the-blank'' provisions, such as the date, name, and address of the franchisee.[277] Nor does it include instances where deviations from the standard agreement are initiated at the prospective franchisee's request.

Second, the final amended Rule targets potential fraud directly by adopting a new prohibition, section 436.9(g), which prohibits a franchisor from unilaterally substituting provisions or pages in a franchise agreement resulting in a material change unless the franchisor first alerts the prospective franchisee about the change seven days before execution of the franchise agreement. This approach remedies deceptive unilateral modification of franchise agreements in a material way without imposing additional disclosure burdens.

In response to the Staff Report, a few commenters asked for additional clarification of the meaning of the term ''negotiations initiated by the prospective franchisee.'' For example, Gust Rosenfeld urged the Commission to make clear in the Compliance Guides that negotiated changes will be considered initiated by the prospective franchisee even where some of the changes favor the franchisor.[278] In the same vein, Marriott urged the Commission to change the Staff Report's proposed language ''Changes to a franchise agreement that result solely from negotiations initiated by the prospective franchisee . . . .'' to ''Changes to a franchise agreement that arise out of negotiations initiated by the prospective franchisee. . .''[279] Marriott contended that the original language—''result solely from negotiations initiated by the prospective franchisee''—could be read narrowly to exclude instances where both parties receive benefits during the negotiation.

The Commission recognizes that a negotiated franchise or related agreement may result in some changes favoring the franchisor. Whether or not a particular change benefits a particular party, however, is irrelevant. What is determinative is whether the prospective franchisee has knowledge of the change before signing the agreement. As long as the prospective franchisee opens the door to changing documents that previously have been presented for signing, any discussions about changes and any agreed upon changes are clearly made with the prospective franchisee's knowledge. Under these circumstances, redisclosure would be unwarranted. To make this point clear, the final amended Rule adopts an edited form of Marriott's suggested language noted above: ''Changes to an agreement that arise out of negotiations initiated by the prospective franchisee do not trigger this seven calendar-day period.''

4. Section 436.2(c): Actions that constitute the furnishing of disclosures

Section 436.2(c) of the final amended Rule specifies what actions constitute furnishing required documents. Although the original Rule did not include such a provision, such specificity is needed now, given the wide array of disclosure formats and delivery mechanisms available in today's marketplace. Accordingly, a franchisor will be considered to have furnished a disclosure document if:

> (1) A copy of the document was hand-delivered, faxed, emailed, or otherwise delivered to the prospective franchisee by the required date;
>
> (2) Directions for accessing the document on the Internet were provided to the prospective franchisee by the required date; or
>
> (3) A paper or tangible electronic copy (for example, computer disk or CD–ROM) was sent to the address specified by the prospective franchisee by first-class United States mail at least three calendar days before the required date.[280]

[274] *See* Gust Rosenfeld, at 3. Gust Rosenfeld noted, however, that while the original Rule referred to franchise and related agreements, the Staff Report's proposed Rule focused narrowly on franchise agreements. *Id. See also* J&G, at 3. The final amended Rule appropriately broadens the contract review provision to refer to franchise and related agreements.

[275] As previously noted, part 436 of the final amended Rule provision substitutes ''seven calendar-days'' for the Franchise NPR provision's ''five days'' to be consistent with the revision of the former 10 business-day disclosure trigger to 14 calendar-days.

[276] *See* Gust Rosenfeld, at 3; IL AG, NPR 3, at 5; Stadfeld, NPR 23, at 4.

[277] J&G questioned whether ''fill-in-the-blank'' provisions include ''things such as the specific radius or geographic area comprising a protected territory, or the actual number of stores to be opened pursuant to an area development agreement, . . . or the specific interest rate payable by the franchisee.'' J&G at 3. The Commission will interpret ''fill-in-the-blank'' provisions narrowly to include non-contractual items, such as the parties' names, addresses, and dates. To the extent that substantive contractual details—such as geographic area of a protected territory and interest rates—are not disclosed in the basic disclosure document or its attachments, then the completed document must be disclosed seven calendar days before signing.

[278] Gust Rosenfeld, at 3.

[279] Marriott, at 4–5. *See also* Spandorf, at 2.

[280] One commenter urged the Commission to require franchisors to prove that an electronic disclosure document was actually delivered. Bundy, at 4. He fears that a franchisor could furnish a disclosure document using slow bandwidth or other procedures, making it difficult for a franchisee to actually read the disclosure document. In the same vein, another commenter also urged the Commission to spell out what specific documents or types of evidence would qualify as valid evidence of the mailing date. BI, NPR 28, at 4–5.

Continued

The basic concepts of the final amended Rule provision track those in the corresponding provision proposed in the Franchise NPR, but the language has been revised, reorganized, and in some cases, expanded, to achieve greater clarity and specificity.[281]

C. Sections 436.3–436.5: The Disclosure Document

Sections 436.3–436.5 of part 436 set forth the substantive disclosures and attachments that franchisors must include in their disclosure documents, beginning with the cover page.

1. Section 436.3: Cover page

The cover page informs prospective franchisees that the disclosure document they are receiving contains important information about the franchise offer. The proposed Rule published in the Franchise NPR incorporated each item of information required in the original Rule's counterpart,[282] with a few exceptions discussed below.[283] The final amended Rule provision follows the cover page proposed in the Franchise NPR, with minor editing for clarity.

The proposed cover page set forth in the Franchise NPR generated little comment. The few comments received generally suggested various improvements to the text of the cover page, many of which have been incorporated into the final amended Rule.[284] The substantive revisions to the cover page requirement fall into four broad categories. First, final amended Rule section 436.3(e)(4) requires that the cover page reference sources of additional background information that prospective franchisees can use in conducting their due diligence investigations, such as the FTC's website and its *Consumer Guide to Buying a Franchise*.[285] This will enable prospective franchisees to find additional background information on franchising, including information on how to use a disclosure document.

Second, final amended Rule section 436.3(b) updates the cover page to embrace electronic disclosure. It requires franchisors to include on the cover page their email and primary home page addresses, so that prospective franchisees can communicate with the franchisor electronically. In the same vein, section 436.3(f) permits franchisors to state on the cover page how prospective franchisees may receive a copy of the disclosure document in an alternative medium.[286]

Third, final amended Rule section 436.3, like the proposed version published in the Franchise NPR, eliminates information from the original Rule's cover page that might be misinterpreted as implying greater Commission oversight of franchising than is the case. Several franchisees contended that phrases in the original cover page—such as ''information . . . required by the Federal Trade Commission'' and ''to protect you''—are misleading because they imply greater federal oversight of franchise offerings than actually exists.[287]

Fourth, to promote greater uniformity with state disclosure laws, final amended Rule section 436.3 has been revised to track more closely the UFOC Guidelines' cover page elements.[288] For example, section 436.3 includes the franchisor's name, logo, brief description of the franchised business, total purchase price as reflected in Item 5 (initial fees) and in Item 7 (estimated initial investment), and a notice that states may be able to provide sources of information about franchising.

With respect to cover page disclosure of the total purchase price, final amended section 436.3(e)(1) revises slightly the comparable UFOC Guidelines requirement,[289] based on the record developed here. Specifically, BI asserted that the total purchase price disclosure on the UFOC Guidelines cover page can be misleading. According to the firm, the cover page should put prospects on notice of the initial franchise fee that must be paid for the right to commence business under the mark. BI argued that the inclusion of the broader Item 5 initial fees would cloud the issue, making comparisons of initial franchise fees among competitors difficult: ''For example, in cases where a franchisor sells or leases the premises of the franchised business to the franchisee, this payment would need to be included in Item 5, but would severely distort the amount of the initial franchise fee disclosed on the cover page.''[290]

The Commission's view, however, is that the purpose of the cover page's

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As an initial matter, franchisors always have the burden of proof to show that they have complied with the Rule's obligation to furnish disclosures. We also believe that the Rule should be as flexible as possible, allowing franchisors to keep records and to offer proof, in the format that is most convenient to them. Nonetheless, to prevent any potential abuse in this area, the final amended Rule sets forth several safeguards. Among other things, a franchisor must notify the prospective franchisee in advance of any prerequisites for obtaining a disclosure document. Section 436.6(g). That would include any unusual bandwidth requirements. In addition, the franchisor must ensure that its disclosures not only can be downloaded, but preserved for future use. Section 436.6(b). Finally, the final amended Rule retains a receipt requirement, which will effectively prove delivery. Section 436.5(w).

[281] For example, where the Franchise NPR version said ''has been delivered,'' the final Rule provision says ''was hand-delivered, faxed, emailed, or otherwise delivered,'' to remove any doubt that the alternative modes of delivery are acceptable. Similarly, where the Franchise NPR version said ''if a copy has been sent . . . by first class mail,'' the final amended provision states ''a paper or tangible electronic copy (for example, computer disk or CD–ROM) was sent . . . by first-class United States mail'' to make it clear that a disclosure document in an electronic format is considered equivalent to paper.

[282] 16 CFR 436.1(a)(21).

[283] Franchise NPR, 64 FR at 57302.

[284] In addition, some non-substantive refinements have been made to improve the clarity, consistency, and organization of the Rule's text. For example, the text now specifies that the various required elements of the cover page are to be presented ''in the order and form as follows.'' Similarly, section 436.3(a) now specifically instructs franchisors that the title is to appear ''in capital letters and bold type,'' not merely giving franchisors a model that depicts the words ''FRANCHISE DISCLOSURE DOCUMENT'' in capitals in the Rule's text, as proposed in the Franchise NPR. In addition, the cover page disclosure informing the prospective franchisee that he or she must be given 14 days to review the document has been conformed to the convention, adopted elsewhere in the Rule text, to state time frames in calendar days. *See* section 436.2(a) (setting forth the 14 calendar-day time frame within which a franchisor must provide disclosure documents). Thus, the required cover page disclosure now states that a franchisor must furnish its disclosures at least 14 calendar-days before the prospective franchisee signs a binding agreement with, or makes any payment to, the franchisor or an affiliate in connection with the proposed franchise sale. *See* J&G, at 4 (noting a wording inconsistency in the Staff Report's recommended Rule text between the cover page disclosure and the substantive timing requirement). Similarly, the Commission has adopted the staff recommendation to adapt the UFOC Guidelines cover page disclosure requirement on the total investment necessary to begin operations (as explained more fully in the text), but has modified the staff's recommended version by changing the phrase ''including [the total amount in Item 5] that must be paid to the franchisor'' to ''This includes [the total amount in Item 5 (§ 436.5(e))] that must be paid to the franchisor or affiliate.'' *See* NASAA; WA Securities (noting a wording inconsistency in the Staff Report's recommended Rule text between the cover page disclosure of total investment necessary to begin operation and Item 5 initial fee disclosure requirements in proposed section 436.5(e)).

[285] *See* Heron, ANPR 80. A copy of the *Consumer Guide to Buying a Franchise* is currently available at the Commission website: www.ftc.gov.

[286] In drafting this provision, we have recognized the NFC's concern that franchisors have flexibility in directing prospects to particular individuals who can assist the prospects in receiving an alternatively formatted disclosure document. NFC, NPR 12, at 27. To provide as much flexibility as possible, the provision permits franchisors to designate either a specific individual or office as a contact.

[287] Kezios, ANPR, 18 Sept. 97 Tr., at 10. *See also* Karp, ANPR, 19 Sept. 97 Tr., at 89–90.

[288] *See generally* UFOC Guidelines, Cover Page, Instructions. As explained below, however, the Commission has not adopted the UFOC Guidelines' cover page risk factors.

[289] UFOC Guidelines, Cover Page, 5 (requiring franchisors to state the total amounts in Item 5 (initial fees and payments to the franchisor) and Item 7 (initial investment).

[290] BI, NPR 28, at 5.

price disclosure is not simply to indicate the fee paid to the franchisor for using the franchisor's mark, but to disclose the total costs paid to the franchisor associated with commencing business operations. In fact, limiting the disclosure to the initial franchise fee alone could be misleading because that could understate the totality of fees that must be paid to the franchisor in order to start the business. The cover page price disclosures will better enable prospective franchisees to assess their full potential business costs, and ultimately their financial risk, than a disclosure limited to the initial franchise fee alone.[291] Nevertheless, the Commission recognizes that it is possible to achieve the goal of informing prospective franchisees about the investment by referring to Item 7 alone—Initial Investment. Indeed, Item 5 is basically a subset of Item 7. Therefore, to maximize consistency between federal and state law, section 436.3 incorporates a modified version of the UFOC cover page references to Item 5 and Item 7, as follows: ''The total investment necessary to begin operation of a [franchise system name] franchise is [the total amount of Item 7 (§ 436.5(g))]. This includes [the total amount in Item 5 (§ 436.5(e))] that must be paid to the franchisor or affiliate.''

In addition, section 436.3 diverges from the UFOC Guidelines in that it does not call for the two cover page risk factor disclosures required by the UFOC Guidelines regarding choice of venue and choice of law.[292] These two risk factors essentially repeat what franchisors already must disclose in Item 17 of the disclosure document.[293] Moreover, mandating the disclosure of these two risk factors on the cover page might incorrectly signal prospective franchisees that these are the most important risk factors to consider.[294] Nonetheless, section 436.3(g) of the final amended Rule expressly permits franchisors to ''include additional disclosures on the cover page . . . to comply with state pre-sale disclosure laws.'' This provision effectively permits franchisors to include state mandated risk factors on the cover page, without adopting risk factor requirements into the final amended Rule.[295]

The Commission has decided not to make further revisions in the cover page requirements that would call for additional education messages, notwithstanding several comments urging us to do so. For example, the AFA suggested that the Commission warn prospective franchisees that they are not purchasing their own business. To that end, the AFA would include the following warning on the cover page: ''You will not own your own business. You will lease the rights to sell [company's name] goods [services] to the public under the [company's name] tradename and trademarks. This agreement will expire and you will have no rights to continue in operation upon expiration.''[296]

The Commission agrees in principle with the AFA's broad point that prospective franchisees should be fully informed about the nature of franchising. However, the appropriate vehicle for educating prospects is through educational materials, not the final amended Rule itself. Indeed, the cover page advances this goal because it will reference the Commission's *Consumer Guide to Buying a Franchise*, which contains the advice the AFA wants communicated.

2. Section 436.4: Table of contents

The final amended Rule section 436.4 retains the original Rule's requirement for a table of contents, but, like the version of this provision proposed in the Franchise NPR, conforms to the UFOC Guidelines in the wording and the ordering of required disclosure items listed.[297] This provision generated minimal comment.

The final amended provision revises the proposed Rule provision's use of the UFOC Guidelines headings in only a few instances to reflect more accurately the Rule requirements, as follows: (1) Item 1 is changed from ''The Franchisor, its Predecessors, and Affiliates'' to ''The Franchisor and any Parents, Predecessors, and Affiliates;''[298] (2) Item 5 is changed from ''Initial Franchise Fees'' to ''Initial Fees;''[299] (3) Item 7 is changed from ''Initial Investment'' to ''Estimated Initial Investment;'' (3) Item 11 is changed from ''Franchisor's Obligations'' to ''Franchisor's Assistance, Advertising, Computer Systems, and Training;'' (4) Item 19 is changed from ''Earnings Claims'' to ''Financial Performance Representations;'' (5) Item 20 is changed from ''List of Outlets'' to ''Outlets and Franchisee Information;'' and (6) Item 23 is changed from ''Receipt'' to ''Receipts.''

3. Section 436.5(a) (Item 1): The franchisor and any parents, predecessors, and affiliates

Section 436.5(a) of part 436 sets forth the first of the final amended Rule's substantive disclosure requirements. As

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[291] BI's concern would be valid if the cover page required the disclosure of only Item 5 (initial fees), but not Item 7 (estimated initial investment). For example, in such a scenario, a franchisor who leased premises to a franchisee would include the lease payment in the Item 5 initial fees, whereas a franchisor who required a franchisee to lease premises from a third party would not include such payment in Item 5. Arguably, this would distort the first franchisor's Item 5 initial fees. However, lease payments to third parties would nonetheless appear in Item 7. Accordingly, Item 5 and Item 7, considered together, enable prospective franchisees to compare initial expenses across franchise systems.

[292] *See* UFOC Guidelines, Cover Page, Instructions, iv.

[293] *See* Cendant, ANPR 140, at 3 (suggesting that risk factors belong in the Item 17 disclosures on franchise relationship issues).

[294] Other commenters suggested additional risk factors. For example, Greg Gaither, a GNC franchisee, suggested that the cover page include a warning that encroachment—marketing in a franchisee's territory—is a risk that might severely affect a franchised outlet's performance. Michael Garner would require franchisors to disclose how their contracts may be imbalanced: ''[I]sn't it better to have an unbalanced franchisor/franchisee relationship disclosed as such early on rather than buried in the legalese of a franchise agreement?'' Dady & Garner, ANPR 127, at 3. Mr. Garner recommended that franchisors disclose up-front on the cover page: (1) if franchisees have no protected territory; (2) if franchisees can be terminated upon failing to comply with the franchise agreement; (3) if franchisees cannot transfer without prior approval; and (4) if the franchisor reserves the right to receive royalty payments even if it breaches obligations to provide support services. Dady & Garner, ANPR 127, at 3. We conclude that each of these issues, for the most part, already is addressed in the substantive rule disclosure items, or is better handled in Commission consumer education materials.

[295] *See* NASAA, at 3–4; WA Securities, at 2 (Commission should permit state risk factors). *See also* Tifford, ANPR, 18 Sept. 97 Tr., at 15–16 (suggesting that the Commission accommodate risks factors developed by the individual states). One commenter, GPM, opposed permitting states to add additional risk factors on the cover page. The firm suggested that a state should be permitted to require additional information only in a state-specific addendum. GPM, NPR Rebuttal 40, at 4. We reject this suggestion. As discussed below, the final amended Rule does not preempt state laws that afford greater or equal protection to prospective franchisees. Indeed, states enjoy great latitude in fashioning franchise disclosure laws, including how and when state-specific information is to be included in disclosure documents. Therefore, franchisors must be permitted to add to an FTC disclosure document in order to comply with non-preempted state law.

[296] AFA, NPR 14, at 4.

[297] In the original Rule, the table of contents was set forth in a footnote at the back of the Rule. *See* 16 CFR Part 436, note 3.

[298] This recognizes the final amended Rule's retention of parent disclosures from the original Rule. See discussion of section 436.5(a)(1) below.

[299] Responding to a comment urging that the title of Item 5 be changed from ''Initial Franchise Fee'' (as proposed in the Franchise NPR) to ''Initial Fees'' so that it would more accurately describe the actual subject matter of the Item, the Staff Report recommended that the title of Item 5 be ''Initial Fees Paid to the Franchisor.'' Staff Report, at 121. However, Howard Bundy's Staff Report comment correctly noted that the recommended reference to ''franchisor'' is inaccurate because the disclosure applies to fees paid to affiliates as well. Accordingly, the final amended Rule deletes the phrase ''paid to the franchisor'' in favor of simply ''initial fees.''

proposed in the Franchise NPR,[300] it retains the original Rule's requirement that franchisors disclose background information on the franchisor and any parents and affiliates.[301] It also expands the original Rule in three respects to maximize consistency with the UFOC Guidelines.[302] First, franchisors must now disclose information about their predecessors for the 10-year period immediately before the close of the franchisor's most recent fiscal year.[303] This will prevent unscrupulous franchisors from hiding prior misconduct and avoiding disclosure obligations simply by assuming a new corporate identity.[304] Second, franchisors must disclose any regulations specific to the industry in which the franchise business operates, such as any necessary licenses or permits,[305] that may affect the franchisee's operating costs and ability to conduct business.[306] Third, franchisors must describe the general competition prospective franchisees are likely to face.[307] This disclosure better ensures that the prospective franchisee can understand the likely economic risks in purchasing a franchise.[308]

The final amended rule provision tracks the proposed Rule published in the Franchise NPR, but is more narrowly tailored in its treatment of required disclosures about affiliates. Slight non-substantive modifications in the provision's language and organization have also been made to improve clarity and precision. Two aspects of section 436.5(a) that prompted comment are discussed in the following sections: the required parent disclosures, and the required predecessor disclosures. Finally, various suggestions advanced by commenters but not adopted in the final amended Rule are discussed in the final part of this section.[309]

a. Parent disclosures

The retention of the original Rule's parent disclosure requirement was not controversial for the vast majority of commenters, including NASAA.[310] A few comments, however, raised two concerns about it. First, a few franchisor representatives asserted that a separate parent disclosure is unnecessary because a parent, in most instances, would already be covered by the Rule's broad definition of ''affiliate''[311]— ''an entity controlled by, controlling, or under common control with another entity.''[312] Other commenters questioned the relevance of a parent's information, asserting that a parent is a legally distinct entity and that disclosing a parent may mislead prospective franchisees into believing that the parent exercises greater oversight or gives financial backing to the franchisor than actually exists. These commenters add that a parent disclosure simply clutters an already lengthy disclosure document.[313]

On the other hand, the materiality of parent information was demonstrated by Dr. Spencer Vidulich, a Pearle Vision franchisee. He related that his franchisor was bought by Cole National Corporation, which operates company-owned optical departments in Sears stores. In this instance, the disclosure of parent information would have alerted prospective Pearle Vision franchisees that their franchisor is owned by a company that operates competing outlets.[314]

Also, contrary to some commenters' assertions, part 436 will not reach all parents when, for example, section 436.5(a) reaches only those affiliates that ''offer franchises in any line of business or provide products or services to the franchisees of the franchisor.'' As Dr. Vidulich suggested, it is possible that a parent does not sell franchises at all—falling outside the scope of the section's coverage of ''affiliates''—but nonetheless could operate competing company-owned outlets. A requirement

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[300] Franchise NPR, 64 FR at 57302–03.

[301] *See* 16 CFR 436.1(a)(1), (3), and (6). The Commission historically has emphasized the materiality of franchisor background information. In the original SBP, the Commission concluded that:

''the failure to disclose such material information . . . may mislead the franchisee as to the business experience of the parties with whom he or she is dealing and . . . could readily result in economic injury to the franchisee because of the franchisee's dependence upon the business experience and expertise of the franchisor.''

Original SBP, 43 FR at 59642.

[302] The final amended Rule also corrects an apparent oversight in the UFOC Guidelines. Item 1 requires franchisors to disclose the address of the franchisor's agent, but does not specifically require the franchisor to identify the agent. IL AG, at 4. Section 436.5(a)(4) of the final amended Rule now requires franchisors to both identify the agent and state the agent's principal business address.

[303] *See* UFOC Guidelines, Item 1.

[304] *See FTC v. Morrone's Water Ice, Inc.*, No. 02–3720 (E.D. Pa. 2002) (company allegedly reincorporated as a ''licensor'' following an adverse arbitration decision); *FTC v. Inv. Dev., Inc.*, Bus. Franchise Guide (CCH), ¶ 9326 (E.D. La. 1989) (company allegedly reincorporated after filing of Commission law enforcement action). *Cf. FTC. v. Jani-King, Int'l*, No. 3–95–CV–1492–G (N.D. Tex. 1995) (company allegedly conducted business through multiple regional corporations thereby avoiding certain disclosures).

[305] *See* UFOC Guidelines, Item 1E Instructions, vi.

[306] *E.g., FTC v. Car Checkers of Am., Inc.*, No. 93–623 (mlp) (D.N.J. 1993) (failure to disclose state restrictions on the sale of service contracts); *United States v. Lifecall Sys., Inc.*, No. 90–3666 (D.N.J. 1990) (failure to disclose state registration requirements). *Cf.* Funeral Rule, 16 CFR 453.3 (it is a misrepresentation to mischaracterize state or local funeral industry laws).

[307] UFOC Guidelines, Item 1E Instructions, v. *Cf.* SEC Regulations-K (Standard Instructions for Filing Forms Under Securities Act of 1933, Securities Act of 1934, and Energy Policy and Conservation Act of 1975), 17 CFR 229.101(c)(1)(x) (requiring registrants to list, where material, ''the identity of the particular market in which the registrant competes, an estimate of the number of competitors, and the registrant's competitive position, if known or reasonably available to the registrant.''). This disclosure is intended to aid prospective franchisees in their decision whether to enter a proposed relationship. It is neither intended nor interpreted to be a complete antitrust analysis. Indeed, such a goal would be impractical in light of the number and variety of relevant local antitrust markets that might be involved.

[308] Franchisors need only state the types of businesses that sell competing goods or services. They need not identify specific businesses. *See* UFOC Guidelines, Item 1, Sample Answer 1 (''Your competitors include department store service departments, service stations, and other national chains of muffler shops.''). This provision is designed to prevent deception by ensuring that prospective franchisees understand whether the business they are entering is unique. While the potential benefit of this provision is limited, the compliance burden is small. Throughout the original SBP, the Commission emphasized that potential economic risks to prospective franchisees are material. *E.g.*, Original SBP, 43 FR at 59650–651 (bankruptcy); at 59662 (sales restrictions); at 59668 (post-term covenants not to compete). A competition disclosure is also warranted in light of several franchisee comments about competition issues. *E.g.*, Packer, ANPR 10 (franchisor has opened franchisor-owned stores to compete with its own franchisees); Manuszak, ANPR 13 (competition from encroachment); Gray, ANPR 22 (franchisor sold to competing system); Lopez, ANPR 123 (competition from franchisor's co-branded outlets).

[309] The Commission declines to adopt one additional recommendation in the Staff Report. Specifically, staff recommended that, in addition to the disclosure of the general competition a franchisor may face, the Rule should also require franchisors to disclose ''any competition from any entity in which an officer of the franchisor owns an interest.'' Staff Report, at 98. The purpose of this recommendation was to require franchisors to disclose any potential conflicts of interest by their officers. *See* Bundy, NPR 18, at 6. *But see* Piper Rudnick, at 5 (contending that such a provision would be overbroad, sweeping in even minority ownership of mutual funds); J&G, at 4 (suggesting that such a provision would be overbroad, and should be limited to only ''material interests'' in a competitor). However, the Commission believes that ordinary corporate fiduciary and conflicts of interest law principles are sufficient to resolve any potential harm when officers of a franchisor own interests in competitors. *See generally* American Law Institute, Principles of Corporate Governance: Analysis and Recommendations (2005).

[310] *See* 16 CFR 436.1(a)(1)(i). The Commission stated in the original SBP that parent information is material and that it would require the disclosure of information about a parent, even though it recognized that the UFOC Guidelines contained no comparable disclosure requirement. Original SBP, 43 FR at 59639.

[311] Gust Rosenfeld, at 2; PMR&W, NPR 4, at 9; H&H, NPR 9, at 15–16; J&G, NPR 32, at 9.

[312] Section 436.1(b).

[313] *E.g.*, IFA, at 3; Prudential Financial, at 1; Spandorf, at 3.

[314] Vidulich, ANPR, 22 Aug. 97 Tr., at 16–17. Similarly, a franchise system with a poor financial record or significant litigation could, for example, seek to shield itself from disclosure by establishing a new subsidiary that will offer identical franchises, but under a different trademark.

that a franchisor identify any parent, therefore, is necessary to ensure that any parent not falling within Item 1's limited use of affiliate will be disclosed.

Moreover, the Item 1 parent disclosure is significantly limited: franchisors must simply *identify* a parent.[315] In contrast with the Item 1 disclosures for affiliates and predecessors,[316] a franchisor need not disclose, for example, the parent's business background, length of time selling franchises or engaging in other lines of business.[317] The Commission concludes that this limited disclosure will, at most, impose a minor burden for most franchise systems that is outweighed by the potential benefit to prospective franchisees.

b. Predecessor disclosures

Part 436 of the final amended Rule adopts the UFOC Guidelines' requirement that franchisors disclose background information about any predecessors for 10 years.[318] During the rulemaking process, no commenters objected to the basic principle that predecessor information should be disclosed.[319] A few commenters, however, questioned the scope of the disclosure. One commenter asserted that the 10-year reporting period is too long, noting that Item 2 establishes only a five-year disclosure period for business experience of company officers and managers.[320] Another commenter urged the Commission to narrow the focus of Item 1 to require the disclosure of information about only any immediate predecessor.[321] The Commission is not convinced, however, that the burden of supplying 10 years of predecessor information—as the majority of franchisors already do to comply with the UFOC Guidelines—is so great as to justify deviating from the UFOC Guidelines on this issue.

c. Suggestions for additional disclosure requirements that the Commission has not adopted

IL AG urged the Commission to expand the scope of Item 1 in several respects. First, IL AG would expand the types of business organizations that must be disclosed under section 436.5(a)(5) to include ''members with a controlling interest in the franchisor.'' In its view, this is necessary to cover limited liability companies.[322] The Commission declines to adopt this suggestion because the examples of different types of entities included there is intended to be illustrative, not exhaustive, and additional examples of business organizations are unnecessary.

In addition, IL AG suggested that Item 1 be expanded to include the date when the franchisor was organized.[323] The Commission also declines to adopt this suggestion. The franchisor already must disclose how long it has been in business and has offered franchises. We believe that time period, not the date of organization, is most relevant to a prospective franchisee. Moreover, neither the original Rule nor the UFOC Guidelines requires this information, and the Commission is reluctant to introduce an inconsistency with the Guidelines on this point.

Finally, IL AG suggested that a description of the competition should include competitors of the franchisor's affiliates.[324] We note that the UFOC Guidelines require only a ''general description of the competition.'' Depending upon the franchise system, competition of affiliates could be sizeable, especially with respect to large, publicly traded franchisors. We are not inclined to diverge from the UFOC Guidelines in the absence of evidence showing a problem on this point.

4. Section 436.5(b) (Item 2): Business experience

Consistent with the original Rule and UFOC Guidelines, section 436.5(b) of the final amended Rule requires the disclosure of the business experience of the franchisor's directors, trustees, general partnerships, and certain executives.[325] It differs from the UFOC Guidelines's Item 2, however, in two respects. First, it does not require a franchisor to disclose brokers.[326] Second, it expands the original Rule and UFOC Guidelines to prevent fraud by requiring the disclosure of prior experience of not only directors and executives, but other individuals who do not necessarily possess a title, but nonetheless will exercise management responsibility relating to the sale or operation of franchises being offered for sale. Additionally, this final amended Rule provision is narrower than its counterpart as proposed in the Franchise NPR, in that it deletes the proposed requirement to disclose prior experience of the officers or executives

[315] Section 436.5(a)(1).

[316] Section 436.5(a)(7).

[317] Despite the narrow Item 1 parent disclosure in section 436.5(a)(1), one commenter asserted that the parent disclosure could be a significant burden on some franchisors with elaborate corporate structures. Spandorf, at 3. She contended that the final amended Rule would require a franchisor to disclose ''all non-affiliate parents, including all intermediate parents, not just the ultimate parent.'' *Id.* Accordingly, she urged the Commission to limit the parent disclosure to those parents with ultimate control ''and any intermediate parent that guarantees the franchisor's obligations to franchisees.'' *Id.* The Commission rejects these suggestions. Item 1 requires franchisors to disclose the identity of parents to ensure that a prospective franchisee understands who may control or influence the franchisor's operations. As noted above in the example of Pearle Vision, it is highly material to a prospective Pearle Vision franchisee that Pearle Vision is owned and controlled by a competing system—Cole Vision. That information would escape disclosure, however, if Cole Vision did not guarantee Pearle Vision's performance or if Cole Vision were, in turn, a subsidiary of a larger corporate parent.

[318] One commenter suggested that the Commission address in the Compliance Guides an inconsistency between the Item 1 disclosure set forth in the Staff Report and the UFOC Guidelines' Item 1 disclosure. Whereas the UFOC Guidelines clearly limit the predecessor disclosures—the predecessor's name and address and prior experience—to a 10-year reporting period, the Staff Report's proposed revised Rule could have been read as limiting the application of the time period to only the predecessor's name and address. Piper Rudnick, at 5. The Commission agrees that the 10-year reporting should also limit the reporting of a predecessor's experience, and the final amended Rule is revised accordingly by adding a cross-reference that limits the applicability of the experience disclosures in section 436.5(a)(7) to only those predecessors covered by section 436.5(a)(2). The commenter also suggested that the prior experience of affiliates should similarly be limited to 10 years. *Id.* This suggestion goes too far and would introduce an unnecessary inconsistency between the final amended Rule and the UFOC Guidelines, which does not so limit affiliate disclosures.

[319] As noted above, this provision prevents franchisors from hiding prior misconduct and avoiding disclosure obligations simply by assuming a new corporate identity. *See FTC v. Morrone's Water Ice, Inc.*, No. 02–3720 (E.D. Pa. 2002) (company allegedly reincorporated as a ''licensor'' following an adverse arbitration decision); *FTC v. Inv. Dev., Inc.*, Bus. Franchise Guide (CCH), ¶ 9326 (E.D. La. 1989) (company allegedly reincorporated after filing of Commission law enforcement action).

[320] H&H, NPR 9, at 16.

[321] GPM, NPR Rebuttal 40, at 4.

[322] IL AG, at 4.

[323] IL AG, at 4.

[324] IL AG, at 4.

[325] *See* 16 CFR 436.1(a)(2). In the original SBP, the Commission explained that a franchisor's failure to disclose its business experience violates Section 5 because ''it (1) misleads the prospective franchisees as to the business experience of the parties with whom they are dealing, and (2) could readily result in economic injury to franchisees due to their heavy dependence upon the experience of those persons associated with the franchisor.'' Original SBP, 43 FR at 59642. *See* Buckley, ANPR 97, at 1 (''franchisor represented his company as highly trained in all phases of the business and capable of supporting a franchise system''); *FTC v. Nat'l Consulting Group, Inc.*, Bus. Franchise Guide (CCH) ¶ 11335 (N.D. Ill. 1998) (claims regarding medical billing expertise and contacts with medical community are material); *FTC v. Richard L. Levinger*, No. 94–0925–PHX RCB (D. Ariz. 1994) (earnings claims tied to purported expertise in the restaurant industry are material); *FTC v. Car Checkers of Am., Inc.*, No. 93–623 (mlp) (D.N.J. 1993) (claims regarding car inspection business expertise are material). *Cf. FTC v. Goddard Rarities, Inc.*, No. CV93–4602–JMI (C.D. Cal. 1993) (representations of expertise in coin investments are material).

[326] *See* UFOC Guidelines, Item 2 and Instructions, v.

of any parent of the franchisor. Each of these issues is discussed in detail below.

a. Brokers

The original Rule did not require disclosure of brokers. The proposed Rule, however, tracking the UFOC Guidelines, required that franchisors ''list all brokers.''[327] As noted above, based upon the comments, the final amended Rule does not include the UFOC Guidelines' provision that franchisors identify its brokers in Item 2.[328] During the Rule amendment proceeding, a few commenters asserted that such disclosure is unnecessary.[329] For example, Frannet, a franchise broker, voiced concern that the proposed inclusion of brokers in Item 2 would require franchisors to disclose immaterial information about ''literally hundreds of business brokers each of whom will receive a commission in the event that a prospect referred by any such person ultimately purchases a franchise,'' resulting in a ''voluminous'' UFOC, with ''no value to the prospective franchisee.''[330]

On the other hand, Michael Seid, a franchise industry consultant, strongly objected to the deletion of broker information from Item 2 because prospective franchisees often rely on statements made by brokers in deciding whether to purchase a franchise. In his view, prospective franchisees perceive brokers as being independent, third-party experts. He opined that listing them in a disclosure document would dispel that notion, making it clear that brokers are authorized agents of the franchisor.[331]

Some prospective franchisees may rely on a broker's statements in the course of purchasing a franchise, and some brokers may make false claims—such as false financial performance representations. Nonetheless, the Commission is not convinced that broker disclosures are warranted in a franchise disclosure document.

Item 2 appropriately requires franchisors to disclose the background of those individuals who *control* the franchisor and those who actually *manage* franchisees. That information is material because prospective franchisees need to know the identity and business experience of the individuals in command of the franchisor in order to assess whether these individuals are likely to be able to perform as promised under the franchise agreement. Unlike franchisors, brokers do not create or implement franchisor policy, nor do they oversee performance of post-sale obligations to the franchisee. Accordingly, prospective franchisees are less likely to give decisive weight to an individual broker's expertise or background in assessing the merits of purchasing a franchise.

Moreover, even if a broker were to make false claims, the prospective franchisee has the benefit of the franchisor's disclosure document to assess those claims before purchasing a franchise. For example, a franchisor statement in Item 19 that it does not authorize the making of financial performance claims should raise doubts about a broker's veracity if the broker were to make his or her own performance claims. Similarly, a franchisor's statement in Item 3 that it has been sued by franchisees would dispel any claim by a broker that the franchisor has not been previously sued. The counteractive effect of the disclosure document gives the Commission reason to doubt that the inclusion of broker information among the required Item 2 disclosures would yield more than a scant benefit to prospective franchisees. Further, the disclosure of brokers would also be cumbersome, especially for large franchise systems that may employ hundreds of brokers nationally. Thus, the Commission concludes that this benefit would not likely outweigh the corresponding compliance costs and burdens.

Finally, the deletion of brokers from Item 2 as had been proposed in the Franchise NPR obviously does not curtail brokers' liability for false claims. Franchise brokers, like virtually all other individuals conducing interstate commerce, remain liable under Section 5 of the FTC Act for their own misrepresentations. In short, while the Commission favors adopting UFOC Guidelines approach to the fullest extent possible, we believe this is one area where an exception is warranted.

b. Individuals with management responsibility

Section 436.5(b) of part 436 requires a franchisor to disclose not only the background of the franchisor's directors and executives, but also ''individuals who will have management responsibility relating to the sale or operation of franchises offered by this document.''[332] Individuals listed in Item 2 must also disclosure their litigation (Item 3) and bankruptcy (Item 4) histories as well. This provision ensures that franchisors cannot conceal a manager's lack of experience, prior litigation, or bankruptcy history by simply avoiding giving the manager a formal title.[333] Although the language has been revised to achieve greater clarity and specificity, this aspect of this provision is conceptually very similar to the rule as proposed in the Franchise NPR.[334] The breadth of this provision is intended to leave no doubt that franchisors must disclose all individuals who in fact exercise management responsibility over the sale or operation of franchises being offered for sale, regardless of any formal title.[335]

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[327] Franchise NPR, 64 FR at 57334.

[328] Franchisors, of course, would still be required to include broker information, if mandated by state law.

[329] *E.g.*, Gust Rosenfeld, at 4; J&G, NPR 32, at 10.

[330] Frannet, NPR 2, at 2. In this regard, it is noteworthy that, had the broker disclosure requirement been retained in the final amended Rule, broker information also would have been required in Items 3 and 4 disclosures. *See* Staff Report, at note 320.

[331] Seid, at 5–7. *See also* IL AG, at 4.

[332] One commenter voiced concern that Item 2 could be misinterpreted to include owners with a controlling interest and asked the Commission to clarify this point in the Compliance Guides. Gust Rosenfeld, at 3–4. We note that neither the original Rule nor the final amended Rule focuses on ownership. Rather, the determining factor is control over the franchise operations. Accordingly, an owner/investor in a franchise system would not ordinarily have to be disclosed in Item 2, unless that owner/investor also manages or otherwise exercises control over the franchise operation.

[333] *See FTC v. P.M.C.S., Inc.*, No. 96–5426 (E.D.N.Y. 1996) (franchisor failed to disclose control figure with prior bankruptcy); *FTC v. The Building Inspector of Am., Inc.*, No. 93–10838Y (D. Mass. 1993) (alleging that the franchisor failed to disclose the franchisor's current executive officers and their business experience, litigation history concerning fraud or misrepresentation, and bankruptcy history); *FTC v. Why USA, Inc.*, No. 92–1227–PHX–SMM (D. Ariz. 1992) (alleging that franchisor failed to disclose officers and their prior litigation). During the Chicago public workshop, a former franchisee related that his franchisor did not disclose that the franchisor's director of franchising (who was not a titled corporate officer) had been discharged in bankruptcy. The franchisee stated that, because the franchisor was small, operated by only five or six people, such a disclosure was ''critical, even though this person was not formally an officer.'' Lay, ANPR, 22 Aug. 97 Tr., at 6. *See also* NASAA, NPR 17, at 3 (''The law enforcement experience of some members of the [NASAA] Franchise Project Group reflects that franchisors and sellers of business opportunities have attempted to avoid litigation disclosures . . . by purposefully not giving the title 'officer' to individuals who, in fact, exercise significant management responsibility over a business.''). *Cf. FTC v. Netfran Dev. Corp.*, No. 05–CV–22223 (S.D. Fla. 2005) (failure to disclose that executive was subject to a Commission order involving fraud or deceptive practices); *FTC v. Int'l Bartending Inst.*, No. 94–1104–A (E.D. Va. 1994) (franchisor failed to disclose that chairman was subject to a Commission order involving fraud or deceptive practices).

[334] The Franchise NPR's version of Item 2 also referenced subfranchisors. As one commenter noted, however, a reference to subfranchisors is unnecessary because the term ''franchisor,'' as set forth in the Rule's definitions (and the UFOC Guidelines' definition), already includes the term ''subfranchisor.'' Gust Rosenfeld, at 4. Therefore, that reference has been deleted.

[335] *See* Staff Report, at 101–02. In the Franchise NPR, the Commission proposed achieving this goal by including within the definition of ''officer,'' any

c. Parents

Part 436 as proposed in the Franchise NPR required franchisors to disclose the prior experience of a parent's officers or executives.[336] This proposal, however, was criticized on the grounds that such a broad disclosure about directors and officers of a parent would clutter Item 2 with information ''of marginal relevance and importance to prospective franchisees.''[337] In response to commenters' persuasive arguments, the Commission has determined to omit the requirement from section 436.5(b).

The Commission has come to the view that the disclosure of prior experience of individuals associated with a parent of a franchisor is generally unnecessary. While in many instances a parent's officers may exercise general management responsibilities that may affect the franchisor, they are not necessarily involved in managing the franchisor or its franchises. Because of their lack of direct control over the franchisor, background information on them is unlikely to be material to a prospective franchisee. Accordingly, the minimal benefit that might accrue to prospective franchisees from a disclosure of the prior experience of individuals associated with the franchisor's parent would not likely outweigh the compliance costs and burdens.

5. Section 436.5(c) (Item 3): Litigation

Section 436.5(c) of the final amended Rule retains the original Rule's requirements to disclose certain pending and prior litigation, as well as current injunctive or restrictive orders. Like the original Rule, the final amended Rule requires disclosure, in some instances, of litigation involving the franchisor's parent.[338] Consistent with the UFOC Guidelines, however, part 436 expands on the original Rule by requiring franchisors to disclose actions involving not only the franchisor, its directors and officers, and affiliates, but predecessors as well.[339] In addition, section 436.5(c)(1)(i)(B), in accord with the UFOC Guidelines, now requires the disclosure of routine litigation that may impact the franchisor's financial condition or ability to operate the business.[340] At the same time, as also proposed in the Franchise NPR, the Commission has determined that section 436.5(c)(1)(B)(ii) of the final amended Rule should expand on both the original Rule and UFOC Guidelines by requiring franchisors to disclose material franchisor-initiated litigation against franchisees involving the franchise relationship.

The comments on Item 3 focused on five broad topics: (1) whether and to what extent disclosures about a franchisor's parent should be required; (2) to what extent disclosures about a franchisor's affiliates should be required; (3) whether disclosure about out-of-court settlements favorable to the franchisor or settlements that by their terms are confidential should be required; (4) whether the Rule as proposed in the Franchise NPR needed clarification to avoid implying that dismissed actions should be disclosed in cases when no liability is imposed upon or accepted by the franchisor; and (5) whether and to what extent disclosure of franchisor-initiated litigation would be required. Each of these topics is discussed in the sections that follow.

a. Parent disclosures

The original Rule required the disclosure of litigation relating to a franchisor's parent.[341] Part 436 as proposed in the Franchise NPR retained this broad approach. The Commission, however, has decided that the final amended Rule should narrow considerably the scope of the franchisor's obligation to disclose litigation relating to a parent. As recommended in the Staff Report, the final amended Rule requires the disclosure of litigation relating to a franchisor's parent only in the case of a ''parent . . . who guarantees the franchisor's performance.''[342]

The narrowed scope of the parent litigation disclosure responds to persuasive comments challenging the value of broad parent litigation disclosures to prospective purchasers and complaining of the burden to franchisors. Typical of these comments are those submitted by PMR&W, arguing that the parent litigation disclosure is confusing at best and offers little if any benefit to prospective franchisees, and noting that a publicly-traded parent may face countless securities fraud claims, for example, that would have to be disclosed, ''overflowing [the disclosure document] with largely irrelevant parent litigation summaries, obscuring and diverting readers from the more important disclosures of franchisor litigation, and greatly increasing compliance burdens and costs.''[343]

Based upon review of the record, including the Staff Report, the Commission is persuaded that litigation involving a parent (which may be voluminous in the case of a publicly-traded parent) may have little bearing on the operation of the franchise system itself. Yet, the Commission does not believe that complete elimination of the parent litigation disclosure is justified. Rather, the Commission has determined to narrowly tailor the parent litigation disclosure to those circumstances where the parent guarantees the franchisor's performance, as recommended in the

''*de facto* officer,'' ''namely any individual with significant management responsibility for the marketing and/or servicing of franchisees whose title does not reflect the nature of the position.'' Franchise NPR, 64 FR at 57332. Some commenters agreed with the Commission that it is necessary to capture individuals who, without an appropriate title, in fact function as officers or directors. *E.g.*, NASAA, NPR 17, at 3. Others asserted that the term ''*de facto* officer'' is ''nebulous,'' creating more problems than it would solve. *E.g.*, Snap-on, NPR 16, at 2; Gurnick, NPR 21, at 3–4; J&G, NPR 32, at 8; Marriott, NPR 35, at 12. Another voiced concern about application to large corporations, where there may be many directors or managers, each of whom would now have to be disclosed. Tricon, NPR 34, at 3. Based upon the Franchise NPR comments, the Commission has determined to delete the term and description of ''*de facto* officer'' from the final amended Rule. At the same time, Item 2 requires a franchisor to identify all individuals who have management responsibility over the franchises, regardless of any formal title. This is true even if the individual happens to be an officer of a parent or an affiliate.

[336] Franchise NPR, 64 FR at 57334.

[337] Lewis, NPR 15, at 12. *See also* Gust Rosenfeld, at 4. BI, NPR 28, at 5. *But see* Bundy, NPR 18, at 6–7 (Item 2 should cover not only officers and executives of parents, but affiliates as well).

[338] *See* 16 CFR 436.1(a)(4). In the original SBP, the Commission stated that a franchisor's litigation history is material because it bears directly on the ''integrity and financial standing of the franchisor.'' Original SBP, 43 FR at 59649. *See, e.g., United States v. We The People Forms and Serv. Centers USA, Inc.*, No. CV 04 10075 GHK FMOx (C.D. Cal. 2004) (full disclosure would have revealed lawsuits and injunctions involving the franchisor's bankruptcy petition preparation services); *FTC v. WhiteHead, Ltd.*, Bus. Franchise Guide (CCH) ¶ 10062 (D. Conn. 1992) (full disclosure would have revealed a $10 million judgment in a fraud action brought by former franchisees); *FTC v. Joseph Hayes*, No. 4:96CV02162SNL (E.D. Mo. 1996) (full disclosure would have revealed prior state fines and injunctions); *FTC v. Inv. Dev., Inc.*, Bus. Franchise Guide (CCH) ¶ 9326 (full disclosure would have revealed insurance fraud convictions). *See also* Marks, ANPR, 19 Sept. 97 Tr., at 8 (''I always counsel clients . . . to look at the litigation section among one of the first sections.'').

[339] *See* UFOC Guidelines, Item 3. *See* AFA, at 2.

[340] *See* UFOC Guidelines, Item 3 A. *See also* AFA, at 2. Under this provision, a fast-food restaurant franchisor, for example, would have to disclose a product liability class action suit that, if successful, might materially affect its financial condition or ability to maintain its business operations. This disclosure is consistent with long-standing Commission policy that a franchisor's continued financial viability and ability to perform as promised is material to a potential investor. *See, e.g.*, Original SBP, 43 FR at 59649.

[341] As noted previously, this is one area where the original Rule was broader than the UFOC Guidelines, which require no disclosure of parent information, unless the parent is an affiliate.

[342] Staff Report, at 104.

[343] PMR&W, NPR 4, at 9. *See also* IFA, at 3; PREA, at 1–2; Spandorf, at 4; Triarc, NPR 6, at 2; NFC, NPR 12, at 28; PREA, NPR 20, at 1.

Staff Report.[344] Where a parent, for whatever reason, induces franchise sales by promising to back the franchisor financially or otherwise guarantees the franchisor's performance, the parent's prior litigation history becomes material to the prospective franchisee and must be disclosed.[345] As noted throughout this document, background information on all parties having post-sale performance obligations is material to a prospective franchisee. There is no meaningful distinction between parents who make performance guarantees and franchisors with various contractual performance obligations.

b. Affiliates

As noted, the original Rule did not require the disclosure of litigation involving a franchisor's affiliate. The proposed rule published in the Franchise NPR incorporated the UFOC Guidelines' requirement that franchisors disclose litigation involving an ''affiliate who offers franchises under the franchisor's principal trademark.'' Section 436.5(c) of the final amended Rule retains this concept, but modestly broadens the requirement, consistent with the Staff Report and Staff Report comments, to encompass: (1) litigation involving not only affiliates who offer franchises under the franchisor's principal trademark, but also any affiliate who ''guarantees the franchisor's performance;'' and (2) with respect to the requirement to disclose government injunctions or restrictive orders, actions involving an affiliate ''who has offered or sold franchises in any line of business within the last 10 years.''[346]

The affiliate litigation disclosure provision generated limited comment.[347] One commenter urged the Commission to broaden Item 3's scope to include litigation involving *all* affiliates, not just those under the franchisor's principal trademark. The UFOC Guidelines' narrow reach extends only to instances where affiliates offer franchises under the franchisor's principal trademark. Arguably, this restrictive approach could allow a franchise system to hide derogatory facts about its litigation history by acquiring and operating a competing franchise system that uses a different mark. In such an instance, the newly-acquired franchisor would have no obligation to disclose its past litigation, falling outside the definition of both ''predecessor'' and ''affiliate.'' On the other hand, the record contains no suggestion that such instances are common. Thus, the Commission does not believe it warranted to require franchisors to disclose all affiliate litigation to address that hypothetical concern. Such a measure would be broader than necessary to address concerns documented in the record, would be burdensome, especially for large companies with multiple brands, and would not likely yield commensurate benefits to prospective franchisees.

Nevertheless, as noted above, the Commission has determined to expand the requirement to disclose affiliate litigation in two respects in order to provide prospects with material information. First, for currently effective government injunctive or restrictive orders delineated in section 436.5(c)(2), the final amended Rule adopts the Staff Report recommendation to broaden Item 3 affiliate coverage to include any affiliate who has offered or sold franchises in any line of business within the last 10 years.[348] In the Commission's view, a government injunction or comparable order[349] (with or without a civil penalty or other redress), may be an indicator of fraud or other unlawful conduct.[350] Accordingly, a franchisor with a history of fraud or Rule violations should not be able to avoid disclosure of government actions against it merely by establishing a new corporation or switching trademarks. We believe this approach will result in the disclosure of material litigation history, without unduly burdening large, multi-brand franchise networks.

Second, section 436.5(c)(1) of the final amended Rule requires franchisors to disclose litigation involving not only affiliates that offer franchises under the franchisor's principal trademark, but also any affiliate that guarantees performance. This responds to NASAA's comment, urging the Commission to make clear that the term ''affiliate'' in Item 3 includes those guaranteeing performance, similar to the parent disclosure noted above.[351] As NASAA noted, there is no practical distinction between a parent and an affiliate who guarantees performance. In both instances, the prospective franchisee may rely on the guarantee in considering whether to purchase the franchise. Therefore, the litigation history of both parents and affiliates

[344] *See* Staff Report, at 104. The Staff Report recommendation that the parent litigation disclosure be narrowed to instances where the parent guarantees the franchisor's performance prompted few comments. PREA and Spandorf opined that parent disclosures have merit where the franchisor has few assets or a prior history such that the prospect is looking to the parent for assurance of continued financial viability, and advocated an exemption from the Item 3 parent litigation disclosure if the franchisor has sufficient net worth and experience. They proposed a net worth of not less than $5 million and a requirement that the franchisor has had at least 25 franchisees for each of the preceding five years. PREA, at 1–2; Spandorf, at 4–7. *See also* PREA, NPR 20, at 1. The Commission finds this suggestion unworkable. As noted throughout this document, the Commission favors bright-line provisions that enable franchisors to determine easily where the Rule applies to a franchise sale. Moreover, the Commission is disinclined to adopt exemptions from specific required disclosures—as opposed to exemptions from the Rule itself. On balance, the Commission believes that the narrowly-tailored parent litigation disclosure included in the final amended Rule strikes the appropriate balance, reducing compliance costs and burdens without depriving prospective franchisees of material information necessary to make an informed investment decision.

[345] *But see* PREA, at 1–2; Spandorf, 4–7 (asserting that prior litigation of a parent who guarantees performance may be irrelevant, and urging the Commission to adopt a net worth standard). As an alternative, PREA and Spandorf suggested that the Commission adopt an approach similar to that of the SEC for the disclosure of legal proceedings to securities investors: a guarantor need only disclose material legal proceedings other than ordinary routine litigation. PREA, at 2. We noted, however, that Item 3 is already limited to material suits, or individual suits which, in the aggregate, are material. This is sufficient to limit Item 3's reach with respect to guarantors.

[346] Item 3 of the proposed Rule published in the Franchise NPR required disclosure of government enforcement actions only for an affiliate ''who *offers* franchises under the franchisor's principal trademark.'' The final amended Rule requires such disclosure for ''an affiliate *who has offered or sold* franchises in any line of business *within the last 10 years.*'' Section 436.5(c)(2) (emphasis added).

[347] Piper Rudnick urged the Commission to clarify in the Compliance Guides that disclosures involving affiliates and predecessors—in Items 1, 3 and 4 —should be limited to the time period when the affiliates or predecessors were ''associated'' or ''affiliated with the franchisor.'' Piper Rudnick, at 5–6. The Commission disagrees. As an initial matter, depending upon the facts, a predecessor entity and successor franchisor may not exist contemporaneously and thus may never be ''associated'' or ''affiliated'' with each other. As for affiliates, Piper Rudnick's suggestion could seriously undermine the very purpose for the disclosure itself. The affiliate disclosures in Items 1, 3, and 4 ensure that a prospective franchisee understands fully the background of the franchisor's affiliates. Significant litigation or a prior bankruptcy, for example, may signal that the affiliate lacks business acumen and, therefore, poses a potential risk, especially if franchisees of the system are contractually required to conduct business with the affiliate. For that reason, the history of the affiliate as a business entity, not its history of association with the franchisor, is material to a prospective franchisee and should be disclosed.

[348] Staff Report, at 104–5.

[349] The Item 3 disclosure of currently effective injunctive or restrictive orders and decrees is also broader than the other Item 3 disclosures in that it covers Canadian orders and decrees. This is consistent with the UFOC Guidelines. *See* UFOC Guidelines, Item 3, C.

[350] We note that there is no private right of action to enforce the Franchise Rule. *See, e.g., Holloway v. Bristol*-Meyers Corp., 485 F.2d 986 (D.C. Cir. 1973) (no implied private right of action under the FTC Act); *Days Inn of Am. Franchising, Inc., v. Windham,* 699 F. Supp. 1581 (N.D. Ga. 1988) (no private right of action exists to enforce the Franchise Rule).

[351] NASAA, at 5.

who guarantee performance is material and should be disclosed.

c. Settlements

With respect to settled actions, the original Rule required disclosure of any civil action a person subject to the provision ''has settled out of court'' in the previous seven fiscal years. It did not distinguish between confidential and nonconfidential settlements.[352] Consistent with the UFOC Guidelines, the Franchise NPR proposed that franchisors disclose the terms of any settled actions, expressly including confidential settlements.[353] Several commenters voiced concern about the requirement to disclose settlements—including confidential settlements.

Settlements Favorable to the Franchisor. PMR&W and Warren Lewis observed that Item 3 in the Rule as proposed in the Franchise NPR did not allow franchisors to omit settled litigation where the settlement is favorable to the franchisor or neutral.[354] Both commenters cited to the UFOC Guidelines,[355] which state that ''settlement of an action does not diminish its materiality if the franchisor agrees to pay material consideration or agrees to be bound by obligations which are materially adverse to its interests.''[356] The point these commenters were making is that the UFOC Guidelines, by implication, would deem favorable or neutral settlements to a franchisor not material and would not call for their disclosure. The Commission believes this interpretation is correct, and intends that result in adopting the final version of this provision. Item 3, therefore, permits franchisors to omit settled litigation where a settlement is favorable to the franchisor or otherwise neutral.[357]

Confidential Settlements. With respect to the disclosure of confidential settlements, David Gurnick commented that the disclosure of any settlement terms that the parties agreed to keep confidential is bad policy because confidential settlements benefit both parties and the ''opportunity for confidentiality is often an important dynamic to resolve a dispute.''[358] He urged that the Rule permit the disclosure of material facts about confidential settlements in the aggregate, so that the franchisor could make the disclosure about a group of cases, without violating the confidentiality of any one or more cases. For example, a franchisor could state: ''we have settled 10 cases with confidentiality agreements. In each of these cases, we made payments to the franchisee in the mid five figure range.''[359]

Similarly, John Baer questioned the disclosure of exact dollar amounts or other confidential settlement terms. ''This often can expose the franchisor to the choice of not being able to register its franchise in a particular state or making a disclosure and possibly breaching the terms of the confidential settlement agreement.''[360] He suggested that the Commission allow franchisors to disclose approximate dollar amounts, such as ''the low four figures,'' or, in the alternative, a range of figures.[361]

In keeping with the goal of reducing inconsistencies with the UFOC Guidelines, the Commission is disinclined, based on this record, to deviate from the UFOC Guidelines with respect to the scope of the confidential settlements disclosure. This issue was debated when NASAA revised the UFOC Guidelines in 1993, with input from many interested parties. Moreover, franchisors using the UFOC Guidelines format have been living under this policy on the state level for more than 10 years, apparently without much hardship.

Further, NASAA has recognized that the disclosure requirements concerning confidential settlements might raise breach of contract issues. Accordingly, the NASAA Commentary on the UFOC Guidelines specifically limited the disclosure to those settlements that were entered into after the adoption of the UFOC Guideline revisions on April 25, 1993. Item 3 of the final amended Rule incorporates a similar concept. The Commission recognizes that some small or regional franchisors who use the Franchise Rule format exclusively have not had the opportunity to phase-in confidential settlement disclosures. Based on this consideration, the Commission has added a footnote 2 to section 436.5(c)(3)(ii) of the final amended rule that specifies that ''any franchisor who has historically used only the Franchise Rule format, or who is new to franchising, need not disclose confidential settlements entered prior to the effective date of this Rule.'' Thus, franchisors historically using only the Franchise Rule format need not disclose confidential settlements entered into prior to the effective date of the final amended Rule, and only franchisors who have used the UFOC Guidelines format in the past must continue to disclose confidential settlements, as is the current practice.

John Baer raised a related point that the Commission finds persuasive. He asserted that it would be unfair to require the disclosure of confidential settlement agreements ''if they were entered into by a company at a time when it was not yet engaged in franchise activities.''[362] It would be unreasonable to expect a non-franchisor to negotiate settlements with an eye toward the possibility that it may engage in franchise sales in the future. Accordingly, footnote 2 to section 436.5(c) of the final amended Rule provides that ''franchisors need not disclose the terms of confidential settlements entered into before commencing franchise sales.''

d. Dismissed actions

As noted above, Item 3 requires a franchisor to disclose certain prior actions in which it has been ''held liable.'' Under this standard, a dismissal without any imposition or acceptance of liability on the franchisor's part, would not have to be disclosed.[363]

In response to the Staff Report, two commenters observed that this

[352] 16 CFR at 436.1(a)(4)(ii).

[353] Footnote 4 in the proposed Rule stated, in relevant part: ''If a settlement agreement must be disclosed in this Item, all material settlement terms must be disclosed, whether or not the agreement is confidential.'' Franchise NPR, 64 FR at 57334. *See also* NASAA Commentary, Item 3.

[354] Footnote 2 in the proposed rule stated: ''Franchisors are not required to disclose actions that were dismissed by final judgment without liability or entry of an adverse order. However, franchisors must disclose dismissal of a material action in connection with a settlement.'' Franchise NPR, 64 FR at 57334. As explained in the text above, this footnote has been deleted from the final amended Rule.

[355] UFOC Guidelines, Item 3 Definitions, iv.

[356] PMR&W, NPR 4, at 10; Lewis, NPR 15, at 13. According to Mr. Lewis, without such a limitation, the Rule would penalize franchisors and subfranchisors who achieve favorable settlements, thereby discouraging settlement of litigation. *See also* Snap On, NPR 16, at 3.

[357] Section 436.5(c)(1)(iii)(B) of the final amended Rule specifies that ''held liable'' as used in Item 3 means that ''as a result of claims or counterclaims, the person must pay money or other consideration, must reduce an indebtedness by the amount of an award, cannot enforce its rights, or must take action adverse to its interests.'' In other words, a franchisor need not disclose a settlement if the franchisor neither pays any material consideration, nor is bound by obligations that are materially adverse to its interests.

[358] Gurnick, NPR 21, at 4. *See also* J&G, NPR 32, at 10–11; Marriott, NPR 35, at 15.

[359] Gurnick, NPR 21, at 5. *But see* Stadfeld, NPR 23, at 12 (urging the Commission to keep the UFOC requirement of disclosing specific payments in settlements regardless of confidentiality agreements).

[360] Baer, NPR 11, at 11.

[361] Mr. Baer also suggested that where a case has been settled by purchase or re-purchase of a franchised business and the amount does not exceed the fair market value of the business, a franchisor should be permitted to state: ''The settlement included a purchase of the franchise . . . for an amount which, in our judgment, does not exceed its fair market value.'' Baer, NPR, 11, at 11.

[362] Baer, NPR 11, at 11.

[363] *See* Franchise NPR, 64 FR at 57334, note 2.

limitation on prior actions is undercut by the inclusion in the proposed Franchise NPR version of Item 3 of a broad provision requiring franchisors and others to disclose if they have ''been a defendant in a material action.'' They observed that while dismissals without liability need not be disclosed under the ''held liable'' requirement of Item 3, they would have to be disclosed under the second more general ''defendant in a material action'' requirement. They urged the Commission to delete the ''defendant in a material action'' element of Item 3, to limit prior litigation disclosures to only those actions in which the defendant incurred liability.[364] In response to these comments, the Staff Report concluded that the drafting of the Franchise NPR's version of Item 3 resulted in overbreadth, and therefore recommended that Item 3 be narrowed accordingly.[365]

The Commission has carefully considered this point. As noted above, the UFOC Guidelines clearly permit franchisors to limit the disclosure of prior actions to matters in which they were ''held liable.'' This approach is also consistent with the original Rule, which limited prior litigation to matters in which the franchisor ''has been held liable . . . resulting in a final judgment or has settled out of court.''[366] Moreover, the language ''been a defendant in a material action'' is arguably redundant: if a defendant was not held liable in a prior action, then the underlying suit was not material. For these reasons, the phrase ''been a defendant in a material action'' included in the proposed Rule published in the Franchise NPR has been deleted from the final amended Rule.[367]

e. Franchisor-initiated litigation

One of the most important ways part 436 of the final amended Rule differs from both the original Rule and the UFOC Guidelines is that part 436 includes a requirement that franchisors disclose franchisor-initiated litigation.[368] Specifically, section 436.5(c)(1)(ii) requires a franchisor to disclose litigation in which it:

> was a party to any material civil action involving the franchise relationship in the last fiscal year. For purposes of this section, ''franchise relationship'' means contractual obligations between the franchisor and franchisee directly relating to the operation of the franchised business (such as royalty payment and training obligations). It does not include suits involving suppliers or other third parties, or indemnification for tort liability.[369]

This final amended Rule provision is substantially the same as its counterpart proposed in the Franchise NPR.[370] Throughout the Rule amendment proceeding, franchisees and their representatives,[371] as well as the Small Business Administration,[372] urged the Commission to adopt such a requirement, asserting that franchisor-initiated litigation is material because it is a clear indicator of: (1) the quality of the franchisor-franchisee relationship; and (2) the extent to which the franchisor may be litigious. Others added that the original Rule and the UFOC Guidelines compelled franchisors to disclose franchisor-initiated litigation only if a franchisee subsequently filed a counterclaim. Yet, as these commenters noted, franchisees often do not have the financial resources to initiate a suit or to pursue a counterclaim.[373] Therefore, according to their argument, disclosure of franchise relationship litigation should not depend upon which party happens to have the resources to file a suit. Typical of these comments is the one submitted by NFA, an association of Burger King franchisees, stating that the disclosure of such information:

> would be beneficial to potential franchisees, as it would allow such franchisees to be aware of any difficulties current or prior franchisees have encountered with the franchisor. In addition, the required disclosure of franchisor-initiated litigation would further aid potential franchisees by serving as an indicator of how franchisors resolve their disputes, and whether or not such franchisors are quick to resort to litigation in order to resolve disputes. The possibility of extensive litigation is important to a potential franchisee, as it may affect the calculation of costs involved in acquiring such a franchise. In addition, the continued threat of litigation from the franchisor may well affect later dealings between the parties, and as such is critical information of which the franchisee should be aware.[374]

A few commenters also maintained that compliance costs arising from such a disclosure are not great. For example, Seth Stadfeld observed that ''once the initial changes are made [to the disclosure document], all that must be done is to update the disclosed litigation annually or sooner if material changes take place.''[375] The AFA was more blunt in its assessment:

> The Commission has a choice. It can save franchisors a few pennies on a slightly larger offering circular

[364] Piper Rudnick, at 1; Duvall, at 1.

[365] Additionally, H&H opined that Item 3 of the proposed Rule published in the Franchise NPR seemed to suggest that a franchisor must disclose all material civil litigation in which the defendant was held liable in the 10-year time period, but only the enumerated list of actions if named in civil litigation. H&H suggested that the disclosure of civil litigation should be limited to the enumerated list regardless of whether the franchisor was named or was held liable in a prior suit. H&H, NPR 9, at 17–18. *See also* NFC, NPR 12, at 28. H&H also suggested that the word ''material'' be substituted for ''significant.'' H&H, NPR 9, at 18. The final amended Rule incorporates these suggestions.

[366] 16 CFR 436.1(a)(4)(ii).

[367] IL AG asserted that franchisors should be permitted to disclose settled litigation in its favor or which is neutral. It explains that a state franchise examiner would question why a case previously listed as pending in one version of a disclosure document would then disappear upon settlement or dismissal from later versions without explanation. IL AG, at 5. We do not find this rationale sufficient to justify retaining a redundancy in the final amended Rule. As noted throughout this document, however, states have the power to include additional disclosures, if they so choose, provided it is possible simultaneously to comply with both the state rule and a corresponding final amended Rule provision.

[368] Section 436.5(c)(1)(ii) requires disclosure of litigation to which a covered person ''was a party,'' and therefore reaches more than just actions where the franchisor or other covered person was a plaintiff. As a practical matter, however, because other elements of Item 3 cover various actions where the franchisor or other covered person was or is the defendant, the significance of this new part 436 section is that it reaches actions initiated by the franchisor or other covered person.

[369] *See* Cendant, ANPR 140, at 3 (noting that in vicarious liability cases—where a customer sues the franchisor for alleged wrongdoing by the individual franchisee—the franchisor often must sue the franchisee to protect its interests and to obtain indemnification. Such suits, therefore, are essentially between the customer and the franchisee and are not indicative of franchise system performance.).

[370] The only difference is that the time frame of the requirement has been tightened, now covering only actions ''within the past fiscal year,'' instead of ''pending actions.'' This topic is addressed in greater detail near the end of the Item 3 discussion.

[371] *See* AFA, at 2; Gee, at 2; Bundy, at 5; Karp, at 2; AFA, ANPR 62, at 2; Lagarias, ANPR 125, at 3; Selden, ANPR 133, Attachment at 2; Karp, ANPR, 19 Sept. 97 Tr., at 98.

[372] SBA, ANPR 36, at 5–6. *See also* IL AG, ANPR 77, at 2.

[373] Peter Lagarias observed that ''[f]ranchisors are often able to wield the threat of litigation, especially by threatening to seek attorneys' fees, to deter franchisees from suing or maintaining lawsuits against them. Thus while loss of a single lawsuit is seldom significant to franchisors, loss of a lawsuit against their franchisor is often fatal for franchisees.'' Lagarias, ANPR 125, at 3. *See also* Merret, ANPR 126; Brandt, ANPR 137; Doe, ANPR, 7 Nov. 97 Tr., at 267.

[374] NFA, NPR 27, at 2. *See also* AFA, NPR 14, at 4; NASAA, NPR 17, at 4; Bundy, NPR 18, at 7; Stadfeld, NPR 23, at 11; Karp, NPR 24, at 19.

[375] Stadfeld, NPR 23, at 11. *See also* Karp, NPR 24, at 20 (disclosure costs pale in comparison with litigation costs).

or save a franchisee from investing hundreds of thousands of dollars in a franchise that he/she might not have invested in if he/she would have known all of the franchisor-initiated lawsuits against its own franchisees.[376]

In contrast, franchisors generally opposed the disclosure of franchisor-initiated litigation. Among other things, they asserted that franchisor-initiated litigation is immaterial[377] and would unnecessarily ''bulk up'' disclosure documents, thereby increasing compliance costs.[378] Others opined that the disclosure was unnecessary because, in their view, a franchisee aggrieved by a franchisor-initiated suit will surely file a counterclaim, which clearly must be disclosed under the original Rule.[379] Other franchisors asserted that the disclosure document already informs prospective franchisees about the state of the relationship.[380] Still others asserted that Item 3 litigation should be limited to suits that imply wrongdoing on the franchisor's part: franchisor-initiated suits simply demonstrate that the franchisor is enforcing its rights under the franchise agreement.[381]

Indeed, some franchisors argued that the disclosure could be misleading, wrongly implying that the franchisor has engaged in illegal or other misconduct.[382] In the same vein, some franchisors feared that a mandatory franchisor-initiated litigation disclosure might actually discourage franchisors from bringing suits, even meritorious suits, that are needed to maintain the integrity of the franchise system.[383]

Based upon the record developed in this proceeding, the Commission is convinced that franchisor-initiated litigation is material information that prospective franchisees need in order to assess a critical aspect of the franchise relationship—the nature of disputes and the level of litigation within a franchise system.[384] We recognize that the UFOC Guidelines' Item 3, in limiting required disclosures to instances where a franchisee has filed a counterclaim, may have focused more narrowly on suits where arguably there was a greater probability of wrongdoing on a franchisor's part. We now believe that this should be broadened to include additional information about the state of the franchise relationship. For example, we agree with the commenters who made the point that franchisor suits to enforce system standards could be viewed as a positive attribute, showing that the franchisor is willing to maintain uniformity for the benefit of the entire system. A franchisor's willingness to protect its system is a material fact about the franchise relationship that should be disclosed to prospective franchisees.

Nevertheless, the Commission declines to broaden further the franchisor-initiated litigation disclosure of part 436, as some have suggested, to include litigation involving another franchise system owned by the franchisor, as well as litigation involving affiliates and third-party suppliers.[385] The core concern underlying the franchisor-initiated litigation requirement is the status of the relationship between the franchisor and its franchisees in the offered system.[386] Accordingly, the Commission has weighed the modest potential benefit of a broader litigation disclosure against the compliance costs and burdens, and decided not to require disclosures about litigation initiated by the franchisor's affiliates, third-party suppliers, or other systems.

At the same time, the Commission also has considered various alternatives that franchisors assert would reduce franchisors' compliance burdens. The alternative that garnered the most support was to tie the disclosure to a threshold level of suits.[387] For example, John Baer suggested a 5% threshold, under which a franchisor would not

[376] AFA, NPR 14, at 4.

[377] H&H, NPR 9, at 17 (little value in requiring franchisors to disclose garden variety litigation involving franchisees, such as debt collection actions). *See also* Cendant, at 3; Quizno's, NPR 1, at 1; Gurnick, NPR 21, at 5; Kaufmann, ANPR 33, at 4.

[378] *E.g.*, Baer, ANPR 25, at 3; Kaufmann, ANPR 33, at 4; Jeffers, ANPR 116, at 1–2; Forseth, ANPR, 18 Sept. 97 Tr., at 20. In addition, several franchisors voiced concern about the interplay between the franchisor-initiated litigation disclosure and state registration laws. Specifically, they opposed the disclosure because it might trigger burdensome state updating requirements. For example, Quizno's asserted that if the disclosure of franchisor-initiated litigation is deemed material by the Commission, it also would be deemed material by the states and, therefore, franchisors would have to stop selling in a state every time they filed a suit until they could amend their registrations. Quizno's, NPR 1, at 1. *See also* Lewis, NPR 15, at 13 (franchisor would have to amend their disclosure documents); J&G, NPR 32, at 10 (would prevent sales in states that require sales to stop until amendments are filed and approved).

[379] *E.g.*, Quizno's NPR 1, at 1; PMR&W, NPR 4, at 9; Holmes, NPR 8, at 4; Quizno's, ANPR 16, at 1; Kaufmann, ANPR 33, at 4; IFA, ANPR 82, at 1–2; Cendant, ANPR 140, at 3. *But see* Lagarias, ANPR 125, at 3.

[380] J&G, for example, contended that any material information about the franchise relationship can be determined from the Item 20 termination rates, as well as through the franchisor's financial statements. J&G, NPR 32, at 10. *See also* GPM, NPR Rebuttal 40, at 4–5.

[381] *E.g.*, Kestenbaum, ANPR 40, at 1; Tifford, ANPR 78, at 3. PMR&W asserted that Item 3 has a limited intent, namely, to:

''inform the franchisee about proven or alleged franchisor actions which may reflect poorly on the franchisor; disclosure also is required for franchisor-initiated litigation where a defendant files a counterclaim containing specified claims. A franchisor's lawsuit against the franchisee, in the absence of a relevant counterclaim, does not reflect any adverse conduct by the franchisor.''

PMR&W, NPR 4, at 10. *See also* Winslow, at 77; H&H, NPR 9, at 17; J&G, NPR 32, at 10; Marriott, NPR 35, at 14. *But see* Jeffers, ANPR 116, at 1–2 (franchisor-initiated suits could be viewed as a ''positive attribute,'' showing that the franchisor is willing to enforce its standards and trademark, and is willing to aggressively eliminate continuing violations of its franchise agreement).

[382] Snap-On, NPR 16, at 2. *See also*, *e.g.*, Gurnick, NPR 21, at 5; NaturaLawn, NPR 26, at 1; J&G, NPR 32, at 10; GPM, NPR Rebuttal 40, at 4–5; Kaufmann, ANPR 33, at 4; Tifford, ANPR 78, at 3; Cendant, ANPR 140, at 3.

[383] PMR&W, NPR 4, at 9. *See also* Snap-On, NPR 16, at 2; J&G, NPR 32, at 10; Marriott, NPR 35, at 14.

[384] For example, a pattern of franchisor-initiated lawsuits, such as royalty collection suits, may indicate franchisees' unwillingness or inability to pay. Such information would be material to a prospective franchisee because it may be an indicator of risk in purchasing a franchise and in the quality of the relationship with the franchisor.

[385] *See* Bundy, NPR 18, at 7; Stadfeld, NPR 23, at 13. Eric Karp urged the Commission to broaden the disclosure further to include franchisor-initiated litigation against third-party suppliers: ''If a franchisor were to sue a supplier of goods or services it sells to franchisees, over issues relating to quality or efficiency of supply or to block sales not authorized by the franchisor, the prospective franchisee would have good reason to want to know about the claim.'' Karp, NPR 24, at 20. The Commission has rejected this suggestion because it goes beyond the goal of providing material information to prospective franchisees about the quality of the franchisor-franchisee relationship.

[386] Piper Rudnick also urged the Commission to clarify in the Compliance Guides the definition of the term ''franchisor relationship.'' In particular, the firm would limit ''franchise relationship'' to a matter arising from the franchise contract. Piper Rudnick, at 6. We believe a definition is unnecessary. Since the promulgation of the original Rule, franchisors have had to disclose franchisee-initiated litigation and counterclaims involving the franchise relationship. Accordingly, such disclosures are not new. Moreover, we disagree that the franchise relationship is as narrow as Piper Rudnick suggests. Surely, a dispute that arises from a lease agreement or promissory note, for example, falls within the purview of a relationship issue that should be disclosed.

[387] Other suggested alternatives failed to garner significant support, including the following. PMR&W suggested requiring a franchisor to disclose, on an annual basis, the number of litigation and arbitration proceedings it has pending against franchisees, along with a general summary of the types of claims involved. PMR&W, NPR 4, at 10. Wendy's suggested that the disclosure should be limited to ''specifically enumerated types of claims which are significant to the entire franchised system,'' as well as a significant dollar amount. Wendy's, NPR 5, at 2. Wendy's, however, failed to identify a list of appropriate types of suits or an appropriate dollar figure. David Holmes would limit the disclosure by eliminating counterclaims filed by a franchisor merely in response to a franchisee-initiated suit. In his view, this is appropriate if the Commission's concern is ''with franchisors having a practice of suing their franchisees, not merely defending themselves.'' Holmes, NPR 8, at 4–5. We disagree because a counterclaim may shed light on issues in the franchise relationship to the same extent as the franchisee's complaint.

have to disclose litigation it initiated unless it has filed suit against at least 5% of the franchisees in its system.[388] Others suggested a higher percentage, such as 10%,[389] 15%,[390] or 20%,[391] while the IL AG suggested a lower percentage, such as 2%.[392]

The Commission is reluctant to tie the franchisor-initiated litigation disclosure of part 436 to a threshold. We believe it is impossible, given the limited record on this issue, to fashion a ''one size fits all'' approach for every franchise system in all industries. Moreover, any threshold would focus on the quantity of suits, suggesting that the sole purpose of the provision is to reveal litigiousness. When it comes to the state of the relationship, however, even a small number of suits initiated by a franchisor could be material to a prospective franchisee because they may reveal the nature of problems in the franchise system or show the franchisor's willingness to enforce system standards.[393] With full disclosure, prospects can review the number and types of franchisors' suits for themselves and draw their own conclusions about whether those suits are significant.

Turning more generally to Item 3 of the final amended Rule, it includes several refinements to the proposed rule that were offered during the proceeding, and that were recommended in the Staff Report. These refinements preserve the utility of the disclosure, while reducing compliance costs.[394] First, in order to minimize compliance burdens, the franchisor-initiated litigation disclosure requirement is limited to suits filed in the previous one-year period.[395] We believe this ''snap-shot'' in time is sufficient to reveal the franchisor's practice of initiating litigation, as well as to reveal the types of franchise relationship problems that typically arise in the franchise system.[396]

Second, Item 3 permits franchisors to report franchisor-initiated litigation annually, not quarterly. That is, a franchisor would disclose all material litigation to which it was a party in the last fiscal year. This is intended to make it clear that quarterly updating requirements do not demand disclosure of franchisor-initiated actions filed in the 12 months prior to the date of the updated document. This approach improves on the proposed Rule's ''pending litigation'' approach.[397] It also would have the additional benefit of reducing more frequent quarterly updating, which may be burdensome and perhaps impracticable in franchise registration states with more frequent updating requirements.[398]

Third, Item 3 incorporates a ''materiality'' standard.[399] This is consistent with both the original Rule and UFOC Guidelines.[400] Indeed, immaterial information, by definition, is unlikely to influence a prospective franchisee's investment decision, while imposing unwarranted costs and unnecessarily lengthening disclosure documents.

As noted above in the discussion of section 436.1(d), materiality is determined from the viewpoint of the reasonable prospective franchisee. Accordingly, any franchisor-initiated litigation that goes to the quality of the franchise relationship being offered for sale is likely to be material. Indeed, the Commission intends the disclosure of franchisor-initiated litigation to be interpreted broadly to cover most suits. Nonetheless, we believe a requirement that franchisors disclose literally all franchisor-initiated suits goes too far. There may be instances where a franchisor-initiated suit might have no bearing on the specific franchise relationship being offered for sale. For example, franchisors may offer for sale ''non-traditional'' outlets operating a unique franchise agreement—such as the operation of an outlet on a military base. Franchisor-initiated litigation involving unique franchise agreements may be immaterial to the sale of ''traditional'' outlets operating under the franchisor's standard franchise agreement. A blanket provision requiring disclosure of suits involving unique agreements might be overbroad and might unnecessarily increase the size of the Item 3 disclosure to the disadvantage of both prospective franchisees who must read it, as well as the franchisors who must prepare the disclosure. A ''materiality'' standard, therefore, will ensure that only suits shedding light on the type of relationship being offered for sale must be disclosed.

[388] Baer, NPR 11, at 11. *See also* Lewis, NPR 15, at 12; BI, NPR 28, at 11; Tricon, NPR 34, at 6. NASAA stated that if the Commission were to limit the disclosure by imposing a threshold, it would support a 5% threshold. NASAA, NPR 17, at 4. Not everyone agreed, however, on the proposal to establish a threshold. Eric Karp, for example, stated: ''the prospective franchisee should make his or her own determination as to whether the number of lawsuits is at a level that indicates a problematic franchise system.'' Karp, NPR 24, at 19–20. According to Howard Bundy, the imposition of a threshold number of cases before an obligation to disclose arises ''invites abuse.'' Bundy, NPR 18, at 7. Seth Stadfeld also argued that a threshold prerequisite would ''discriminate[] arbitrarily in favor of large mature franchise systems to the detriment of small franchise systems.'' Stadfeld, NPR 23, at 13.

[389] NFC, NPR 12, at 28.

[390] Holmes, NPR 8, at 4.

[391] AFC, NPR 30, at 3.

[392] IL AG, NPR 3, at 6 (also recommending no threshold for smaller systems, such as those with fewer than 25 franchisees).

[393] One commenter asserted that the Commission should require litigation disclosures only when there have been three consecutive fiscal years of lawsuits, regardless of the number of such suits. NaturaLawn, NPR 26, at 1. The purpose of the disclosure, however, is not limited to litigiousness. As discussed above, any number of suits initiated by the franchisor against its franchisees is material because it sheds light on the quality of the franchise relationship.

[394] In addition to the refinements noted below, the Commission considered, but rejected, several others that find no additional support in the rulemaking record and which would be unnecessarily inconsistent with the UFOC Guidelines. For example, Duvall urged limiting the disclosure of pending actions to franchise disputes only, eliminating the reference to actions for fraud, unfair and deceptive trade practices, and the like. Duvall, at 1. IL AG urged expansion of the scope of the affiliate disclosure to cover all affiliates in any line of business. IL AG, at 5. Pu advocated a requirement to disclose the name, address, and telephone number of the lawyer for the franchisee in any litigation. Pu, at 1.

[395] Initially, the Commission proposed that the disclosure of franchisor-initiated litigation be limited to pending litigation. Franchise NPR, 64 FR at 57303–04. Several commenters opposed that approach. For example, Howard Bundy would require the disclosure of all franchise relationship suits by the franchisor or an affiliate commenced during at least the last three years. ''Just giving the 'pending' cases is like giving only one month of financial statements. It does not permit the prospect to see and evaluate trends and developments.'' Bundy, NPR 18, at 7. *See also* Stadfeld, NPR 23, at 13. We agree that focusing on pending litigation is insufficient to achieve the goal of shedding light on the quality of the franchise relationship. However, we believe that a one-year time period is sufficient for that purpose, giving a prospective franchisee a snap-shot in time of the franchise system. *But see* Karp, at 2 (contending that suits filed in one year are not necessarily representative of the problems that arise in the system or the propensity of the franchisor to sue its franchisees).

[396] One commenter suggested that the Commission permit a franchisor to explain in Item 3 that this disclosure is limited to only certain types of actions and only updated annually. Gust Rosenfeld, at 4. To the extent that a franchisor finds that its compliance with any particular disclosure item may result in inaccurate or misleading information being furnished to a prospective franchisee, the franchisor may add footnotes to ensure accuracy or to avoid misleading statements. This applies to any misleading Item 3 litigation disclosure as well.

[397] This disclosure approach also would be more representative of franchisor-initiated litigation than ''pending litigation,'' which would omit suits that may have been settled during the year, or which took less than a year to resolve.

[398] States typically require immediate updating upon a material change.

[399] The Commission declines to adopt suggested expansion of section 436.5(c)(1)(ii) to encompass *all* suits, regardless of their materiality. Stadfeld, NPR 23, at 13.

[400] *See* 16 CFR 436.1(a)(4) (only material actions need be disclosed); UFOC Guidelines, Item 3 Definitions at iii (''Included in the definition of material is an action or an aggregate of actions if a reasonable prospective franchisee would consider it important in making a decision about the franchised business.'').

Fourth, as recommended in the Staff Report, Item 3 permits a franchisor to provide basic, summary information on its initiated litigation, without the need for long discussions on each and every case.[401] In addition, franchisors may list individual suits under one common heading, which will serve as the summary (for example, royalty collection suits). The franchisor would then merely list each applicable suit (case name, court, file number), without the need to provide any additional explanation.

Fifth, and finally, the final amended Rule clarifies the relationship between the disclosure of franchisor-initiated litigation and the disclosure of counterclaims. Staff Report comments by Wiggin & Dana noted that the rule proposed in the Franchise NPR did not explicitly address the filing of a franchisee counterclaim after a franchisor initiates a suit.[402] The firm questioned whether a franchisor-initiated case followed by a counterclaim would be treated as a franchisor-initiated case only—receiving the more narrow disclosure treatment—or whether the counterclaim would be considered like all other counterclaims—receiving the more extensive disclosure treatment.[403]

The Commission intends the franchisor-initiated litigation provision of the final amended Rule to expand upon the approach taken by the original Rule, not constrict it. Accordingly, franchisors must disclose any counterclaims in the same manner as they would have done under the original Rule, providing complete case summaries. Only in those instances where a franchisor initiates a suit—absent the filing of any subsequent counterclaim filed by the franchisee—does the franchisor-initiated litigation disclosure requirement apply.

The final amended Rule makes this point clear as follows. First, section 436.5(c)(3) provides instructions for all litigation that must be disclosed in Item 3. It requires, for each suit, the disclosure of the case title, number or citation, initial filing date, names of the parties, the forum, and the relationship of the opposing party to the franchisor. Following these basic disclosures are more specific disclosures (*e.g.*, summaries of legal and factual claims, relief sought, conclusions of law) that pertain to all suits, except for franchisor-initiated litigation, which is covered in a separate section (section 436.5(c)(4)). Any counterclaim filed by a franchisee in a suit would be covered by the section 436.5(c)(3) disclosure requirements.

The next section—section 436.5(c)(4)—sets forth the instructions for ''any other franchisor-initiated suit identified'' in Item 3.[404] The use of the phrase ''any other franchisor-initiated suit'' is intended to limit the provision to suits in which no franchisee counterclaim has been filed. This section makes clear that, in lieu of the more comprehensive disclosure instructions of section 436.5(c)(3), a franchisor may disclose franchisor-initiated litigation ''by listing individual suits under one common heading.'' Accordingly, Item 3 affords the franchisor flexibility, permitting the disclosure of franchisor-initiated litigation either through the comprehensive disclosures of section 436.5(c)(3) or the more abbreviated disclosures of section 436.5(c)(4).

6. Section 436.5(d) (Item 4): Bankruptcy

Section 436.5(d) of the final amended Rule retains the original Rule's disclosure of prior bankruptcies, including any parent's bankruptcy.[405] Consistent with the UFOC Guidelines, it extends the original Rule by requiring franchisors to disclose bankruptcy information about predecessors and affiliates, to disclose foreign proceedings comparable to bankruptcy, and to make bankruptcy disclosures for 10 years, instead of the original Rule's seven years limitation.[406]

Item 4 of the final amended Rule also incorporates several refinements based upon the record developed in this proceeding. The Rule as proposed in the Franchise NPR, at Item 4, would have required the disclosure of an affiliate's prior bankruptcy only if the affiliate currently offers franchises under the franchisor's trademark.[407] One commenter suggested that the bankruptcy disclosure should apply to all affiliates, consistent with the UFOC Guidelines.[408] We agree. It is clear that the UFOC Guidelines require franchisors to disclose the bankruptcy of any affiliate of the franchisor, not just those affiliates who offer franchises under the franchisor's principal mark.[409] In order to reduce inconsistencies between part 436 and the UFOC Guidelines, we have revised the disclosure of an affiliate's bankruptcy accordingly.[410]

In its response to the Staff Report, J&G also contended that the introductory paragraph of both the proposed Rule in the Franchise NPR and the Staff Report are unclear.[411] As recommended in the Staff Report, for example, this paragraph would require a franchisor to disclose ''whether the franchisor, any parent, predecessor, affiliate, officer, general partner . . . filed for bankruptcy.''[412] J&G contended that it is unclear whether this language requires a franchisor to disclose the bankruptcy history of officers or affiliates of a predecessor, as well as officers of a parent or affiliate. To eliminate confusion on this point, the final amended Rule reads as follows:

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[401] *See* Staff Report, at 117–18. The Staff Report proposal permitting franchisors to limit the description of each disclosed suit generated no comment.

[402] Under the original Rule, a counterclaim must be disclosed for 10 years and the franchisor must provide more detailed information about the nature and status of the action. 16 CFR 436.1(a)(4)(ii) (actions ''brought by a present or former franchisee or franchisees and which involves or involved the franchise relationship'').

[403] Wiggin & Dana, at 1–2.

[404] *See* Wiggin & Dana, at 2.

[405] *See* 16 CFR 436.1(a)(5). In the original SBP, the Commission found that bankruptcy information is material because it bears directly on the ''integrity and managerial ability of the parties with whom [the franchisee] is dealing and . . . could readily result in drastic economic injury to the franchisee because it could lead him or her to invest substantial amounts of money in a bankrupt business.'' Original SBP, 43 FR at 59650–51.

[406] *See* UFOC Guidelines, Item 4.

[407] Franchise NPR, 64 FR at 57304.

[408] Bundy, NPR 18, at 7. *See* NASAA Comparison, at 6.

[409] As previously noted, the definition of ''affiliate'' in the UFOC Guidelines varies for purposes of specific disclosure items. For example, ''affiliate'' for Item 3 (litigation) purposes is limited to ''an affiliate offering franchises under the franchisor's principal trademark.'' UFOC Guidelines, Item 3. The more limited Item 3 definition of affiliate reduces franchisors' compliance burdens significantly. A franchisor may have numerous affiliates, any of which may have been involved in, or is currently involved in, litigation. The disclosure of such affiliate information arguably might impose significant compliance costs that may not outweigh any benefits to prospective franchisees. Therefore, the Item 3 litigation disclosure—limited to affiliates offering franchises under the franchisor's principal trademark—strikes the right balance between pre-sale disclosure and costs. On the other hand, where any affiliate has a current or prior bankruptcy, that fact is highly material because the affiliate's parent may wish to divert funds away from the franchisor to the affiliate, thereby depriving the franchisor of advertisements, training, or other services. Under the circumstances, a broader definition of affiliate in the Item 4 bankruptcy disclosure is warranted.

[410] Consistent with Item 2, the final amended Rule at Item 4 also extends the UFOC Guidelines by requiring the bankruptcy disclosures not only for officers or general partners, but for any ''other individual who will have management responsibility relating to the sale or operation of franchises offered by this document.'' This is necessary to prevent franchisors from hiding prior bankruptcies of individuals who in fact will manage the franchises, but who do not have a formal title.

[411] J&G, at 4. IL AG advocated that the Commission deviate from the UFOC Guidelines by including in the list of persons needing to disclose bankruptcy information ''members,'' to make it clear that limited liability companies are included. IL AG, at 5. This is also unnecessary because nothing in part 436 would prevent a limited liability company from qualifying as a parent, predecessor, or affiliate, as those terms are used in part 436.

[412] *See* Staff Report, proposed section 436.5(d)(1).

''Disclose whether the franchisor; any parent; predecessor; affiliate; officer, or general partner of the franchisor, or any other individual who will have management responsibility relating to the sale or operation of franchises offered by this document . . .''

The Commission has rejected, however, other suggestions to modify Item 4. Several commenters questioned the need to require predecessor and parent bankruptcy disclosures. They asserted that the additional disclosure burden is not outweighed by any benefit to prospective franchisees.[413] Consistent with our discussions in connection with Items 1–3, we believe that information about predecessors and parents is material and should be disclosed. Where a parent is in bankruptcy, for example, its assets include any franchisor-subsidiary. Under such circumstances, a prospective franchisee should be made aware that the franchisor in which it is considering investing might be sold, possibly to a competitor or to a company lacking prior franchise experience.

Further, David Gurnick suggested that the time period for reporting a bankruptcy should be reduced from 10 to five years.[414] J&G also observed that a 10-year obligation would compel the disclosure of a bankruptcy that was actually filed significantly earlier:

> [I]t would seem that ten years from the date of the filing of a petition would be the appropriate beginning date. We are aware of one case in which an officer was involved with a company when a petition was filed in 1986, and the bankruptcy proceeding is still pending. Were it settled this month (December 1999), disclosure of that event would be required for a total of 23 years![415]

Although the 10-year reporting period may, in rare instances, result in the disclosure of a bankruptcy filed more than 10 years earlier, the Commission has determined that the 10-year reporting period is reasonable in order to give prospective franchisees a complete picture of the franchisor's bankruptcy history. We are not inclined to deviate from the UFOC Guidelines on this point.

Finally, NaturaLawn urged the Commission to exclude from Item 4 the disclosure of personal bankruptcies. The company noted that personal bankruptcies can be filed for a variety of reasons, such as divorces, medical issues, or insurance claims.[416] The Commission believes that the disclosure of personal bankruptcy information is necessary to prevent deception or fraud. In many instances, prospective franchisees entrust considerable initial fees and ongoing funds to franchise managers for training and advertising, among other forms of post-sales assistance. Accordingly, prospective franchisees may rely to their detriment on claims made by such managers. The disclosure of a franchisor manager's bankruptcy, therefore, would shed light on that manager's ability to safeguard and use those funds properly. Under the circumstances, we see no compelling reason to omit a personal bankruptcy, especially since such an approach would also deviate from the UFOC Guidelines.

7. Section 436.5(e) (Item 5): Initial fees

Section 436.5(e) of the final amended Rule requires the disclosure of initial fees.[417] This disclosure is substantively similar to the comparable disclosure provision found in the original Rule at 16 CFR 436.1(a)(7). The final amended Rule, like the proposed Rule published in the Franchise NPR, follows the UFOC Guidelines in explicitly permitting franchisors to provide a range of fees, whereas the original Rule implicitly contemplated a fixed fee.

Item 5 of the final amended Rule is substantially similar to Item 5 in the proposed Rule published in the Franchise NPR, but it incorporates several technical revisions that the commenters suggested. One commenter recommended that the title of Item 5 should refer to ''Initial Fees'' instead of the proposed title, ''Initial Franchise Fee,'' recognizing that a prospective franchise may pay more than just one fee in order to acquire a franchise.[418] Consistent with that revision, references to ''fee'' in Item 5 have been revised as follows: (1) ''these fees are refundable,'' in place of ''this fee is refundable;'' and (2) ''Initial fees mean,'' in place of ''initial fee means.''[419]

Second, another commenter correctly noted that the Franchise NPR version of Item 5 did not expressly define ''initial fees'' to include commitments to make payments to the franchisor. Rather, Item 5 as proposed in the Franchise NPR would have defined an initial fee only in terms of cash actually paid at the time of the sale.[420] The commenter's point is well-taken. The ''initial fees'' disclosure requirements of Item 5 relate to the required payment element in the definition of the term ''franchise.''[421] Under that definition, a ''required payment'' is not limited to cash, but expressly includes commitments to make payments to the franchisor at a later date. Otherwise, a franchisor could seriously undercut the Item 5 cost disclosure by requiring prospects to sign notes or other obligations in lieu of immediate payment. Accordingly, Item 5 of the final amended Rule expressly includes not just fees that are actually paid, but commitments to pay as well.[422]

Commenters also offered various proposals for modifying Item 5 that we believe are unwarranted. While Item 5 requires disclosure of ''the range or formula used to calculate the initial fees paid in the fiscal year before the issuance date,'' Howard Bundy urged that it require the disclosure of any contractual formulas for determining the current initial fee. Mr. Bundy opined that it is ''important to have disclosure of any contractual formulas that will

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[413] J&G, NPR 32, at 11; Marriott, NPR 35, at 15; GPM, NPR Rebuttal 40, at 5.

[414] Gurnick, NPR 21, at 6.

[415] J&G, NPR 32, at 11.

[416] NaturaLawn, NPR 26, at 1.

[417] In the original SBP, the Commission recognized that the disclosure of complete and accurate information about initial franchise fees is material. The failure to disclose such information pre-sale is deceptive because ''it (1) misleads, or at least confuses prospective franchisees as to the amount of the required initial franchise investment and (2) could readily result in economic injury to a franchisee unable to fully obtain all such funds or unable to recoup the full amount of such funds in the course of the franchise business.'' Original SBP, 43 FR at 59653.

[418] Lewis, NPR 15, at 14. CA Bar, however, asserted that the term ''initial fee,'' as opposed to ''initial franchise fee'' may have negative consequences for franchisors selling company-owned stores. CA Bar explained that ''initial fees'' or ranges of ''initial fees'' paid to a franchisor for a company-owned store may be proprietary information, especially if fees charged are not uniform. CA Bar, at 9. We disagree. Under the current UFOC Item 5, all franchisors must disclose the ''initial franchise fee,'' which is defined to include ''all fees and payments for services or goods received from the franchisor before the franchisee's business opens.'' UFOC, Item 5. Accordingly, the Item 5 disclosure is not limited to payments marked ''franchise fee.'' We decline to introduce a distinction between ''initial fees'' and ''initial franchise fees,'' as CA Bar suggested, which would be inconsistent with the UFOC Guidelines.

[419] Lewis, NPR 15, at 14. *But see* Gust Rosenfeld, at 8 (suggesting the broader ''initial payments'' than ''fees,'' which may be misconstrued narrowly to refer only to any upfront franchise fee).

[420] Bundy, NPR 18, at 7. (''It should include any amounts that the franchisee becomes obligated to pay before entering into the franchise. For example, if the entire initial franchise fee is deferred into a promissory note, that does not change the fact that it is an 'initial fee.'").

[421] Section 436.1(h).

[422] The Commission has also clarified the language of Item 5 in two respects. First, the final amended Rule makes clear that the term ''initial fees'' includes payments or commitments to pay an affiliate of the franchisor. *See* NASAA, at 3. This is consistent with the NASAA Commentary on the UFOC Guidelines. *See also* NASAA Comparison, at 7. Second, the final amended Rule adds, at the end of Item 5, the following sentence: ''Disclose installment payment terms in this subsection or in paragraph 436.5(j) of this section.''

result in this prospect paying a different initial fee than the historic information would suggest.''[423]

The Commission's view, however, is that as long as the prospect is aware of the amount to be paid before the sale, the method the franchisor used to derive that amount is not necessarily material. The Commission notes that Item 5 ensures that a prospective franchisee knows whether fees are uniform and, where they are not, enables the prospect to bargain for a lower rate. Item 5 supplies the prospect with some historical information that can aid in gauging the parameters of the franchisor's willingness to negotiate fees. We believe that this is more useful by far than including in the disclosure document current contractual formulas. Thus, there is no reason to diverge from the UFOC Guidelines on this issue.

Three other commenters voiced concern about Item 5 as it relates to the negotiation of fees. The NFC asserted that Item 5 implies that a franchisee can seek to negotiate initial fees only if the franchisor already disclosed in its Item 5 a range of previously accepted fees. Such a result, in its view, restricts prospective franchisees' ability to initiate fee negotiations.[424] The Commission's intention is to promote the parties' ability to negotiate terms and conditions, including fees and other costs. Full and accurate prior disclosure furthers that goal. Accordingly, nothing in Item 5 or any other provision of part 436 of the final amended Rule prevents the parties from negotiating fees.

David Gurnick suggested that the Rule permit a franchisor to disclose whether or not it will negotiate fees, and if it does so, permit disclosure of the conditions that may affect the negotiation.[425] Similarly, BI urged that franchisors be permitted to disclose that they may lower the initial fees.[426]

As noted above, however, Item 5 ensures that prospects know when fees may vary. This is sufficient to prompt them, if they wish, to negotiate for a fee level that suits them. A more extensive or detailed disclosure on this issue would only introduce needless nonconformity with the UFOC Guidelines without producing any appreciably increased benefit to prospective franchisees.

BI also urged that when the initial fee is negotiated rather than established by applying a formula or fixed calculation, the range of such negotiated initial fees in the prior fiscal year need not be disclosed.[427] The Commission's view, however, is that providing a range of fees, regardless of how or why these ranges came about, is useful to prospective franchisees in the negotiation process. Such disclosure compels neither party to reach agreement on unacceptable terms: franchisors and prospective franchisees remain free to negotiate in and outside of any disclosed range. Accordingly, we see no reason to deviate from the UFOC Item 5 approach in this regard.[428]

8. Section 436.5(f) (Item 6): Other fees

Section 436.5(f) of the final amended Rule requires franchisors to disclose recurring or occasional fees associated with operating a franchise (*e.g.*, royalties, advertising fees, and transfer fees). This requirement recognizes that a prospective franchisee's investment is not limited to the initial franchise fee alone. Rather, a franchisee may incur considerable costs in the operation of the business, which will significantly impact upon his or her ability to continue in business and ultimately be successful. This provision covers payments made directly to the franchisor or an affiliate, or collected by the franchisor or affiliate for the benefit of a third party. This disclosure is substantially similar to the comparable original Rule disclosure found at 16 CFR 436.1(a)(8).[429] Following the UFOC Guidelines, the Rule, as proposed in the Franchise NPR, expanded the scope of this original Rule provision by requiring a disclosure about the existence of advertising and purchasing cooperatives from which franchisees may be required to purchase goods or services. The proposed Rule also required disclosure about the voting power of any franchisor-owned outlets in the cooperative and, if company store voting power is controlling, the range of required fees charged by the cooperative. This is material information about restrictions on prospective franchisees' independence in operating the offered franchise, as well as the total costs of doing so.

The Commission has determined to adopt proposed Item 6 from the Franchise NPR, with some fine tuning. Accordingly, Item 6 of the final amended Rule incorporates a suggestion from both Warren Lewis and NASAA that the proposed title of Item 6 taken from the UFOC Guidelines (''Recurring or Occasional Fees'') be replaced with ''Other Fees,'' the term actually used throughout the disclosure.[430] The Commission believes this change improves the clarity of the Rule's text and Item 6.

In addition, to conform more closely to the UFOC Guidelines, Item 6 of the final amended Rule requires that franchisors state explicitly what fees are non-refundable (rather than just stating the conditions when a fee is refundable).[431] Again, to conform more closely with the UFOC Guidelines, Item 6 requires franchisors to disclose whether continuing fees currently being charged are uniformly imposed on all franchisees.[432]

The Staff Report recommended expansion of Item 6 to require franchisors to disclose required payments made to third parties.[433] The Commission has decided not to adopt that recommendation. Early in the Rule amendment proceeding, NASAA urged this expansion of Item 6.[434] Another commenter supported this suggestion, noting that in the ''vast majority of the franchise cases we see, the franchisee's ongoing legal obligations to third parties far exceed the franchisee's ongoing legal obligations to the franchisor. However, the franchisee cannot obtain the franchise without incurring the third-party obligations.''[435]

Eight Staff Report comments, however, opposed the proposed expansion of Item 6 to require the

[423] Bundy, NPR 18, at 7.

[424] NFC, NPR 12, at 10–11.

[425] Gurnick, NPR 21, at 6.

[426] BI, NPR 28, at 6.

[427] *Id.*

[428] The Commission has decided not to adopt various suggested revisions to Item 5 offered by the IL AG. For example, IL AG suggested that the Rule require franchisors to disclose specific information about the amount of fees that are refundable. IL AG, at 5. The Commission believes that Item 5 adequately covers this by requiring a franchisor to state ''any conditions under which these fees are refundable.'' Clearly, this language is flexible enough to permit a franchisor to state in its Item 5 disclosure whether it offers a full or partial refund.

[429] In the original SBP, the Commission noted that the failure to disclose continuing costs violates Section 5 because it ''(1) misleads or at least confuses the franchisee as to the required amount of his or her total investment; and (2) could readily result in economic injury to the franchisee unable to meet such continuing obligations.'' Original SBP, 43 FR at 59654–55.

[430] Lewis, NPR 15, at 14; NASAA, NPR 17, at 4.

[431] As previously noted, NASAA has urged the Commission throughout the Rule amendment proceeding to reduce inconsistencies with the UFOC Guidelines to the fullest extent possible. To that end, it has submitted into the record a comparison between the original Rule and UFOC Guidelines. *See* NASAA Comparison, at 8; UFOC Guidelines, Item 6, Instructions vi. As noted throughout this Statement, a primary objective in revising this Rule is to align it more closely with the UFOC Guidelines.

[432] *See* NASAA Comparison, at 8.

[433] Staff Report, at 126.

[434] NASAA, NPR 17, at 4.

[435] Bundy, NPR 8, at 8. Mr. Bundy also suggested that franchisees need to understand that third-party obligations continue even if the franchise is terminated. *Id.* We agree, but believe that this raises a consumer education issue, not a pre-sale disclosure one, that is best handled by Commission and industry educational efforts.

disclosure of payments made to third parties. Gust Rosenfeld's comment is typical, noting that a franchisor may require franchisees to lease premises, obtain necessary licenses, and operate in compliance with applicable laws. ''All of the payments to do these things are technically 'required,' but they are generally applicable to all businesses, and the franchisor does not control when they are made, to whom they are made, or what the amount is.''[436] Similarly, Piper Rudnick and IFA asserted that a required listing of all possible third-party suppliers of goods or services would expose a franchisor to liability if it forgot to include one or more.[437]

The Commission agrees that the disclosure of third-party fees in Item 6 would be overbroad, resulting in the mandatory disclosure of information that might not be readily obtainable by the franchisor and unnecessarily increasing franchisor's compliance burden without any commensurate benefit to prospective franchisees. Moreover, estimates of initial payments to third parties are already covered by Items 7 and 8, as discussed below. Specifically, Item 7 requires franchisors to disclose estimates of pre-sale expenses paid during the initial period—typically the first three months—and also requires franchisors to ''[l]ist separately and by name any other specific required payments (for example, additional training, travel, or advertising expenses) that the franchisee must make to begin operations.[438] Franchisors must also include an ''additional funds'' category to capture ''any other required expenses the franchisee will incur before operations begin and during the initial phase of operations.''[439] Item 8 already requires franchisors to disclose franchisee obligations to make purchases from required or approved suppliers. These include obligations to purchase items such as supplies, equipment, inventory, computer hardware and software, and real estate. The Commission is persuaded that the Item 7 and Item 8 part 436 disclosures are more than sufficient to advise prospective franchisees of the likely purchase obligations incurred in operating a franchise.

9. Section 436.5(g) (Item 7): Estimated initial investment

Section 436.5(g) of the final amended Rule requires franchisors to set out in an easy-to-read table all the expenses necessary to commence business (*e.g.*, rent, equipment, and inventory)—not just the initial fees covered by Item 5 and other fees covered by Item 6. It also requires franchisors to disclose any refund conditions. Comparable cost disclosures are found in the original Rule at 16 CFR 436.1(a)(7).[440] Consistent with the UFOC Guidelines,[441] Item 7 also extends the original Rule by requiring a franchisor to disclose not only payments that the franchisee must make to the franchisor or its affiliates, but also estimated payments the franchisee must make to third parties in some instances. For example, franchisors must estimate payments for utility deposits and business licenses. It also requires franchisors to include an ''additional funds'' category[442] that captures other expenses franchisees will incur during the ''initial period'' of operations.[443]

Item 7 generated little comment. In response to the Staff Report, Howard Bundy asserted that Item 7 is insufficient, failing to reveal a franchisee's total initial investment because it does not include various payments to third parties beyond the first 90 days. Specifically, it misses real estate costs and equipment financing and leasing. Mr. Bundy urged the Commission to adopt the following:

> Disclose the total amount (in a range, if appropriate) of all obligations to third parties during the entire initial term of the franchise that will be necessary to operate the franchised business (including real estate leases and equipment leases) that the franchisee may be required to personally guaranty.[444]

The Commission declines to adopt this proposal. By its terms, Item 7 of the UFOC Guidelines is designed to furnish prospective franchisees with material information about the likely expenses faced in the start-up phase of the franchise. Armed with such information, a prospective franchisee will know whether or not he or she has the financial ability to get the franchised outlet operational. Item 7 is not intended to capture all expenses made over the life of the franchise, which may vary depending upon such factors as the franchisee's choice of suppliers and the terms he or she negotiates with them. For example, Item 7 recognizes that a franchisor may not know the exact amount of real property expenses. Rather than requiring an exact figure, Item 7 permits franchisors to give an estimate or a low-high range. If neither can be determined, Item 7 permits franchisors to simply describe property requirements, such as property size and type, and location. Moreover, prospective franchisees may be able to get more detailed estimates of long-term expenses by speaking directly with existing franchisees in their location, or with trademark-specific franchisee associations. For these reasons, the Commission is not inclined to deviate from the UFOC Guidelines Item 7 on this issue.

Item 7 of the final amended Rule is substantially similar to its counterpart in the Franchise NPR, but has been modified in a number of ways to adhere more closely to the UFOC Guidelines. For example, the Franchise NPR proposed that the Item 7 table be titled: ''YOUR ESTIMATED INITIAL INVESTMENT FOR THE FIRST [REASONABLE INITIAL PHASE] MONTHS.''[445] As one commenter noted, however, the language proposed in the Franchise NPR is unnecessarily inconsistent with title of Item 7 table of the UFOC Guidelines, which is titled ''YOUR ESTIMATED INITIAL INVESTMENT.''[446] Moreover, the ''initial phase'' referenced in UFOC Guidelines Item 7 pertains only to the

[436] Gust Rosenfeld, at 4–5. *See also* Wiggin & Dana, at 2 (questioning whether the proposed disclosure of payments to third parties in Item 6 would cover employee wages, uniform dry cleaning, or accountant fees to prepare taxes). Several commenters recommended that Item 6 be limited to ongoing payment made to the franchisor or its affiliates. Piper Rudnick, at 2; Spandorf, at 7.

[437] Piper Rudnick, at 2; IFA, at 3. *See also* J&G, at 5 (asserting that the provision would cover not only garden variety fees, but an ''infinite plethora of potential and unpredictable (or unknowable as a practical matter) payments and fees that may vary by locality, such as license and permit fees, or may arise due to unpredictable events.''); Duvall, at 1–2 (a franchisor cannot know all the required payments made to hundreds of vendors and accounts).

[438] Section 436.5(g)(1)(ii).

[439] Section 436.5(g)(1)(iii).

[440] ''Since . . . fees frequently involve substantial sums of money, it must be assumed that if they were fully disclosed, they would play a significant role in a prospective franchisee's decision of whether to enter into a franchise relationship.'' Original SBP, 43 FR at 59652. The ''[f]ailure to disclose material information as to the true cost of the franchise'' is an unfair and deceptive trade practice in violation of Section 5. *Id.*, at 59653.

[441] UFOC Guidelines, Item 7.

[442] PMR&W asserted that the additional funds category is too broad. Citing the NASAA Commentary, the firm noted that owners' salary, for example, should be excluded. PMR&W, NPR 4, at 10–11. We agree, but believe this issue is best addressed by staff in the Compliance Guides, which will explain the term ''additional funds'' in greater detail.

[443] The term ''initial period'' means at least three months or some other reasonable period for the industry. A franchisor seeking to apply an initial phase other than three months has the burden of showing the reasonableness of the phase selected.

[444] Bundy, at 5.

[445] Franchise NPR, 64 FR at 57335.

[446] *See* PMR&W, NPR 4, at 10–11.

''additional funds'' category, not to the entire table.[447]

In addition, Item 7 as proposed in the Franchise NPR would have required franchisors to disclose ''additional funds'' required before operations begin and during the initial phase of the franchise.''[448] The Commission noted in the Franchise NPR that this language was intended to require a working capital disclosure that could assist prospective franchisees in understanding their break-even point. Several commenters opposed the Franchise NPR's intention to capture working capital and a break-even point; they pointed out that such an approach goes beyond what the UFOC Guidelines require and asserted that this could be misleading without more detailed earnings information, such as in an earnings claim statement.[449] Indeed, one commenter argued persuasively that the Franchise NPR's proposal could create a ''back-door'' mandatory earnings claim, a position contrary to the Commission's view that earnings claims should be voluntary.[450] The Commission finds these arguments persuasive. Accordingly, the final amended Rule tracks the language of UFOC Guidelines Item 7 more closely, eliminating any implication that the Commission intends for franchisors to disclose either a working capital or breakeven point.

10. Section 436.5(h) (Item 8): Restrictions on sources of products and services

The original Rule required franchisors to disclose obligatory purchases, restrictions on sources of products and services, and the amount of any revenue the franchisor may receive from required suppliers.[451] The final amended Rule requires more detailed and extensive disclosures on these topics, consistent with the UFOC Guidelines. Specifically, section 436.5(h) of the final amended Rule requires franchisors to disclose whether it makes the criteria for approving suppliers available to franchisees.[452] In addition, franchisors must state whether, by contract or practice, the franchisor provides material benefits to franchisees who use designated or approved suppliers (*e.g.*, permitting renewals or additional outlets). Finally, it requires franchisors to disclose the existence of purchasing or distribution cooperatives, and whether the franchisor negotiates purchase agreements with suppliers on behalf of franchisees. These highly material disclosures inform prospective franchisees about critical restrictions on how they will have to operate the franchise, which comprise a vitally important aspect of the franchise relationship.

During the course of the Rule amendment proceeding, franchisee advocates raised various concerns about Item 8. For example, several franchisees voiced concern about source restrictions that prevent them from obtaining supplies at lower market rates.[453] Commenters generally did not allege that franchisors fail to disclose source restrictions, but complained about the ''abusive nature'' of such restrictions.[454] Nevertheless, franchisee advocates questioned the sufficiency of the Item 8 disclosures. Specifically, Andrew Selden urged the Commission to expand the disclosure of supplier restrictions to require franchisors to disclose more information about their practices and intentions with respect to the provision of competitive alternative sources of supply.[455] Mr. Selden, however, offered no specific language for the Commission's consideration. Robert Zarco urged the Commission to require franchisors to warn prospective franchisees that:

> The company retains the right to approve all outside vendors supplying products to the franchisees. Our criteria generally focus on quality and concept-uniformity, but we reserve the right to modify the criteria for approving suppliers at any time. Additionally, there are no time limitations as to how long the review/approval of franchisee-endorsed vendors may take.[456]

The Commission agrees that full disclosure of source restrictions and purchasing obligations is warranted. To that end, the final amended Rule adopts the broader UFOC Guidelines' Item 8 disclosures. Item 8 strikes the right balance between pre-sale disclosure and compliance costs and burdens. It is sufficient to warn prospective franchisees about source restrictions, purchase obligations, and approval of alternative suppliers, without requiring franchisors to disclose their past practices regarding approving alternative suppliers (which may be irrelevant to their current practices) or their future intentions (which may be proprietary information or misleading if the franchisor abandons the intended direction). Moreover, prospective franchisees can always ask existing franchisees or trademark-specific franchisee associations about a franchisor's history of approving alternative suppliers, if this issue is important in their decision-making process.

With respect to the disclosure of revenues received from suppliers, Howard Bundy suggested that franchisors should disclose the dollar amount of any revenues received during some stated period, such as during the

[447] *Id.*

[448] Franchise NPR, 64 FR at 57305.

[449] Lewis, NPR 15; Snap-On, NPR 16, at 3; Holmes, NPR 8, at 6.

[450] Homes, NPR 8, at 6. *See* Staff Report, at 159–62.

[451] *See* 16 CFR 436.1(a)(9)–(11). In the original SBP, the Commission noted that buying restrictions are common in franchise agreements and are material because they will ''have a significant impact on the sources of supplies and prices which a franchisee will pay for his or her supplies and thus also on the profitability of the franchise.'' Original SBP, 43 FR at 59655. Similarly, required purchases ''limit the independence of the franchisee, affect the profitability of the franchisee, and constitute a potential source of hidden profit for the franchisor.'' *Id.*, at 59656–57.

[452] In the Franchise NPR, the Commission proposed that franchisors disclose the actual criteria for evaluating, approving, or disapproving of alternative suppliers. Franchise NPR, 64 FR at 57336. Two Franchise NPR commenters voiced concern that this proposal goes well beyond what the UFOC Guidelines require, forcing franchisors to disclose proprietary information. PMR&W, NPR 4, at 1; NFC, NPR 12, at 29. *See also* Staff Report, at 130–31. The Commission agrees. Consistent with the UFOC Guidelines Item 8, the final amended Rule requires franchisors to disclose only a general description of its selection criteria.

[453] *E.g.*, Manuszak, ANPR 13; Weaver, ANPR 17; Mueller, ANPR 29; Colenda, ANPR 71; Gagliati, ANPR 72; Buckley, ANPR 97; Haines, ANPR 100; Myklebust, ANPR 101; Rafizadeh, ANPR, 7 Nov. 97, at 288–89; Slimak, ANPR, 22 Aug. 97 Tr., at 26. *See also* Kezios, ANPR 64.

[454] *E.g.*, Brickner, ANPR 128; Buckley, ANPR 97, at 3; Myklebust, ANPR 101. A few franchisees reported that their franchisor failed to approve alternative suppliers or made it difficult for franchisees to find alternative sources of supplies. *E.g.*, Chiodo, ANPR, 21 Nov. 97 Tr., at 308; Hockert-Lotz, *id.*, at 325–27.

[455] Selden, ANPR 133, Appendix B, at 1.

[456] Zarco & Pardo, ANPR 134, at 2. In the same vein, the AFA asserted that it is insufficient to require a franchisor to disclose whether a franchisee can purchase products from unaffiliated suppliers. It urged the Commission to require franchisors to disclose how long it actually takes for the franchisor to approve alternative suppliers, by stating the following:

> ''We have been known to take up to one year or more to approve a non-franchisor-affiliated vendor; or We have been known to change the specifications for [specific product] during the approval process. This has caused delays of between [number of days/weeks/months/years] to [number of days/weeks/months/years].''

AFA, NPR 14, at 4. While the Commission understands that some franchisees have experienced difficulties in obtaining franchisor approval to use alternative supply sources, the record is insufficient to justify a sweeping consumer warning that assumes delay in the approval process as a matter of course. Rather, advice concerning the approval of alternative suppliers can be addressed in consumer education materials.

last year.[457] The disclosure of revenues from suppliers serves an ''anti-conflict of interest'' purpose, putting prospective franchisees on notice that the franchisor, by benefitting materially from a relationship with a supplier, may be motivated to require franchisees obtain goods or services from that supplier. Accordingly, the highly material fact is that the franchisor receives revenues from suppliers it requires franchisees to use, not the exact dollar amount received. By requiring franchisors to disclose the percentage of revenue derived from suppliers, Item 8 achieves that purpose, consistent with the UFOC Guidelines.

Finally, in response to the Staff Report, a few commenters offered various technical refinements to Item 8.[458] First, Piper Rudnick noted that Item 8 of the Staff Report would require disclosures about purchases from ''suppliers . . . under the franchisor's specifications[, including] obligations to purchase imposed by written agreement or by the franchisor's practice.'' The firm interpreted the phrase ''imposed by written agreement'' as modifying the word ''supplier.'' If so, it maintained that a franchisor would have no reason to know if a supplier has a written agreement.[459] We believe this is a strained reading of the provision: ''written agreement'' is intended to refer to ''franchisor,'' not to a ''supplier.'' Nevertheless, in order to avoid any confusion, we have modified Item 8 in the final amended Rule now to read as follows: ''Include obligations to purchase imposed by the franchisor's written agreement or by the franchisor's practice.''[460]

Second, NASAA addressed the placement of footnote 5. Item 8, as proposed in the Staff Report, would require franchisors to disclose ''whether the franchisor or its affiliates will or may derive revenue or other material consideration from required purchases or leases by franchisees,'' and ''if so describe the precise basis by which the franchisor or its affiliates will or may derive that consideration by stating . . .'' Footnote 5 added: ''Take figures from the franchisor's recent annual audited financial statement . . . If audited statements are not yet required, or if the entity deriving the income is an affiliate, disclose the sources of information used in computing revenues.'' NASAA observed that the footnote incorrectly seems to modify ''precise basis,'' when it should modify ''franchisor's total revenue.'' It suggested moving the footnote to the end of section 436.5(h)(6)(i) so that it will modify ''the franchisor's total revenue.''[461] The final amended Rule adopts that suggestion.

11. Section 436.5(i) (Item 9): Franchisee's Obligations

Section 436.5(i) of the final amended Rule adopts UFOC Item 9, as proposed in the Franchise NPR.[462] This disclosure gives prospective franchisees an easy-to-understand guide to 25 enumerated contractual obligations that are common in franchise relationships, with cross references to the specific sections of the franchise agreement and disclosure document that discuss each obligation in greater detail. There is no counterpart in the original Rule.

Item 9 generated only a few comments during the Rule amendment proceeding. One franchisor representative maintained that the disclosure is unnecessary. He urged that a franchisor be permitted to opt out of Item 9 if the franchisor provides prospective franchisees with a detailed table of contents or index to its franchise agreement.[463] Similarly, another franchisor representative suggested that the Item 9 disclosures should apply only to franchise agreements, but not to any accompanying ''licenses, leases, subleases, guarantees, security agreement, load documents, software agreements, etc.''[464] According to this commenter, references to these ancillary agreements are burdensome and of little value to prospective franchisees. On the other hand, a franchisee representative asserted that Item 9 does not go far enough: ''As currently structured, this disclosure is not worth the time and effort largely because it provides no benefit to the prospect.''[465] He suggested that franchisors use a remarks column to describe briefly the nature of each obligation.

The Commission believes that Item 9 serves a useful purpose. As stated throughout this document, franchisee complaints submitted during the Rule amendment proceeding supported better pre-sale disclosure about the nature of the franchise relationship.[466] Item 9 addresses that concern by providing a detailed table of contents to the franchise agreement, with the additional benefit of cross references to the relevant sections of the disclosure document. It facilitates review of a franchise offering by enabling a prospective franchisee to find and review the contractual provisions detailing their legal obligations, better ensuring that prospective franchisees are not mislead about the nature of the franchise relationship. Moreover, many franchisors already use the UFOC Guidelines and prepare an Item 9 table. Further, Item 9 should impose few costs or compliance burdens because franchisors need only reference existing materials, most likely the franchise agreement and disclosure document. To the extent that legal obligations are spelled out in any ancillary agreements, franchisors must direct prospects to those provisions as well.[467]

12. Section 436.5(j) (Item 10): Financing

Consistent with the UFOC Guidelines Item 10, section 436.5(j) of the final amended Rule requires a franchisor to disclose all the material terms and conditions of any financing agreements, which encompass: the rate of interest, plus finance charges, expressed on an annual basis; the number of payments; penalties upon default; and any consideration received by the franchisor for referring a prospective franchisee to a lender. This disclosure is comparable to the original Rule provision found at 16 CFR 436.1(a)(12).[468] The final

[457] Bundy, NPR 18, at 8. *See also* Brown, ANPR 4, at 3 (urging the Commission to prohibit direct and indirect ''kick-backs'' from third-party vendors to the franchisor).

[458] The IL AG also urged the Commission to add ''affiliates'' to the list of suppliers. IL AG, at 5. This is unnecessary. Franchisors already must disclose purchasers from ''the franchisor, its designee, or suppliers approved by the franchisor, or under the franchisor's specifications.'' Accordingly, ''designee, or suppliers approved by the franchisor'' would cover any required purchases from affiliates.

[459] Piper Rudnick, at 6.

[460] Piper Rudnick also recommended that the Compliance Guides clarify the phrase ''obligations to purchase imposed by . . . the franchisor's practice.'' Piper Rudnick, at 6. As far as we are aware, this phrase, taken from the UFOC Guidelines, has not previously raised any interpretive issues. At the very least, ''franchisor's practice'' may include purchases that are recommended by the franchisor, or purchases that are prevalent among franchisees, even if not required by contract.

[461] NASAA, at 5. *See also* WA Securities, at 3.

[462] Franchise NPR, 64 FR at 57305.

[463] Duvall, ANPR 19, at 2.

[464] J&G, NPR 32, at 11.

[465] Stadfeld, NPR 23, at 14.

[466] Item 9 is consistent with other trade regulation rules where the Commission has recognized that information about legal risks to consumers is material. *E.g.*, Negative Option Rule, 16 CFR 425.1(a)(ii) (minimum purchase obligations); Door-to-Door Sales Rule, 16 CFR 429.1 (obligations regarding cancellations).

[467] The UFOC Guidelines clearly contemplate that franchisors should reference other ancillary agreements, where appropriate. For example, the beginning of UFOC Item 9 reads: ''Disclose the principal obligations of the franchisee under the franchise and other agreements after the signing of these agreements.'' The express reference to ''other agreements'' and the use of the words ''these agreements,'' clearly indicate that the drafters directed franchisors to reference all applicable agreements. We see no compelling reason to deviate from the UFOC Guidelines on this point.

[468] In the original SBP, the Commission found that a prospective franchisee's ability to obtain sufficient funding on reasonable terms is a critical

amended Rule's Item 10 closely tracks the version of this provision as proposed in the Franchise NPR, revised to improve the clarity and overall consistency of the Rule.[469]

Section 436.5(j), like UFOC Guidelines Item 10, extends the original Rule disclosures by requiring franchisors to disclose any interest on the financing in terms of the rate of interest, plus finance charges, expressed on an annual basis, consistent with such disclosures required in consumer credit transactions.[470] It also requires more disclosure than the original Rule about what the financing covers, waiver of defenses, and the franchisor's practice or intent to sell or assign the obligation to a third party.[471]

Three commenters voiced concerns about Item 10. First, H&H suggested that leases referred to in Item 10 should be called "'finance leases,' a well-established term in commercial law."[472] The Commission declines to adopt this suggestion. While "finance leases" may be a term of art used in commercial law, we do not believe that the UFOC Guidelines Item 10—upon which section 436.5(j) is based—is ambiguous or otherwise unclear. Deviating from the UFOC Guidelines on this point, therefore, is unwarranted.

Second, David Gurnick suggested that the Rule expressly permit negotiation of financial terms, and require disclosure indicating "that there are other sources of financing, such as banks, which the franchisee should consider."[473] The Commission, of course, intends that franchisees be free to negotiate financing terms. The Commission does not believe that the text of the final amended Rule at Item 10 can be read to imply that negotiation of financial terms is not permitted, or that Item 10 contemplates any restriction of a franchisee's choice of lender. Therefore, we believe it unnecessary to deviate from the UFOC Guidelines on this point.[474]

Finally, in response to the Staff Report, IL AG raised a technical issue about the sample Item 10 Financing Table, noting that "Equip. Lease" and "Equip. Purchase" have separate lines, while "Land/Constr." has a single line. The form of the Item 10 Financing Table in the final amended Rule, however, is taken directly from the UFOC Guidelines, and the record does not reflect that this format has caused difficulty for franchisors or confusion on the part of prospective franchisees. We therefore decline to deviate from the UFOC Guidelines on this point.

13. Section 436.5(k) (Item 11): Franchisor's assistance, advertising, computer systems, and training

Section 436.5(k) retains the original Rule's disclosure of franchisor's assistance obligations, including pre-opening assistance (*e.g.*, site selection), as well as ongoing assistance (*e.g.*, training).[475] Item 11 of the final amended Rule expands the original Rule, however, based upon the UFOC Guidelines' more detailed assistance disclosure requirements, including disclosures relating to advertising assistance and computer system requirements.[476]

Section 436.5(k) requires franchisors to begin their Item 11 disclosure with the statement, in bold type, that "[e]xcept as listed below, [the franchisor] is not required to provide you with any assistance." This alert counters any express misrepresentations to the contrary and corrects any misconception on the prospective franchisee's part that a minimum degree of assistance is inherent in any franchise offer.[477] Item 11 also requires franchisors to explain in detail the franchisor's site selection criteria and the franchisor's training program. As noted above, this provision also requires franchisors to disclose the extent of any advertising assistance and the operation of local, regional, and national advertising councils or co-ops. These disclosures address a common franchisee complaint, namely, that franchisees do not get the quality or quantity of advertising they pay for.[478]

element in determining whether to enter into a franchise relationship. Accordingly, it concluded that it is both unfair and deceptive for a franchisor to fail to disclose or misrepresent financing terms and conditions, and to fail to disclose rebates received in connection with franchise financing. Original SBP, 43 FR at 59659–60.

[469] The disclosures required by Item 10 are modeled on the disclosures lenders make under the Federal Reserve's Regulation M (Consumer Leasing),12 CFR Part 213, and Regulation Z (Truth in Lending), 12 CFR Part 226. Because these regulations cover personal property leases and credit transactions that are "primarily for personal, family, or household purposes," however, they generally do not apply directly with respect to lease and financing transactions undertaken in connection with the purchase of a franchise. Sales of franchises generally are not undertaken to advance personal, family, or household purposes. The version of Item 10 proposed in the NPR, following Item 10 in the UFOC Guidelines, expressly referenced the Consumer Credit Protection Act's Truth in Lending ("TILA") provisions, 15 U.S.C. 1605–1606. While not intending to depart unnecessarily from the UFOC Guidelines, the Commission believes that this reference is potentially confusing, because the TILA likely does not apply to transactions within the scope of the amended Rule. Nevertheless, franchisors can look to TILA and to the Consumer Leasing Act for guidance in crafting their disclosures under Item 10. The Commission anticipates that staff Compliance Guides will illuminate this topic further.

[470] It is worth noting that interest rates or finance charges may fluctuate between the time when the prospective purchaser receives the disclosure document and the time when he or she actually executes the financing agreement. Section 436.5(j)(1)(iv) requires disclosure of what the rate of interest, plus finance charges, expressed on an annual basis, was on a specified recent date. In situations where the rate may change during the life of the loan, disclosure of this fact would be required under the catch-all requirement of section 436.5(j)(x), which calls for disclosure of "other material financing terms." Of course, Item 22—section 436.5(v)—requires that any financing agreement be attached to the disclosure document, and the Item 10 disclosures merely summarize key terms.

[471] The introduction to UFOC Item 10 makes clear that franchisors are permitted to provide this information in summary table format, and Appendix A to the final amended Rule offers a sample table.

[472] H&H, NPR 9, at 18.

[473] Gurnick, NPR 21, at 6–7.

[474] The Commission will ensure that the Compliance Guides reiterate the point made here: nothing in Item 10 restricts the parties' ability to negotiate over financing terms.

[475] *See* 16 CFR 436.1(a)(17) and (18). The offer of business assistance is one of the hallmarks of a franchise system. In the original SBP, the Commission stated that promises of assistance made to induce prospective franchisees to purchase a franchise are material, especially to those prospects with "little or no experience at running a business." Original SBP, 43 FR at 59676–77.

[476] *See* UFOC Guidelines, Item 11.

[477] Our law enforcement experience demonstrates that misrepresentation about the level of support and assistance is one of the most common problems in franchise cases. *See* Staff Program Review, at 24–26 (next to earnings claims, support problems are the second most frequent issue raised by franchisee complainants). *E.g.*, *FTC v. Car Wash Guys Int'l, Inc.*, No. 00–8197 ABC (RNBx) (C.D. Cal. 2000); *FTC v. Indep. Travel Agencies of Am., Inc.*, No. 95–6137–CIV Gonzalez (S.D. Fla. 1995); *FTC v. Sage Seminars, Inc.*, No. C–95–2854–SBA (N.D. Cal. 1995); *FTC v. Skaife*, Bus. Franchise Guide (CCH) ¶ 9555 (C.D. Cal. 1990).

Indeed, misrepresentations about support and assistance continue to be a source of numerous franchisee complaints. For example, one franchisee-commenter reported that her outlet failed, in part, because the franchisor did not adhere to its own criteria in selecting a store. Based upon her experience, she asserted that it is very important to have full disclosure on site selection criteria. Lundquist, ANPR, 22Aug. 97 Tr., at 45. *See also* Dady & Garner, ANPR 127, at 4; Mousey, ANPR, 29 July 97 Tr., at 4–7.

[478] *See, e.g.*, *FTC v. Car Checkers of Am., Inc.*, No. 93–623 (mlp) (D.N.J. 1993) (misrepresenting that advertising expenses would be minimal or low); *United States v. Fed. Energy Sys., Inc.*, Bus. Franchise Guide (CCH) ¶ 8180 (C.D. Cal. 1984) (misrepresenting extent of company advertising assistance); *United States v. Ferrara Foods, Inc.*, Bus. Franchise Guide (CCH) ¶ 7926 (W.D. Mo. 1983) (misrepresenting availability of national media advertising). The issue of advertising funds continues to generate concerns on the part of franchisees and their advocates. *E.g.*, Brown, ANPR 4, at 3 (favoring restrictions on franchisor's unreasonable use of advertising funds); Manuszak, ANPR 13 (franchisor refuses to account for use of franchisees' advertising funds); Weaver, ANPR 17 (no discretion on use of advertising funds); Rachide, ANPR 32 (mismanagement of advertising funds); Colenda, ANPR 71 (alleging inappropriate use of advertising payments); Zarco & Pardo, ANPR 134, at 5 ("A franchisor should be required to disclose the extent of its veto power over the allocation of

Continued

Section 436.5(k) also addresses major technological changes in franchising since the original Rule was promulgated in 1978. Based upon UFOC Item 11, this provision requires material disclosure about the required use of computers and electronic cash registers.[479] For example, it requires franchisors to disclose whether they will have independent access to information and data stored on electronic cash register systems or software programs that the franchisee is required to use or buy.[480]

Item 11, as proposed in the Franchise NPR, would have adopted the UFOC Guidelines requirement that franchisors identify each piece of hardware and software by brand, type, and principal function, or to identify compatible equivalents and whether they have been approved by the franchisor.[481] The computer system disclosure was the only Item 11 issue that generated significant comment during the Rule amendment proceeding. Several comments asserted that the UFOC Guidelines Item 11 computer system disclosures are burdensome, not helpful to prospective franchisees, and are unnecessary because the costs associated with purchasing computers and related equipment are already disclosed in Items 5, 7, and 8.[482] Marriott, for example, explained that its Item 11 computer usage disclosure ''results in four to five pages of disclosure in each of Marriott's offering circulars yet provides little or no benefit to franchisees.''[483] In addition, one franchisor representative noted that many start-up franchisors are ''not certain which computer system or software they expect to have the franchisees use. Provision should be made for these new franchisors.''[484]

The Commission believes that Item 11's computer systems disclosures, which track the UFOC Guidelines' disclosures, serve a useful purpose. There is no question that the costs a franchisee must incur to purchase or lease computer and related equipment or software, as well as any continuing maintenance or upgrade obligations and their associated costs, comprise information that is material to the prospective franchisee's purchasing decision. Information about whether the franchisor will have access to information stored on the franchisee's computers or electronic cash registers also is material, because such access very likely would be a key component of the relationship between the franchisor and franchisee. As noted throughout this document, the Commission is convinced that additional disclosures are warranted where they will likely prevent deception about the nature of the franchise relationship a prospective franchisee is deciding to enter.

Nonetheless, the computer usage disclosures as set forth in the UFOC Guidelines appear to go beyond what is material in some instances and likely would impose unwarranted compliance burdens. Specifically, we are disinclined to require a franchisor to identify each and every piece of hardware and software by brand, type, and principal function, or to identify compatible equivalents and whether they have been approved by the franchisor. We agree with the Franchise NPR commenters who observed that some franchisors (start-up franchisors in particular) may not have decided upon specific systems at the time of sale or, even if they did, that the technology very likely will change over the course of the franchise agreement. Thus, the compliance burden to prepare component-specific disclosures would not likely outweigh any tangible benefits to prospective franchisees.[485] We are persuaded that it is sufficient for franchisors to describe generally the computer systems to be used, if any; any required purchase and maintenance costs and obligations; and whether the franchisor will have access to information contained in those systems. This information not only will enable prospects to weigh the costs and benefits of purchasing a specific franchise, but will better enable prospects to learn if they will be at a technological disadvantage compared to other franchise systems in the industry.

On the other hand, one franchisee advocate, Howard Bundy, firmly defended the materiality and usefulness of detailed itemized disclosures about required computer systems. Specifically, Mr. Bundy voiced concern about franchisors that require franchisees to use proprietary technology that the franchisor has developed or plans to develop. Mr. Bundy asserted that this may negatively impact upon franchisees' ability to fix flaws in software, for example. He contended that prospective franchisees should have the right to know whether they can use ''off-the-shelf'' products, and whether software can interface with common systems such as Microsoft Office or Outlook. Similarly, they should know whether accounting software complies with IRS standards or if they will get periodic updates.[486]

Mr. Bundy's concern about the potential limitations of franchisor-developed software has merit. However, we believe the final amended Rule already addresses this issue. As noted above, section 436.5(k) requires franchisors to ''describe the systems (which includes hardware and software components) generally in non-technical language, including the types of data to be generated or stored in these systems.'' Thus, the ''general description'' requirement is broad enough to cover proprietary systems that can be obtained only from the franchisor. Moreover, section 436.5(k) will require the franchisor to disclose any obligation to provide ongoing maintenance, repair, upgrades, or updates. Taken together, these provisions are sufficient to capture instances where franchisors require the use of their own software.

Finally, we note that in response to the Staff Report, Gust Rosenfeld raised a technical point about the Item 11 disclosure of the franchisor's operating manual. The firm noted that, under the UFOC Guidelines, franchisors must include the Table of Contents of the operating manual in the disclosure

any franchisee-generated funds, such as advertising cooperatives.'').

[479] In response to the ANPR, a few commenters voiced concerns about obligations to purchase computers or related equipment. *E.g.*, Fetzer, ANPR, 19 Sept. 97 Tr., at 42 (needed to purchase a computer converter, an additional $7,000 expense); Rafizadeh, ANPR, 7 Nov. 97 Tr., at 292 (GNC unilaterally forcing franchisees to pay a new $80 monthly maintenance fee on computer equipment purchased from GNC).

[480] *See* NCA 7-Eleven Franchisees, ANPR 113, at 2 (noting 7-Eleven's use of ''point-of-sale'' cash registers, which enable headquarters to monitor sales).

[481] Franchise NPR, 64 FR at 57338.

[482] Baer, NPR 11, at 13; J&G, NPR 32, at 11.

[483] Marriott, NPR 35, at 15–16.

[484] Kestenbaum, ANPR 40, at 2. In response to the Franchise NPR—which proposed adopting the UFOC Item 11's detailed computer systems disclosures—H&H suggested that a franchisor should be required to disclose the specifications of any mandatory computer system to the extent known or available, observing that start-up franchisors may not have identified software systems before they start franchising. The firm suggested that a franchisor should be permitted to satisfy the Item 11 requirements by disclosing that specifications are not known or available. H&H, NPR 9, at 23. *Cf.* Bundy, NPR 18, at 9 (suggesting that a start-up franchisor disclose some guidelines it will follow in selecting a computer system). We agree. Accordingly, the Commission intends that, for start-up franchisors, the computer system disclosures of Item 11 should be read to allow flexibility: a start-up franchisor may indicate that computer requirements are yet unknown, or otherwise state its policy concerning computer usage, as is warranted. As Mr. Bundy noted, the lack of selected computer systems by the franchisor itself reveals material information: that the franchisor is not yet computerized, which may ''plac[e] the franchisee at a disadvantage in many, if not most industries.'' Bundy, NPR 18, at 9.

[485] *See* Staff Report, at 137–38. It is noteworthy that NASAA has not opposed this substantive revision to Item 11 of the UFOC Guidelines.

[486] Bundy, at 6–7.

document, unless ''the prospective franchisee views the manual before purchase of the franchise.''[487] The firm asserted that the Staff Report erred in recommending that the alternative to providing the Table of Contents be revised to permit a franchisor to ''offer a prospective franchisee the opportunity to review the manual before buying the franchise.''

The Commission believes the Staff Report is correct. As a practical matter, we question how it could be proven that a prospective franchisee actually reviewed a manual. Even if a franchisor had a prospective franchisee initial each page of a manual, there is no assurance that the prospect actually ''reviewed'' the manual. For that reason, at most we can require a franchisor to afford a prospective franchisee *the opportunity* to review the manual. At the same time, we stress that the ''opportunity to review'' a manual must be a reasonable one. A franchisor would not satisfy its disclosure obligation if, for example, it offered to show the manual to a prospect only if the prospect agreed to fly across country to the franchisor's corporate headquarters. In that regard, the opportunity to review a manual means that the franchisor must show the manual to the prospect (for example in person or online) and permit the prospect sufficient time to review it.

14. Section 436.5(l) (Item 12): Territory

Section 436.5(l) of the final amended Rule retains the original Rule's disclosures concerning exclusive territories and sales restrictions.[488] Like the proposed Rule published in the Franchise NPR, the final amended Rule is closely modeled on the UFOC Guidelines. It therefore expands the original Rule's disclosure requirements regarding territories in several respects. These new disclosure requirements cover: (1) the conditions, if any, under which a franchisor will approve the relocation of the franchisee's business and the franchisee's establishment of additional outlets; (2) any present plans on the part of the franchisor to operate a competing franchise system offering similar goods or services; and (3) in instances when a franchisor does not offer an exclusive territory, a prescribed warning about the consequences of purchasing a non-exclusive territory. In response to some comments, the Commission also has decided to make additional modifications to the text of Item 12 in order to update both the original Rule and the UFOC Guidelines to address new technologies and market developments, such as the Internet and alternative channels for distributing a franchisor's goods.[489]

The Item 12 territory disclosures generated several comments. First, franchisees and their advocates urged the Commission to address ''encroachment,'' the practice by which a franchisor essentially competes with its franchisees by establishing franchisor-owned or new franchised-outlets in the same market territory, by purchasing and operating a competing franchise system, or by selling the same goods or services through alternative channels of distribution. Second, other commenters questioned the scope of Item 12, urging the Commission to require franchisors to disclose more information about their past expansion practices, as well as future expansion plans. Third, some commenters questioned the terminology used to describe territories, urging the Commission to avoid implying that a protected territory is inherent in the concept of franchising. Finally, several commenters offered different views on the form of warning that might be appropriate where a franchisor sells franchises without an exclusive territory. Each of these issues is discussed below.

a. Encroachment

Throughout the Rule amendment proceeding, franchisees and their advocates urged the Commission to address ''encroachment.''[490] The commenters contended that encroachment may have a devastating effect upon an individual franchisee who does not have a contractually protected exclusive territory,[491] and some urged the Commission to ban encroachment as ''an abusive and unfair'' trade practice under Section 5 of the FTC Act.[492]

The Commission's view is that the granting of a protected territory is fundamentally a private contractual matter for the parties to determine for themselves.[493] While the record establishes franchisees' concerns about encroachment, it falls far short of supporting a conclusion that not granting a protected territory in a franchise agreement constitutes an unfair practice within the meaning of the FTC Act. Nor does the record support a conclusion that a franchisor's expansion where there are existing franchisees is an unfair practice.

Section 5(n) of the FTC Act provides that an ''unfair'' practice is one that ''causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.'' While the record suggests that some franchisees in several franchise systems may have been harmed by franchisor encroachment, the record leaves open the question whether encroachment is prevalent and whether the injury resulting from encroachment is substantial, when viewed from the standpoint of the franchising industry as

[487] Gust Rosenfeld, at 5 (*citing* UFOC Guidelines, Item 11, at B. vii.).

[488] *See* 16 CFR 436.1(a)(13). In the original SBP, the Commission recognized that sales restrictions and limited territories affect a franchisee's ability to conduct business and are, therefore, material. Original SBP, 43 FR at 59662. *See, e.g., FTC v. Am. Legal Distrib., Inc.*, Bus. Franchise Guide (CCH) [1987–1989 Transfer Binder] ¶ 9090 (N.D. Ga. 1988); *United States v. C.D. Control Tech. Inc.*, Bus. Franchise Guide (CCH), ¶ 9851 (E.D.N.Y. 1985); *United States v. Fed. Energy Sys, Inc.*, Bus. Franchise Guide (CCH) [1983–85 Transfer Binder] ¶ 8180 (C.D. Cal. 1984); *FTC v. Nat'l Bus. Consultants, Inc.*, Bus. Franchise Guide (CCH) ¶ 9365 (E.D. La. 1989). *Cf. FTC v. Vendors Fin. Serv., Inc.*, No. 98–N–1832 (D. Colo. 1998); *FTC v. Int'l Computer Concepts, Inc.*, No. 1:94cv1678 (N.D. Ohio 1994); *FTC v. O'Rourke*, Bus. Franchise Guide (CCH) ¶ 10243; *FTC v. Am. Safe Mktg., Inc.*, Bus. Franchise Guide (CCH) ¶ 9350 (N.D. Ga. 1989).

[489] Specifically, Item 12 of the final amended Rule extends the original Rule by providing a prospective franchisee with material information about competition not only through outlets within the prospective franchisee's intended location, but through alternative channels of distribution, such as the Internet, catalog sales, telemarketing, and direct marketing. In the same vein, it addresses any restrictions on a franchisee's ability to conduct business outside of his or her territory through traditional sales and alternative channels of distribution. The Staff Report recommended this modification to the proposed Rule. Staff Report, at 144–45. *See* PRM&W, NPR 4, at 11 (supporting need to update the original Rule to address new technologies and marketing practices).

[490] *E.g.*, Brown, ANPR 4, at 2; Packer, ANPR 10; Manuszak, ANPR 13; Donafin, ANPR 14; Weaver, ANPR 17; Rachide, ANPR 32, at 3; AFA, ANPR 62, at 1; Orzano, ANPR 73; Buckley, ANPR 97, at 3; Marks, ANPR 107, at 2; Zarco & Pardo, ANPR 134, at 2.

[491] For example, Laurie Gaither, an owner of a GNC franchise, reported that the company opened a franchisor-owned outlet in a mall within two miles from her store. She claimed that this development has reduced her profits by 50%. L. Gaither, ANPR 68.

[492] *E.g.*, AFA, ANPR 62, at 1 (putting up a new outlet to compete with an existing franchisee is an unfair trade practice); Bell, ANPR 30 (FTC needs to prohibit franchisors from devaluing assets through encroachment); Rachide, ANPR 32 (encroachment among practices that FTC should prohibit); Marks, ANPR 107 (FTC should consider prohibiting franchisor encroachment, unless franchisee compensated).

[493] Absent an express grant of a protected territory, a franchisor is generally free to establish as many outlets (franchisor-owned or franchised) in any particular market as it wishes. A few state courts (or federal courts applying state law), however, have held that encroachment violates state implied covenants of good faith and fair dealing. *See, e.g., In re Vylene Enterprises, Inc.*, 90 F.3d 1472 (9th Cir. 1996).

a whole,[494] not just from a few franchise systems.[495] Second, assuming a regulatory regime of full and truthful pre-sale disclosure on the issue of territories, prospective franchisees can avoid potential harm from encroachment by shopping for a franchise opportunity that offers an exclusive territory. Finally, the record does not support a finding that harm to franchisees resulting from encroachment necessarily outweighs potential benefits (expansion of markets and increased consumer choice) to consumers or to competition. For these reasons, the Commission has determined that the criteria for an industry-wide prohibition on encroachment has not been met. Thus, the Commission declines to mandate specific contractual terms regarding territories.

b. Scope of the Item 12 disclosures

A few commenters urged the Commission to require franchisors to disclose more information about their past practices with regard to expansion into franchisees' areas or their future plans to do so.[496] For example, Andrew Selden, a franchisee representative, suggested that ''Item 12 should be elaborated to require full disclosure of past practice, current intention or future possibility of franchisor-sponsored competitive activities that have the prospect of impacting the franchisee's business.''[497]

Franchisors addressing current development plans uniformly opposed any disclosure. H&H's comment is typical. Most franchisors consider current development plans to be proprietary information ''that would place them at a competitive disadvantage if they were to be made publicly available.''[498] The firm also stressed that franchisors need flexibility to adapt development plans to market realities. ''Disclosure of development plans could lead to possible claims by franchisees who anticipated greater or lesser franchise development in a particular area.''[499]

Based on review of the record as a whole, the Commission has determined that requiring disclosure of past and planned future expansion is unwarranted. With respect to past expansion, prospective franchisees arguably can discover such information on their own by directly observing the number and location of outlets in their community and by speaking with current and former franchisees. Moreover, past practices are not necessarily a predictor of future intent. It is also unreasonable to require franchisors to disclose hypothetical possibilities about their future expansion. Indeed, by not granting an exclusive territory, the franchisor has effectively reserved to itself the unrestricted right to expand into new or existing locations or to sell its products or services via alternative channels of distribution.

The UFOC Guidelines require a franchisor to disclose only if the franchisor ''may establish'' other outlets in the area; it does not require the franchisor to disclose its specific plans for the franchisee's territory. Franchisors need to elaborate on their expansion plans only if they have ''present plans to operate or franchise a business under a *different trademark* and that business sells goods or services similar to those to be offered by the franchisee.''[500] Moreover, the Commission is inclined to the view that a franchisor's development plan is proprietary information that a franchisor should not be required to make public.[501] It could also subject franchisors to future liability for fraud or misrepresentation should the franchisor alter, abandon, or delay its stated expansion plans. Further, requiring a franchisor to disclose plans to develop a territory may be costly and burdensome because the franchisor conceivably would have to prepare multiple Item 12 disclosures to focus on each franchise location. The disclosures already contained in Item 12 are sufficient to warn prospects about likely competition because any prospective franchisee who buys a franchise without any protected territory is essentially taking the risk that the franchisor will further develop the market area. For these reasons, we have determined not to deviate from the UFOC Guidelines on this point.

c. Terminology

The final amended Rule fine-tunes the terminology and organization of Item 12. As proposed in the Franchise NPR, Item 12 would have required that franchisors disclose information ''concerning the franchisee's market area with or without an exclusive territory.'' It also referred to the franchisee's ''defined area.''[502] Several commenters raised concerns about the use of these terms.

First, BI opposed the use of the term ''exclusive territory'' in the Franchise NPR, urging the Commission to use the term ''protected territory'' instead. It asserted that the term ''protected territory'' is more descriptive of a franchisee's typical contractual rights regarding its territory, if any.[503] Similarly, the firm opposed the use of the term franchisee's ''market area.'' It maintained that the term ''market area'' is undefined and imprecise. BI advocated use of the term ''location.''[504]

The NFC agreed, asserting that the term ''market area'' is a ''charged word.''[505] According to the NFC, under franchisee agreements, franchisees have, at most, a right only to a specified location or narrowly defined geographic area. Use of the term ''market area'' may advance the false notion that the grant of a franchise inherently ''confers upon a franchisee exclusive rights within the franchisee's economic 'market area,' despite the terms of the subject franchise agreement.''[506] Similarly, the NFC opposed the use of the term ''defined area.'' In its view, the appropriate term should be ''limited protected territory,'' noting that an area is almost never granted unconditionally by a franchisor. The NFC advised that by using the phrase ''limited protected territory'' in lieu of ''defined area,'' the Commission could ''actually reduce the misconception which otherwise may be engendered in the minds of prospective franchisees over what territorial protections, if any, they can expect to receive.''[507]

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[494] As discussed above in the overview of the final rule above (section I.D. of this document), the Commission has voiced concern that government-mandated contractual terms may result in affirmative harm to consumer welfare. Accordingly, the Commission has authorized staff to file a number of advocacy comments recommending against proposed state bills that would have unduly limited manufacturers in managing their distribution systems, such as by requiring exclusive territories.

[495] *See* Staff Program Review, at 59.

[496] One commenter in the Rule amendment proceeding advocated broadening the scope of the Rule to require more expanded disclosures covering competition by affiliates, the franchisor's officers, and franchise sellers. Bundy, NPR 18, at 9. In the absence of persuasive record evidence that competition by franchisor officers or sellers is a prevalent problem, however, the Commission has determined not to deviate from the UFOC Guidelines on this issue.

[497] Selden, ANPR 133, Appendix B. *See also* Dady & Garner, ANPR 127, at 4 (''Explicit statements about the nature and extent of protection against same-brand competition that will or will not be provided is essential to an informed buying decision.'').

[498] H&H, NPR 9, at 23.

[499] *Id. See also* Wendy's, NPR 5, at 2; Baer, NPR 11, at 13 ; Lewis, NPR 15, at 15; BI, NPR 28, at 11; J&G, NPR 32, at 12; GPM, NPR Rebuttal 40, at 6.

[500] UFOC Item 12C (emphasis added).

[501] *E.g.*, Wendy's, NPR 5, at 2.

[502] Franchise NPR, 64 FR at 57339.

[503] BI, NPR 28, at 6 (''[E]xclusive . . . is ambiguous and often misleading.'').

[504] *Id.*

[505] NFC, NPR 12, at 19.

[506] NFC, NPR 12, at 19. *See also* J&G, NPR 32, at 12.

[507] *Id. See also* J&G, NPR 32, at 12.

The Commission agrees that terms such as ''market area'' and ''defined area'' are potentially misleading. Such terms inaccurately imply an inherent right to a territory, where, in fact, the right to a territory, protected or otherwise, is purely a matter of contract. Accordingly, we believe the term ''exclusive territory''—as used in the UFOC Guidelines[508]—is more precise. While the term ''exclusive territory'' is, perhaps, not as ''descriptive'' as the terms ''protected area,'' or ''limited protected territory,'' its use is clarified for prospective franchisees through the disclosures set forth in paragraphs (5) and (6) of section 436.5(l). Accordingly, in the absence of a stronger showing that alternatives to ''exclusive territory'' are more accurate, the Commission has determined to revise Item 12 to adhere more closely to the UFOC Guidelines on this point, as recommended in the Staff Report.[509] Thus, the final amended Rule substitutes the words ''location'' or ''exclusive territory'' for ''market area,'' ''area,'' and ''defined'' area, as appropriate.

d. Warning

Item 12 of the final amended Rule fine-tunes and expands slightly the standard warning proposed in the Franchise NPR that is required in those instances when franchisors do not offer exclusive territories: ''You will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control.''[510]

Given the potential financial risks associated with a non-exclusive territory, the Commission believes that franchisors who do not offer an exclusive territory should warn prospective franchisees about such possible risks.[511] The Commission generally disfavors the use of warnings that merely repeat what is already expressly stated in the franchise agreement, but believes that a specific warning regarding exclusive territories is warranted in light of the volume and persuasiveness of franchisee complaints regarding territory issues.[512] As noted previously, the Commission is convinced that additional disclosures are warranted where they will likely prevent deception about the nature of the franchise relationship.

15. Section 436.5(m) (Item 13): Trademarks

The original Rule required a franchisor to list the trademark identifying the goods or service to be sold by the prospective franchisee.[513] Consistent with the UFOC Guidelines, section 436.5(m) of the final amended Rule requires franchisors to disclose whether the trademark is registered with the United States Patent & Trademark Office; the existence of any pending litigation, settlements, agreements, or superior rights that may limit the franchisee's use of the trademark; and any contractual obligations to protect the franchisee's right to use the mark against claims of infringement or unfair competition.

These expanded disclosures are consistent with the Commission's long-standing policy of requiring franchisors to disclose the material costs and benefits of the franchise sale. One of the principal reasons that one may wish to purchase a franchise—as opposed to starting one's own business—is the right to use the franchisor's mark, which presumably creates an instant market for the franchisees' goods or services.[514] For that reason, trademark usage is one of three definitional elements of the term franchise. Any pending litigation, settlement restrictions, or other potential limitations on the use of the trademark are material because they will necessarily affect the value of the trademark to a prospective franchisee and ultimately may impact the franchisee's ability to continue operating the business.

Item 13 generated little comment. Howard Bundy suggested that franchisors should disclose not only pending trademark litigation, but all such litigation in the last 10 years.[515] The Commission declines to adopt this suggestion. The fact that the franchisor may have been involved in a trademark dispute a decade ago is not inherently material.[516] What influences a decision to purchase a franchise is whether there are any *current* restrictions or disputes over the trademark license. Obviously, any existing trademark restrictions or challenges not only may decrease the value of the mark and the goodwill associated with it, but may increase franchisees' costs if they must switch to a different mark. Accordingly, we decline to deviate from the UFOC Guidelines by requiring more extensive disclosures on this point.

The Commission has determined to adopt staff's recommendation to adhere more closely to the UFOC Guidelines on Item 13 than did the proposed Rule on two points. First, the Franchise NPR proposed that franchisors disclose how any infringement, opposition, or cancellation proceeding ''affects the franchised business.''[517] This is unnecessarily inconsistent with the wording of the UFOC Guidelines, which state: ''affects the ownership, use, or licensing'' of the trademark.[518]

Second, the Franchise NPR included a footnote addressing the use of summary opinions of counsel: ''Franchisors may include a summary opinion of counsel concerning any action if a consent to use the summary opinion is included as part of the disclosure document.''[519] The footnote, however, did not address the discretionary use of a full opinion letter, nor the need to attach the full opinion letter if a summary is used. On this point, the UFOC Guidelines state:

> the franchisor may include an

[508] *See*, *e.g.*, UFOC Item 12 (''Describe any exclusive territory granted the franchisee. Concerning the franchisee's location (with or without exclusive territory, disclose . . .''). *See also* NASAA Comparison at Item 12.

[509] In response to the Staff Report, no commenters raised any concerns about the recommended choice of terminology used in Item 12.

[510] This language, with minor editing, was suggested by PMR&W, which observed that the proposed version of the warning focused only on sales from outlets. PMR&W argued convincingly that such a warning could be misleading because it fails to take into consideration competition from other sources, such as the Internet, direct mail, and mail order. PMR&W, NPR 4, at 11. *See also* J&G, NPR 32, at 12; IL AG, NPR Rebuttal 38, at 3.

[511] Indeed, several franchisee advocates urged the Commission to strengthen the existing UFOC Guidelines' encroachment risk factor. For example, Robert Zarco suggested that franchisors be required to state:

> ''The company reserves the right to increase the number of franchised or company-owned units in an area. In the past, we have been known to put another outlet in close proximity to an existing unit. This action generally has a negative impact on the gross and/or net sales of the pre-existing unit.''

Zarco & Pardo, ANPR 134, at 2. *See also* Dady & Garner, ANPR 127, at 3 (suggesting: ''You have no protected area. Your franchisor, without any compensation to you, may place another store in a location that may completely erode your profitability.'').

[512] *E.g.*, Brown, ANPR 4, at 2; Parker, ANPR 10; Manusak, ANPR 13, at 1; Donaphin, ANPR 14; Weaver, ANPR 17; Rachide, ANPR 32, at 3; AFA, ANPR 62, at 1; L. Gaither, ANPR 68; Orzano, ANPR 73, at 1; Buckely, ANPR 97, at 3; Marks, ANPR 107, at 2; Zarco & Pardo, ANPR 134, at 2; Vidulich, 22 Aug. 97 Tr., at 17; Christiano, 19 Sept. 97 Tr., at 50; Bundy, 6 Nov. 97 Tr., at 135; Cordell, 6 Nov. 97 Tr., at 136; Kezios, 6 Nov. 97 Tr., at 142. *See also FTC v. Fax Corp. of Am., Inc.*, No. 90–983 (D. N.J. 1990); *FTC v. Nat'l Bus. Consultants, Inc.*, No. 89–1740 (E.D. La.1989); *FTC v. Am. Legal Distrib., Inc.*, No. 1:89–CV–462–RLV (N.D. Ga. 1989).

[513] *See* 16 CFR 436.1(a)(1)(iii).

[514] In the original SBP, for example, the Commission noted that a key feature of franchising is the right to use the franchisor's trademark. Original SBP, 43 FR at 59623.

[515] Bundy, NPR 18, at 9.

[516] On this issue, the UFOC Guidelines specifically note that a franchisor need not disclose historical challenges to registrations of trademarks that were resolved in the franchisor's favor. UFOC Guidelines, Item 13B Instructions, iv.

[517] Franchise NPR, 64 FR at 57339.

[518] *See* NASAA Comparison, at 17.

[519] Franchise NPR, 64 FR at 57339.

> attorney's opinion relative to the merits of litigation or of an action if the attorney issuing the opinion consents to its use. The text of the disclosure may include a summary of the opinion if the full opinion is attached and the attorney issuing the opinion consents to the use of the summary.[520]

The Commission adopts the UFOC Guidelines language in both instances.

In addition, the final amended Rule improves on the clarity and precision of the proposed Rule's standard disclosure required when the franchisor's trademark is not registered on the Principal Register of the United States Patent and Trademark Office. The proposed disclosure reads as follows: ''If the trademark is not registered on the Principal Register of the U.S. Patent and Trademark Office, state: 'By not having a Principal Register federal registration for [name or description of symbol], [name of franchisor] does not have certain presumptive legal rights granted by a registration.'''[521]

The final amended Rule's disclosure is:

> We do not have a federal registration for our principal trademark. Therefore, our trademark does not have as many legal benefits and rights as a federally registered trademark. If our right to use the trademark is challenged, you may have to change to an alternative trademark, which may increase your expenses.[522]

16. Section 436.5(n) (Item 14): Patents, copyrights, and proprietary information

Section 436.5(n) of the final amended Rule adopts the UFOC Guidelines' requirement for disclosure of information about the franchisor's intellectual property. There is no comparable provision in the original Rule. Item 14 elicited no comment during the amendment proceeding.

Item 14 requires franchisors to describe in general terms the types of intellectual property involved in the franchise and any legal proceedings, settlements, and restrictions that may impact the franchisee's ability to use such property.[523] If counsel permits, Item 14 allows a franchisor to include a counsel's opinion or a summary of the opinion about legal actions, if the full opinion is attached.[524]

The final amended Rule differs from the Franchise NPR proposal, however, in several non-substantive respects to add precision and improve organization of the provision. Specifically, Item 14 of the final amended Rule separates those disclosures pertaining to patents from those pertaining to patent applications. At the same time, it also groups closely related disclosures—those for patents, patent applications, and copyrights—under a single common direction. For example, section 436.5(n)(1) of the Franchise NPR stated: ''For each patent or copyright: (i) *Describe* the patent or copyright and its relationship to the franchisee; (ii) *State* the duration of the patent of copyright.'' Section 436.5(n)(1) of the final amended Rule simplifies this language by eliminating the use of multiple directions. Instead, it says: ''(1) Disclose whether the franchisor owns rights in, or licenses to, patents or copyrights that are material to the franchise. Also, disclose whether the franchisor has any pending patent applications that are material to the franchise. If so, *state* . . .'' followed by the specific disclosure requirement for patents, patent applications, and copyrights.

Similarly, section 436.5(n)(1), as proposed in the Franchise NPR, referred to the ''issue date.'' The final amended Rule instead uses the correct language: ''issuance date.'' In the same vein, Item 14 of the final amended Rule corrects imprecise language that would have required the disclose of material determinations pending in ''the U.S. Patent and Trademark Office or the U.S. Court of Appeals for the Federal Circuit.'' In fact, patent and copyright determinations can be made in courts other than the U.S. Court of Appeals for the Federal Circuit, as noted in other sections of Item 14 (''Describe any current material determination of the United States Patent and Trademark Office, the United States Copyright office, or a court regarding the patent or copyright.''). The language now reads more broadly ''pending in the United States Patent and Trademark Office or any court.''

Finally, Item 14, as proposed in the Franchise NPR, would have required franchisors to disclose the ''length of time of any infringement.'' However, it is possible that a franchisor may not know how long a third party has been infringing its rights. Accordingly, Item 14 of the final amended Rule adds the qualifying phrase ''to the extent known.''

17. Section 436.5(o) (Item 15): Obligation to participate in the actual operation of the franchise business

Section 436.5(o) of the final amended Rule retains the original Rule requirement that franchisors disclose whether franchisees are required to participate personally in the direct operation of the franchise.[525] Like the corresponding provision in the Franchise NPR's proposed rule, this section of the final amended Rule closely tracks the UFOC Guidelines' Item 15. It therefore expands the original Rule on this point by requiring franchisors to disclose: (1) participation obligations arising not only from the parties' franchise agreement, but from other agreements or as a matter of practice; (2) whether direct participation is recommended; and (3) any limitations on whom the franchisee can hire as a supervisor and any restrictions that the franchisee must place on his or her manager. If the franchisee operates as a business entity, the franchisor must also disclose the amount of equity interest, if any, that the supervisor must have in the franchise.

Item 15 generated little comment. In response to the Staff Report, NASAA and Washington Securities noted an inconsistency between the proposed final amended Rule and the UFOC Guidelines on the disclosure of whom a franchisee may hire as an on-premises supervisor and that person's training. Whereas the UFOC Guidelines provide that these disclosures pertain to all franchisees, the Franchise NPR suggested that these disclosures should be limited to franchisees who are individuals, but not to business entities.[526] We agree with the commenters that the Franchise NPR's proposed limitation was based upon an erroneous reading of the UFOC

[520] UFOC Guidelines, Item 13B Instructions, v.

[521] Franchise NPR, 64 FR at 57339.

[522] Arguing that many prospective franchisees would not understand the standard disclosure prescribed in the Franchise NPR's proposed Rule—particularly the phrase ''presumptive legal rights''—the Staff Report recommended that the Commission simplify it. The simplified version recommended by staff, however, was criticized by two commenters on the ground that it was not entirely accurate from a legal standpoint. Gust Rosenfeld, at 6; Piper Rudnick, at 2. The version adopted here corrects the problems pointed out by these commenters.

[523] Restrictions on the use of the franchisor's intellectual property are material because they not only may seriously diminish the value of the franchise, but could undermine the franchisee's ability to operate the business. Item 14 also may improve the relationship between franchisors and franchisees by preventing any misunderstanding about the value or use of the franchisors' intellectual property.

[524] *See* NASAA Comparison, at 20.

[525] *See* 16 CFR 436.1(a)(14). In the original SBP, the Commission noted that the degree of personal participation required of a franchisee is a material fact in the franchise relationship. Accordingly, the omission of such information is an unfair or deceptive practice in violation of Section 5. Original SBP, 43 FR at 59663.

[526] NASAA, at 5; WA Securities, at 3–4.

Guidelines, and the final amended Rule makes the appropriate correction.

NASAA also urged the Commission to consider expanding Item 15 to include the disclosure of ''operating hours and the method used by franchisors to notify franchisees of changes in required operating hours.''[527] The Commission, however, declines to adopt this suggestion. While this information might be useful for prospective franchisees, it does not rise to the level of materiality such that non-disclosure of it may put prospective franchisees in jeopardy of being deceived. Moreover, no other commenter raised this point, and in the absence of a record dictating that we deviate from the UFOC Guidelines, the Commission is reluctant to do so.

Finally, NASAA and Washington Securities recommended that the Commission require franchisors to disclose in Item 15 all agreements regarding the franchise that apply to the owners of the franchise.[528] While this suggestion is rooted in the NASAA Commentary on the UFOC Guidelines, nothing in Item 15 of the UFOC Guidelines says that franchisors must present copies of the actual agreements to prospective franchisees. The Commission believes such a requirement would be duplicative and burdensome. Franchisors already must include in Item 22 copies of ''all agreements proposed for use or in use . . . regarding the offering of a franchise, including the franchise agreement, leases, options, and purchase agreements.'' Presumably, contracts with franchise owners would already be disclosed in Item 22. Thus, this suggested modification is unnecessary.

18. Section 436.5(p) (Item 16): Sales restrictions

Section 436.5(p) of part 436 retains the original Rule's disclosures on sales restrictions. Like other disclosure requirements addressing how a franchisee may conduct business, this provision requires franchisors to disclose any restrictions limiting the goods or services that the franchisee may offer for sale or the customers to whom a franchisee may sell goods or services.[529] Consistent with UFOC Guidelines, Item 16 also extends the original Rule disclosures by requiring a franchisor to disclose whether the franchisor has the right to change the types of goods or services authorized for sale, as well as any limits on the franchisor's right to make such changes. These disclosures better enable a prospective franchisee to understand the extent to which the franchisor has the contractual right to control sales, which may directly affect the prospect's ability to conduct business, its independence from the franchisor, and ultimately, its profitability. No comments were submitted on the Item 16 sales restrictions disclosures, and the adopted version is almost identical to the version proposed in the Franchise NPR.[530]

19. Section 436.5(q) (Item 17): Renewal, termination, transfer, and dispute resolution

Section 436.5(q) adopts UFOC Item 17, which requires franchisors to summarize in tabular form 23 enumerated terms and conditions of a typical franchise relationship, such as the duration of the franchise agreement, rights and obligations upon expiration of the franchise agreement, post-term covenants not to compete, and assignment and transfer rights. The final amended Rule provision is almost identical to the proposed rule in the Franchise NPR, with only a slight modification, described below, with respect to the treatment of the term ''renewal.''

The approach taken in the final amended Rule greatly streamlines the original Rule, which required franchisors to detail the rights and obligations already spelled out in the franchise agreement.[531] Item 17, therefore, reduces compliance burdens, while providing prospective franchisees with a detailed road map to the franchise contract, where they can read the various provisions in greater detail. At the same time, Item 17 expands on the original Rule by requiring disclosures pertaining to dispute resolution, including any arbitration or mediation requirements, as well as forum-selection and choice of law provision disclosures. For each enumerated contract term, the franchisor must cross reference the applicable franchise agreement provisions and briefly summarize the governing terms.[532]

Most of the comments submitted on Item 17 concerned the use of the term ''renewal.'' Franchisee advocates asserted that the term ''renewal'' is misleading.[533] In their view, the term implies that a franchisee, upon expiration of the franchise term, can continue operating the franchise under substantially similar terms and conditions. They observed, that in practice, franchisees who wish to continue operating their franchises at the end of the franchise term must often sign new contracts that impose materially different terms and conditions, such as higher royalty payments or the elimination of an exclusive territory. They asserted that renewing franchisees, in many instances, have no choice but to sign even the most abusive, one-sided renewal contracts because they have a substantial economic investment in their franchises and simply cannot walk away without incurring significant economic loss.[534] Worse, when a

[527] NASAA, NPR 17, at 4.

[528] NASAA, at 5; WA Securities, at 3–4.

[529] *See* 16 CFR 436.1(a)(13). In the original SBP, the Commission recognized that sales restrictions are material because they can limit the scope of the franchisee's market and ultimately the franchisee's profitability. Original SBP, 43 FR at 59661. The sales restriction disclosures are comparable to other Commission trade regulation disclosures concerning restrictions on the use of goods and services. *E.g.*, Telemarketing Sales Rule, 16 CFR 310.3(a)(1) (requiring disclosure of all material restrictions, limitations, or conditions to purchase, receive, or use the goods or services); Negative Option Rule, 16 CFR 425.1(a)(1)(ii) (requiring disclosure of post-sale minimum purchase requirements); Disclosure of Warranty Terms and Conditions, 16 CFR 701.3(a)(8) (requiring material disclosures of limitations and exclusions on warranty coverage).

[530] The final amended Item 16 is reorganized for greater precision and uses more precise language. For example, the final amended Item 16 eliminates a redundancy in the Franchise NPR regarding the disclosure of any restrictions on customers, which appeared in both the introduction to the Item (disclose . . . any franchisor-imposed restrictions . . . that limit the franchisee's customers) and in the main text (disclose . . . any restrictions on the franchisee's customers). The final amended Item 16 also uses more precise language, substituting ''disclose [any restrictions] . . . that limit access to customers,'' rather than the Franchise NPR's inaccurate language ''any restrictions on the franchisee's customers.''

[531] *See* 16 CFR 436.1(a)(15) (requiring franchisors to describe 14 categories of terms and conditions).

[532] In the original SBP, the Commission stated that the terms and conditions of the franchise relationship—such as those governing transfers, renewals, and terminations—are material because they ''may limit what the franchisee may do with his or her capital asset.'' Original SBP, 43 FR at 59664. Given the length and complexity of the typical franchise agreement, prospective franchisees may overlook, or do not fully appreciate, such terms and conditions. *Id.*

[533] For example, the AFA stated:

'''Renewal' is a misnomer. 'Re-license,' 'rewrite' or even 're-franchise' is a more accurate description of what actually happens at the end of the initial contract term. Most franchisees find that when it is time to 'renew,' they are not 'renewing' their existing franchise agreement, but are entering into a wholly new franchise agreement, often with materially different financial and operational terms. They are presented these 'renewal' contracts on a 'take it or leave it' basis and are under enormous coercion pressures to sign—especially if the old agreement contains a post-termination covenant not to compete. This is truly 'holding a gun to the head' of the 'renewing' franchisee.''

AFA, ANPR 62, at 2.

[534] *E.g.*, AFA, NPR 14, at 5; Bundy, NPR 18, at 4; Karp, NPR 24, at 20–21; Morrell, NPR 31, at 2; Bores, ANPR 9, at 1; Rachide, ANPR 32; Chabot,

Continued

franchisee does walk away, he or she is often bound by a covenant not to compete, which restricts his or her ability to operate a similar business for a number of years.

Several franchisor representatives supported the view that the term ''renewal'' may be inappropriate. The NFC, for example, stated that the term ''renewal'' is somewhat ambiguous: it could mean either ''a simple extension of the existing agreement under the same terms or—as is far more common—the grant of a 'successor franchisor' under the terms being offered at the time that the existing agreement expires.''[535] However, the NFC did not believe that the term ''renewal'' is misleading, and it was uncertain whether the ambiguity compels a revision of the Rule. J&G asserted that the term is potentially misleading,[536] and Tricon urged the Commission to avoid its use entirely.[537]

On the other hand, several commenters maintained that the term ''renewal'' is clear and requires no modification. For example, John Baer stated that ''renewal'' is a term of art in franchising and should not be changed. He also observed that the various state relationship laws use that term and ''to revise it for disclosure purposes is likely to cause more confusion than clarity.''[538] Seth Stadfeld, a franchisee advocate, agreed, explaining that the term ''renewal'' refers to the relationship between the franchisor and franchisee, not to the underlying contract. He also shared Mr. Baer's concern that the term is used in state relationship statutes and should not readily be changed.[539]

Several commenters suggested that the Commission adopt various disclosures or warnings for prospective franchisees that would explain the concept of renewal in greater detail. The IL AG, for example, suggested that franchisors make the following statement: ''You should learn what changes in your agreement might occur and what rights you have when your contract expires. Renewal may change important contract terms.''[540]

While the record reveals that there may be confusion over the use of the term ''renewal,'' it does not show that use of the term is inherently deceptive. The Commission concludes that the term ''renewal'' is a franchising term of art, meaning that upon the expiration of a contract, the franchisees may have the right to enter into a new contract, where materially different terms and conditions may apply. Moreover, as several commenters noted, the term ''renewal'' is used in various state relationship laws, in addition to the UFOC Guidelines. In light of that background, the Commission is disinclined to mandate use of a different term or prohibit use of ''renewal.'' At any rate, a prospective franchisee may be just as prone to misinterpret the substitute language (*e.g.*, ''re-license'') as the term ''renewal.'' It short, any term may be misleading if prospective franchisees fail to understand the underlying concept that a franchisor may require a change in contract terms and conditions upon expiration of the original agreement as a condition of renewal. Therefore, the Commission has determined not to introduce nonconformity between federal and state approaches on the use of this term.

Nonetheless, the record is persuasive that many prospective franchisees may not appreciate the legal import of the term ''renewal.'' Indeed, franchisees often are surprised to discover that ''renewal'' means the continuation of their franchise relationship under potentially vastly different terms. To prevent potential deception with respect to use of the term ''renewal,'' Item 17 of the final amended Rule requires franchisors to explain their renewal policy in the summary field for provision Item 17(c) (requirements for franchisee to renew or extend).[541] We do not suggest any particular form of explanation, however, because that will depend upon the individual policies of each franchisor.[542] If applicable, the franchisor must also state that franchisees ''may be asked to sign a contract with materially different terms and conditions than their original contract.''[543] While we are reluctant to add consumer education notices to the disclosure document, especially where the UFOC Guidelines require no parallel notice, we believe it is warranted in this instance, given the continued concern raised by franchisee advocates and others about renewals.[544]

20. Section 436.5(r) (Item 18): Public figures

Consistent with the UFOC Guidelines, Item 18 requires franchisors to disclose the involvement of a public figure in the franchise system, including his or her management responsibilities, total investment made in the franchise system, and compensation, if any. This section is substantively similar to the comparable disclosure provision of the original Rule found at 16 CFR 436.1(a)(19).[545] The final amended Rule adopts Item 18 as proposed, with only minor language changes for the sake of clarity and improved organization.[546]

Item 18 generated few comments during the Rule amendment proceeding.

ANPR 37; Rich, ANPR 65; Orzano, ANPR 73; Geiderman, ANPR 131; Karp, ANPR, 19 Sept. 97 Tr., at 83; Chiodo, ANPR, 21 Nov. 97 Tr., at 303–04.

[535] NFC, NPR 12, at 30.

[536] J&G, NPR 32, at 13.

[537] Tricon, NPR 34, at 6–7.

[538] Baer, NPR 11, at 13. *See also* IL AG, NPR 3, at 7.

[539] Stadfeld, NPR 23, at 15–16. *See also* NaturaLawn, NPR 26, at 2.

[540] IL AG, NPR 3, at 7. Similarly, the AFA urged the Commission to adopt the following warning:

''You do not own your own business. You are leasing the rights to sell our goods/services to the public under our trade name. At the end of your initial [number of years] term, your current contract will expire [terminate]. You will have the choice of signing a new contract written by us at the time of expiration [termination]. The new contract will be written by us with no input from you and will contain materially different financial and operational terms.''

AFA, NPR 14, at 5. *See also* Bundy, at 7; Bundy, NPR 18, at 5 (urging the Commission to require franchisors to disclose the consequences of renewal).

[541] In response to the Staff Report, Spandorf opined that Item 17 as recommended by staff was still confusing, asserting that it could mean that a franchisor would have to make the statement about renewal even if the franchisor does not offer renewals. Spandorf, at 7. We do not believe this is a serious concern. Item 17 clearly states that franchisors need only address those issues listed in Item 17 if applicable. ''If a particular item is not applicable, state 'Not Applicable.'''

[542] One example of a renewal explanation may be: ''If you seek to renew your franchise agreement upon expiration, know that royalty payments and the size of your exclusive territory may change'' or ''Upon expiration, you will renegotiate the terms and conditions of your contract. Be aware that these terms and conditions may be different from those in your original agreement.''

[543] Section 436.5(q)(3).

[544] In response to the Staff Report, Howard Bundy urged the Commission to adopt a negative disclosure whenever a franchisor does not offer renewal on the same exact terms as the original agreement: ''We do not give you the right to renew or extend your franchise on the same terms as your current franchise agreement. You should consult your franchise attorney about the consequences of this.'' Bundy, at 7. We believe the Item 17 requirement that franchisors explain what they mean by ''renewal'' is sufficient to address this concern.

[545] In the original SBP, the Commission stated that this information is material because it helps prospective franchisees understand the extent of any financial and managerial commitments from the public figure, as well as any obligations to the public figure. Prospective franchisees can then decide for themselves whether an association with a public figure is valuable to them. Original SBP, 43 FR at 59677–78.

[546] For example, Item 18 of the Franchise NPR used the language: ''Disclose . . . any compensation *paid* or promised to the public figure.'' The final amended Rule substitutes the word ''given'' for ''paid,'' recognizing that a public figure may be ''given'' tangible benefits, such as a car, not just a cash payment. Accordingly, the term ''given'' is more precise and broader. The final amended Rule also improves the organization of Item 18. As proposed in the Franchise NPR, Item 18 included the definition of ''public figure'' upfront, where it interrupted the flow of the basic disclosure requirements. Accordingly, Item 18 of the final amended Rule is easier to read.

Two commenters questioned the utility of the disclosure. H&H noted that this Item is seldom, if ever, applicable and urged the Commission to delete it.[547]

The Commission has determined that the information required under Item 18 remains material in those instances, relatively uncommon though they may be, when a public figure creates his or her own franchise system or when a franchisor uses a public figure pitchman. A public figure's ownership or management of a franchise system could create the impression of greater oversight or influence in the operation of the system, making the franchise offering appear to be a less risky investment. Similarly, a public figure pitchman's endorsement of a franchise system may create the impression that the franchise system is sound or a low risk. How much weight a prospect may give a public figure endorser's pitch may vary with the level of compensation received from the franchisor. If, for example, a pitchman is paid a nominal sum, then a prospective franchisee may be inclined to give the pitch more weight because the pitchman has little to gain financially and thus little motive to fabricate his or her pitch. Accordingly, the public figure disclosures concerning level of involvement and compensation are material and their potential benefits to prospective franchisees would outweigh their costs. To that limited degree, these disclosures still serve a useful purpose. In those more typical instances when no public figure is involved, Item 18 entails no additional compliance burden. On balance, therefore, the Commission is disinclined to deviate from the UFOC Guidelines on this point.

21. Section 436.5(s) (Item 19): Financial performance representations

Section 436.5(s) of part 436, a key anti-fraud provision, addresses the making of financial performance representations.[548] Consistent with the original Rule and the UFOC Guidelines, the final amended Rule permits, but does not require, franchisors to make such representations under limited circumstances. When a franchisor elects to make a financial performance claim, the franchisor must, among other things, have a reasonable basis for the representation[549] and disclose the basis and assumptions underlying the representation.[550] Franchisors also must include an admonition that a prospective franchisee's actual earnings may differ.[551]

Bringing the original Rule's provisions on financial performance representations into closer alignment with the UFOC Guidelines entailed several deletions or departures from the original Rule. Specifically, the final amended Rule differs from the original Rule in that:

- It eliminates the requirement that franchisors who decide to make financial performance claims provide prospective franchisees with a separate financial performance claim document.[552] Instead, consistent with the UFOC Guidelines, it requires any performance claim to appear in Item 19 of the disclosure document itself;
- It eliminates the requirement that all financial performance claims be geographically relevant to the franchise offered for sale;[553]
- It eliminates the requirement that any historical financial performance claims must be based upon generally accepted accounting principles (''GAAP'');[554]
- It permits franchisors, under specific circumstances, to disclose, apart from the disclosure document, the actual operating results of a specific unit being offered for sale;[555] and
- It permits franchisors to furnish supplemental performance information directed at a particular location or circumstance.[556]

For the reasons explained below, the final amended Rule provision, however, diverges from Item 19 of the UFOC Guidelines by permitting greater disclosure of financial information about subsets of franchisor-owned or franchised outlets, provided the franchisor discloses specified information about the subset at issue. With certain additional refinements described in the following paragraphs of this section, including the preamble requirements, Item 19 of the final amended Rule closely tracks Item 19 as proposed in the Franchise NPR.[557]

Nearly all comments on the Item 19 disclosure requirements focused on four issues: (1) whether financial performance disclosures should be mandatory or voluntary; (2) whether the Rule should permit disclosure of financial performance information about geographical or other subsets of franchisor-owned or franchised outlets; (3) whether the Rule should retain the requirement that historical financial performance data be prepared according to GAAP; and (4) whether the Rule should require prescribed preambles. Each of these issues is discussed in the sections immediately below.[558]

a. Voluntary disclosure of financial performance information

The Franchise NPR proposed that the making of financial performance representations remain voluntary, as was the case under the original Rule[559] and UFOC Guidelines.[560] Many

[547] H&H, NPR 9, at 18. Howard Bundy agreed, proposing instead that the space be used for more important issues: ''It would make more sense to elevate the renewal issue, the gag order issue, and the integration clause issue, and perhaps even the arbitration clause issue to full Item status and move the public figure information elsewhere.'' Bundy, NPR 18, at 10. Of the franchisees who participated in the Rule amendment proceedings, only one voiced concerns about a public figure. Dianne Mousley purchased a Mike Schmidt's Philadelphia Hoagies franchise, in part based upon the representation that Mike Schmidt, a former baseball player, would be actively involved in the franchise system. However, Ms. Mousley's primary concerns did not involve Mr. Schmidt. Rather, she complained about delays in constructing the store and lack of promised training and support. *See generally* Mousley, 29 July 97 Tr., at 1–32.

[548] In the original SBP, the Commission found that one of the most frequent abuses occurring in the marketing of franchises is the use of deceptive past and potential franchise sales, income, and profits claims. Indeed, the Commission stated that the ''use of deceptive and inaccurate profit and loss statements by franchisors has resulted in a legion of 'horror stories.''' Original SBP, 43 FR at 59684.

[549] *See* 16 CFR 436.(1)(b)(2); 436.(1)(c)(2); 436.1(e)(2); UFOC Guidelines, Item 19A.

[550] *See* 16 CFR 436.1(b)(3); 436.1(c)(3); 436.1(e)(5)(i); UFOC Guidelines, Item 19B.

[551] *See* 16 CFR 436.1(b)(4); 436.1(c)(5); 436.1(e)(5)(iii); UFOC Guidelines, Item 19B Instructions, (c).

[552] *See* 16 CFR 436.1(d).

[553] *See* 16 CFR 436.1(b)(1); 436.1(c)(1).

[554] *See* 16 CFR 436.1(c)(4); 436.1(e)(2).

[555] *See* UFOC Guidelines, Item 19 Instructions i.

[556] *See* UFOC Guidelines, Item 19 Instructions ii.

[557] The greatest difference between Item 19 as proposed in the Franchise NPR and Item 19 in the final amended Rule is the elimination of the GAAP requirement, discussed in greater detail, *infra*.

[558] Piper Rudnick's comment on the Staff Report raised an issue on a separate topic that the Commission has decided to address. The firm noted that there is a problem with section 436.5(s)(3)(ii)(A) as proposed in the Franchise NPR (and as recommended in the Staff Report). Specifically, that provision required that the material bases for a financial performance representation include a statement of ''the degree of competition in the market area.'' Piper Rudnick observed that there may be no single ''market.'' If national performance claims are made, it would be extremely difficult to describe the ''market.'' As a result, franchisors are likely to adopt ''some meaningless boilerplate'' to comply. Accordingly, the firm recommended dropping the entire quoted phrase. Piper Rudnick, at 3. The Commission has carefully considered this point, and has determined that competition is a factor that may impact upon a prospective franchisee's ability to achieve represented financial performance. A reference to competition generally, therefore, is warranted. Nevertheless, the phrase ''market area'' may be so problematic as to render the particular disclosure element meaningless, as the firm predicts. Therefore section 436.5(s)(3)(ii)(A) of Item 19 as adopted refers simply to ''degree of competition,'' without reference to a ''market area.''

[559] Franchise NPR, 64 FR 57309–10.

[560] UFOC Guidelines, Item 19.

franchisees and their representatives, however, urged the Commission to mandate the disclosure of financial performance information.[561] In support of this recommendation, these commenters advanced a number of arguments: (1) that financial performance information is the most material information prospective franchisees need to make an informed investment decision;[562] (2) that franchisors already have performance information and it is a deceptive omission for them to fail to disclose this information; (3) that franchisors are in the best position to collect and disseminate performance information; (4) that a mandated financial performance disclosure would reduce the level of false and unsubstantiated oral and written financial performance claims; and (5) that more disclosure regarding performance would benefit the marketplace and competition.[563]

In contrast, franchisors and their advocates uniformly opposed mandatory financial performance disclosures, based on the following arguments: (1) it is impossible for the Commission to create a single performance disclosure format that will be relevant for all industries; (2) not all franchisors have the contractual right to collect extensive financial information with which to prepare a reasonable performance disclosure; (3) financial performance data collected from existing franchisees is not necessarily complete and accurate; (4) a mandatory performance disclosure would be misinterpreted as a guarantee of future performance, thus increasing litigation; and (5) mandating financial performance disclosures would have a negative impact upon the franchisor-franchisee relationship, subjecting franchisees to more extensive accounting oversight and audits.[564]

Based upon its assessment of the record as a whole, the Commission concludes that financial performance representations should remain voluntary. In reaching this conclusion, we recognize that false or misleading financial performance claims are the most common allegation in Commission franchise law enforcement actions.[565] However, there is no assurance that mandating performance claims will in fact reduce the level of false claims. Given that many different industries are affected by part 436, what makes a financial performance disclosure reasonable, complete, and accurate is quite varied. Thus, the Commission will not mandate a particular set of financial performance disclosures. However, if a franchisor chooses to make such disclosures, they, of course, must be reasonable, non-misleading, and accurate.

Mandating financial performance disclosures would also impose substantial new accounting, data collection, and review costs on all franchise systems. At the same time, it potentially could expose existing franchisees, upon whose data the franchisor would rely, to more extensive audits. In addition, existing franchisees might be subject to potential liability for indemnification should a franchisor, relying on the franchisees' performance data, be found to have violated the Rule by failing to furnish accurate financial performance data.

Further, the record reveals that approximately 20% or more of franchisors choose to make financial performance disclosures.[566] Accordingly, prospective franchisees can find franchise systems that voluntarily disclose such information. If prospective franchisees were to seek out such franchise systems, or demand the disclosure of such information from franchisors, ordinary market forces might compel an increasing number of franchisors to disclose earnings information voluntarily, without a federal government mandate. More important, a disclosure document is not the only potential source of financial performance information. Prospective franchisees can obtain financial performance information from a variety of third-party sources. For example, typical expenses, such as labor and rent, may be available from industry trade associations and industry trade press. Prospective franchisees may be able to discuss earnings and other financial performance issues directly with current and former franchisees, as well as with trademark-specific franchisee associations. For these reasons, we conclude that financial performance representations should remain voluntary, consistent with the original Rule and UFOC Guidelines.

b. Geographic relevance and subgroups

As noted above, Item 19 of the final amended Rule eliminates the original Rule's geographic relevance requirement for financial performance representations.[567] This brings the Rule's financial performance disclosure requirements into closer alignment with Item 19 of the UFOC Guidelines,[568] as proposed in the Franchise NPR.[569]

At the same time, the final amended Rule deviates from the Franchise NPR by omitting the UFOC Guidelines' requirement that franchisors disclose the number and percentage of *all*

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[561] *E.g.*, AFA, at 2; Bundy, at 7–8; Karp, at 3; Selden, at 2; Haff, at 2; Blumenthal, at 1.

[562] Karp, ANPR, 19 Sept. 97 Tr., at 100–03. Quoting several business texts, Mr. Karp asserted that historical financial performance information is critical to any evaluation of a business. Internal Revenue Service Ruling 59–60, Item D, for example, provides that: ''detailed profit and loss statements should be obtained and considered for a representative period immediately prior to the required date of appraisal, preferably five or more years.'' According to Mr. Karp, the failure of franchisors to disclose historical performance information deprives prospects of material information that is essential in evaluating the franchise offering.

[563] *See* Staff Report, at 159–60; ANPR, 62 FR at 9118. *See also* Brown, ANPR 4, at 4; SBA Advocacy, ANPR 36, at 8; Purvin, ANPR 79; Lagarias, ANPR 125, at 1–2; Dady & Garner, ANPR 127, at 1–2; and Selden, ANPR 133, at 1–2 and Appendix C; Lundquist, ANPR, 22 Aug. 97 Tr., at 46–47.

[564] *See* Staff Report, at 161–62. *E.g.*, Gust Rosenfeld, at 6; Duvall, ANPR 19, at 2; Kaufmann, ANPR 33, at 7; Tifford, ANPR 78, at 5; Jeffers, ANPR 116, at 5. *See also* 7-Eleven, NPR 10, at 3 (suggesting that a typical franchisor would be hard-pressed to generate financial performance information without ''very extensive and significant effort.''). In addition, a few commenters urged the Commission to coordinate its financial performance disclosure policy with NASAA to promote uniformity. For example, John Tifford stated: ''Federal and state regulators must develop a coherent and compatible earnings claim policy in order to ensure that franchisors will not be exposed to risks caused by inconsistent and uncoordinated federal and state policies.'' Tifford, ANPR 78, at 6. *See also* AFA, ANPR 62, at 4; IL AG, ANPR 77, at 2; IFA, ANPR 82, at 3. On the other hand, Cendant, representing several major franchise systems, suggested that the FTC prohibit states from mandating financial performance disclosures by preempting the field. Cendant, ANPR 140, at 2.

[565] *See*, *e.g.*, *FTC v. Minuteman Press, Int'l*, 93–CV–2494 (DRH) (E.D.N.Y.) (1998 Order) (finding that the making of false gross sales and profit representations to prospective franchisees was pervasive in the Minuteman and Speedy Sign-A-Rama franchise systems). *See also*, *e.g.*, *FTC v. Car Wash Guys, Int'l*, No. 00–8197 ABD (RNBx) (C.D. Cal. 2000); *FTC v. Tower Cleaning Sys., Inc.*, No. 96 58 44 (E.D. Pa. 1996); *FTC v. Majors Med. Supply*, No. 96–8753–Zloch (S.D. Fla. 1996); *FTC v. Indep. Travel Agencies of Am., Inc.*, No. 95–6137–CIV–Gonzalez (S.D. Fla. 1995); *FTC v. Mortgage Serv. Assoc., Inc.*, No. 395–CV–1362 (AVC) (D. Conn. 1995); *FTC v. Robbins Research Int'l, Inc.*, No. 95–CV–627–H(AJB) (S.D. Cal. 1995); *FTC v. Sage Seminars, Inc.*, No. C–95–2854–SBA (N.D. Cal. 1995). *See generally* Vidulich, 22 Aug. 97 Tr., at 18–19; Marks, 19 Sept. 97 Tr., at 2–3; Fetzer, 19 Sept. 97 Tr., at 40–41.

[566] *See*, *e.g.*, Bortner, ANPR 37, at 3; NASAA, ANPR 43, at 3.

[567] *See* 16 CFR 436.1(b)(1); 436.1(c)(1). The original Rule's geographic relevance prerequisite was designed to ensure that a financial performance representation was reasonable in light of the opportunity being offered for sale. In short, geographic relevance ''helps to ensure that the representation reflects what the franchisee is likely to achieve.'' Original SBP, 43 FR at 59691.

[568] The UFOC Guidelines, for example, permit a franchisor selling a franchise in Florida to disclose that franchised outlets in urban areas of Oregon and Washington have averaged a specific profit level. In contrast, the original Rule barred such a performance claim because such claim is not geographically relevant to the prospective franchisee's territory—Florida.

[569] Franchise NPR, 64 FR at 57310.

existing outlets known to have attained a represented performance level.[570] Rather, for the reasons explained below, Item 19 of the amended Rule is consistent with the original Rule in requiring franchisors to disclose the number and percentage of existing outlets known to have attained the represented performance level in the area that formed the basis for the representation.[571]

The UFOC Guidelines require a franchisor to compare the number of franchisees who have performed at a claimed level against all franchisees in its system, not just against franchisees it has measured or against franchisees in a subgroup. For example, a franchisor may have statistics showing that nine out of 10 franchised stores in a particular location (such as Seattle) average $100,000 net profit a year. Yet, the UFOC Guidelines prevent the franchisor from disclosing truthful information about the universe the franchisor had measured—the 10 franchised outlets in Seattle. Rather, the franchisor would be forced instead to state 9 out of the entire number of all franchises nationwide (*e.g.*, 9 out of 1,000) have earned the $100,000 claimed. This approach can mislead a prospective franchisee because it suggests that the franchisor has in fact measured the financial performance of all franchisees, when that may not be true. It also may deflate franchisees' actual performance records. More important, a franchisor may decline to disclose performance information if, in order to do so, it must first incur the expense of conducting a system-wide franchisee performance analysis.

To correct this problem, Item 19 of the revised Rule permits franchisors to disclose truthful financial performance information about a subgroup of existing franchisees under limited conditions.[572] Specifically, the financial information furnished to prospective franchisees must have a reasonable basis and the franchisor must disclose: (1) the nature of the universe of outlets measured; (2) the total number of outlets in the universe measured; (3) the number of outlets from the universe that were actually measured; and (4) any characteristics of the measured outlets that may differ materially from the outlet offered to the prospective franchisee (*e.g.*, location, years in operation, franchisor-owned or franchisee-owned, and likely competition).[573]

Few commenters addressed the revision of Item 19. Among those that commented on Item 19, a few specifically supported the elimination of the separate geographic relevance prerequisite.[574] On the other hand, IL AG voiced concern that eliminating the geographic relevance requirement would not prevent franchisors from ''cherry picking'' their best performing franchise locations and then allowing prospects to assume that their performance results will be similar.[575]

At the same time, other commenters supported allowing financial performance claims based on franchisee subgroups with the specified substantiation requirements. John Baer, for example, maintained that the disclosures for subgroups ''provide franchisors with sufficient guidance about what characteristics of the outlets must be disclosed and how they may differ materially from outlets offered to a prospective franchisee.''[576] Similarly, Marriott observed that allowing disclosure of subgroup performance is laudable ''especially when franchisors are frequently adopting new business strategies which may result in different [financial performance representations], depending upon whether the old or new system format is followed by the franchisees.''[577]

Based upon the record, the Commission has concluded that eliminating the geographic relevance requirement, coupled with permitting broader disclosure of financial performance of subgroups, will remove obstacles that discourage franchisors from making financial performance data available to prospective franchisees. At the same time, Item 19 prevents franchisors from ''cherry picking'' their best locations as a basis for financial performance representations. Specifically, Item 19's substantiation requirements ensure that franchisors disclose how they derived the performance results of subgroups, so that prospective franchisees can assess for themselves the sample size, the number of franchisees responding, and the weight of the results. In addition, these provisions require franchisors to disclose the material differences between the subgroup-units tested and the units being offered for sale, so that prospects can avoid drawing unreasonable inferences from the representations.

c. GAAP

As noted, Item 19 of the final amended Rule eliminates the original Rule requirement that historical financial performance data must be prepared according to GAAP.[578] The Franchise NPR proposed retention of this requirement.[579] Without exception, the commenters who addressed this issue opposed the GAAP requirement. For example, NASAA advised that GAAP goes beyond what the UFOC Guidelines require and the accounting rules would discourage the making of financial performance representations:

> Based upon the experience of states that register franchise offerings, many franchisors that currently include historical financial performance data in UFOC Item 19 may not prepare them according to GAAP. In some instances, a

[570] Item 19B ii of the UFOC Guidelines instructions requires ''a concise summary of the basis for the claim including a statement of whether the claim is based upon actual experience of franchised units and, if so, the *percentage of franchised outlets in operation for the period covered by the earnings claims that have actually attained or surpassed the stated results*.'' The original Rule did not include any counterpart requirement. The original Rule contained the same broad number and percentage requirements only for financial performance claims made in the general media. 16 CFR 436.1(e)(5)(ii).

[571] 16 CFR 436.1(b)(5)(i); 16 CFR 436.1(c)(6)(i).

[572] This approach to financial performance substantiation, as proposed in the Franchise NPR and recommended in the Staff Report, prompted few comments from any of the participants in this proceeding.

[573] *See* Gust Rosenfeld, at 6 (supporting option of marking financial performance representations based upon sub-group data).

[574] ''[T]he omission of the geographic relevancy requirement represents the removal of a substantial impediment to franchisors who might wish to provide financial performance data to prospective franchisees, because it will lower the obstacles to, and cost of, compiling the data necessary to produce a meaningful representation. We believe it is unlikely to have any material effect on the quality of such representation, as geographic relevancy is often quite attenuated.'' BI, NPR 28, at 11. *See also* Baer, NPR 11, at 13.

[575] IL AG, NPR 3, at 7.

[576] Baer, NPR 11, at 14.

[577] Marriott, NPR 35, at 11. *But see* PMR&W, NPR 4 (suggesting that these provisions may deter the dissemination of financial performance information).

[578] *See* 16 CFR 436.1(c)(4) and 436.1(e)(2). The Commission adopted the original GAAP requirement to address concerns about the validity of franchisee financial statements used by franchisors to make historical financial performance representations. Not only may some franchisees understate profits, but each could have his or her own accounting system. ''Differences between franchisees also occur due to such factors as variations in the drawing accounts of principals, fringe benefits of principals, salaries charged to income, and preparation of statements on a cash rather than an accrual basis.'' Original SBP, 43 FR at 59691. To minimize the potential dangers inherent in using franchisee performance data, the Commission determined that historical performance claims and the data underlying them must have been prepared according to GAAP.

[579] Franchise NPR, 64 FR at 57341, note 13: ''If a financial performance representation is a representation concerning historical financial performance or if historical financial performance data are used as the basis for a forecast of future earnings, the historical data must be prepared according to U.S. generally accepted accounting principles.''

franchisor's historical financial performance data presented may be accurate and material, yet may not be presented according to GAAP. In many other instances, the franchisor may not be aware whether the data presented is according to GAAP. This requirement would discourage franchisors that have a factual basis for making financial performance disclosures from doing so. In addition, this requirement likely would increase costs to franchisors who do choose to make historical financial performance disclosures by requiring them to obtain an accountant's opinion as to whether their data is presented according to GAAP.[580]

Based upon an assessment of the record, the Commission has determined that the GAAP requirement is unnecessary and may impede franchisors' ability to disclose performance information, to the detriment of both franchisors and prospective franchisees. GAAP is not the only approach to ensure the accuracy of historic performance data. Franchisors making historical performance representations should have the flexibility to formulate such representations, provided that such representations are truthful and reasonable. Indeed, franchisors always have the burden to establish that any financial performance representations are reasonable. Moreover, it is apparent that some franchisors using the UFOC format have disseminated non-GAAP compliant historic performance representations, without any pattern of deception identified by the states. Finally, eliminating the GAAP requirement is likely to reduce compliance burdens, while bringing greater uniformity to federal and state disclosure law.

d. Preambles

As noted above, Item 19 of the final amended Rule differs from the original Rule and the UFOC Guidelines by requiring franchisors to include prescribed preambles in their Item 19 disclosures. The preamble requirements are incorporated in Item 19 as proposed in the Franchise NPR.[581] The preamble requirements address two concerns. First, there is evidence in the record that some franchisors falsely state that the Commission or the Franchise Rule prohibits franchisors from making financial information available.[582] Second, our law enforcement experience tells us that prospective franchisees may rely on unsubstantiated financial performance representations.[583]

To prevent deception arising from these two practices, Item 19 requires franchisors to include in their Item 19 disclosures a prescribed preamble stating that the Rule permits the making of financial performance representations, if the representations are set forth in the franchisor's disclosure document.[584] This statement counters any suggestion that the Franchise Rule prohibits franchisors from disclosing financial performance information. Armed with such material information, prospective franchisees could question why a franchisor does not provide financial performance data, if they wish, or shop for a system that discloses financial performance information. In addition, this preamble will discourage prospects from relying on unauthorized financial performance claims made outside of the disclosure document.

For those franchisors who elect not to disclose financial performance information, Item 19 requires a second preamble, warning prospective franchisees not to rely on unauthorized performance representations and to report the making of such unauthorized representations to the franchisor, the Commission, and appropriate state agencies.[585]

Several commenters supported the inclusion of preambles in Item 19 in order to clarify the state of the law regarding the making of financial performance representations. In particular, the first preamble would correct the common misstatement that the Rule actually prohibits the making of such representations. According to the AFA, for example, a clarification of the law is crucial: ''[T]he great untruth that franchise salespeople have been allowed to perpetrate over the years is the following statement in one form or another—the federal government prohibits us from giving you information regarding the financial performance of [name of our] franchises.''[586]

Other commenters asserted that the preambles, coupled with market forces, will encourage the disclosure of financial data. For example, 7-Eleven stated: ''We believe this approach—affirmatively informing would-be investors about the requirements under the Rule and the manner in which such information should be disclosed—when combined with the competitive force of the marketplace, ensures that earnings information can be identified and properly appraised by franchise investors.''[587]

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[580] NASAA, NPR 17, at 5. *See also* Bundy, at 7; Gust Rosenfeld, at 6; PMR&W, NPR 4, at 12; H&H, NPR 9, at 13; NFC, NPR 12, at 31; Lewis, NPR 15, at 15; Snap-On, NPR 16, at 3; J&G, NPR 32, at 7; Marriott, NPR 35, at 12; IL AG, Rebuttal NPR 38, at 5. Based on the comments, particularly those submitted by NASAA, the Staff Report recommended elimination of the GAAP requirement. Staff Report, at 166–67.

[581] Franchise NPR, 64 FR 57311 and 57341. Slight wording changes have been made to improve overall clarity and consistency, and the sentence ''If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet,'' to conform with the Rule's substantive liberalization on this point.

[582] *E.g.*, Bundy, at 7; CA BLS, ANPR 124, at 1; Lagarias, ANPR 125, at 4. *See also* H&H, ANPR 28, at 8; SBA Advocacy, ANPR 36, at 8; AFA, ANPR 62, at 5; Purlin, ANPR 79, at 2; Jeffers, ANPR 116, at 5.

[583] *E.g.*, *FTC v. Minuteman Press, Int'l*, No. 93–CV–2494 (DRH) (E.D.N.Y. 1998). *See also* Franchise NPR, 64 FR at 57311; ANPR, 62 FR at 9118.

[584] The first preamble reads:

''The FTC's Franchise Rule permits a franchisor to provide information about the actual or potential financial performance of its franchised and/or franchisor-owned outlets, if there is a reasonable basis for the information, and if the information is included in the disclosure document. Financial performance information that differs from that included in Item 19 may be given only if: (1) a franchisor provides the actual records of an existing outlet you are considering buying; or (2) a franchisor supplements the information provided in this Item 19, for example, by providing information about possible performance at a particular location or under particular circumstances.''

[585] The second preamble reads:

''We do not make any representations about a franchisee's future financial performance or the past financial performance of company-owned or franchised outlets. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor's management by contacting [name and address], the Federal Trade Commission, and the appropriate state regulatory agencies.''

[586] AFA, NPR 14, at 3. Several commenters confirmed that such misrepresentations are prevalent and urged the Commission to clarify the Rule to combat them. For example, the CA BLS stated:

''Franchisees have reported to certain members of the California Franchise Legislative Committee that franchisor salespersons informed them during the pre-sale discussions in the offer and sale of a franchise that the FTC Rule prohibited them from making earnings claims. Based on these reports, we agree that there is a need to clarify the Rule to make clear that neither the Commission nor the Rule prohibits franchisors from making earnings representations.''

CA BLS, ANPR 124, at 1. Peter Lagarias, a franchisee representative, similarly told us: ''I am personally aware of franchisors (and sometimes even their lawyers) stating that earnings claims are forbidden by the Commission's Rule. The Commission should clarify in the Rule that the franchisor could elect to make earnings claims but has elected not to make earnings claims.'' Lagarias, ANPR 125, at 4.

[587] 7-Eleven, NPR 10, at 3. *See also* IFA, NPR 22, at 11; Stadfeld, NPR 23, at 17; H&H, ANPR 28, at 8; Duvall, ANPR 19, at 2; Jeffers, ANPR 116; CA BLS, ANPR 124, at 2; Zarco & Pardo, ANPR 134, at 6. *But see* J&G, NPR 32, at 7 (admonition to

At the same time, the Commission has rejected various suggestions to require more strongly worded preambles. For example, Eric Karp would amplify the second preamble to warn prospects that, although the franchisor collects financial information, it does not disclose any, and he suggested including the phrase, ''Consider why we are unwilling to do so.''[588] In effect, these commenters would turn the absence of a financial performance claim into a risk factor. The Commission rejects this approach. It does not necessarily follow that the absence of a financial performance disclosure necessarily signals a riskier investment. It could well be that a company bent on defrauding prospective franchisees would manipulate its numbers to create a stronger success image, while a successful but punctilious system might choose not to disclose numbers because it may not believe that it can make a reasonable disclosure that would be applicable to all potential buyers. In addition, any concern that prospective franchisees need to see actual earnings figures in order to judge success is mitigated by Item 20, which compels the disclosure of franchise turnover rates, as well as the names and addresses of current and former franchisees, who can be contacted for information.

22. Section 436.5(t) (Item 20): Outlets and franchisee information

Section 436.5(t) of the final amended Rule retains the original Rule's requirement that franchisors disclose the number of franchised and franchisor-owned outlets; the names, business addresses, and business telephone numbers of current franchised outlets, and statistical information on franchise turn-over rates, in particular the number of franchises voluntarily and involuntarily terminated, not renewed, and reacquired by the franchisor.[589] To align the final amended Rule more closely to the UFOC guidelines, it also extends the original Rule by requiring franchisors to disclose the names, business addresses, and business telephone numbers of at least 100 current franchised outlets (as opposed to the original Rule requirement of at least 10 franchised outlets).[590] It also requires the disclosure of some contact information for former franchisees[591] who have left the franchise system in the last fiscal year. Finally, it also makes the disclosure more user-friendly than it was in the original Rule by requiring the statistical information to be presented in a tabular format.

Item 20 of the final amended Rule differs from the UFOC Guidelines model in several respects. First, it corrects a double-counting problem brought to the Commission's attention during the Rule Review. Second, it requires more limited disclosure of personal contact information of former franchisees.[592] Third, when a franchisor resells a specific outlet it has reacquired, it mandates that the franchisor disclose the outlet's prior franchisee-owners during the franchisor's last five fiscal years. Fourth, it addresses franchisors' use of ''confidentiality clauses,'' which effectively restrict franchisees from discussing their experiences with prospective franchisees. Finally, it requires the disclosure of trademark-specific franchisee associations.[593] We address each of these issues below.

a. Double-counting

As proposed in the Franchise NPR, the final amended rule avoids a problem with the UFOC Guidelines' version of Item 20.[594] Like the UFOC Guidelines, the final amended Rule Item 20 requires disclosure of information about franchisees who have recently left the franchise system, as well as changes in ownership of franchised outlets. During the Rule amendment proceeding, no commenters opposed this requirement in principle, but commenters almost unanimously voiced concern that UFOC Item 20 is seriously flawed and needs to be fixed.[595] Specifically, UFOC Item 20 often results in franchisors ''double-counting'' changes in franchised outlet ownership, resulting in inflated turnover rates.

The Commission believes that the UFOC Guidelines' ''double-counting'' problem is attributable to at least two factors. First, UFOC Item 20 requires franchisors to report changes in

prospective franchisees to notify the FTC and an appropriate state agency of an unauthorized earnings claim seems a bit excessive).

[588] Karp, at 3. In the same vein, Howard Bundy would strengthen the second preamble to read:

''Financial Performance Information is material to any decision to invest. [Franchisor] does not provide you with Financial Performance Information. The absence of such information makes it very difficult for you to estimate your prospects of success in the business. You should proceed with caution and consult your franchise attorney and other business advisors.''

Bundy, NPR 18, at 10.

[589] *See* 16 CFR 436.1(a)(16). In the original SBP, the Commission explained that the required statistical information gives prospective franchisees material information about the size of the franchise system they are contemplating joining and goes to the prospect's likelihood of success. ''Providing a prospective franchisee with an accurate statement of the number of units operated by his or her franchisor will convey information relating to the financial success of the particular franchise business since the franchisee's ultimate success depends in large measure on public recognition of the franchisor's name.'' Original SBP, 43 FR at 59670. *See also* ANPR,

62 FR at 9118. In addition, the disclosure of contact information for current franchisees prevents fraud by arming prospects with a valuable alternative source of information with which to verify franchisor's representations. *Id.*

[590] UFOC Guidelines, Item 20B.

[591] Current and former franchisees often have widely different experiences. For that reason, in *Blenheim Expositions, Inc.*, 120 FTC 1078 (1995), the Commission challenged as a violation of Section 5, franchisee success claims based upon a Gallup Poll study of current franchisees only.

[592] The UFOC Guidelines require the disclosure of names, last known home address, and telephone number of each franchisee who left the system within the last fiscal year. UFOC Guidelines, Item 20E. The purpose of the disclosure is to reduce fraud by enabling prospective franchisees to learn about the nature of the franchise system and, most important, the nature of the franchise relationship from those who recently exited the system, voluntarily or involuntarily. To reduce inconsistencies between with the UFOC Guidelines, the Franchise NPR followed the same approach. Franchise NPR, 64 FR at 57343. As explained below, however, Item 20, as proposed in the Franchise NPR, would require the disclosure of personal information, raising privacy concerns. For that reason, the Commission has adopted a more limited approach in the final amended Rule.

[593] The provision does not require franchisors to disclose the existence of broad-based organizations that represent franchisee interests generally, such as the American Franchisee Association, the American Association of Franchisees & Dealers, or the International Franchise Association.

[594] The problems with the UFOC Guidelines' Item 20 first surfaced during the Rule review that preceded initiation of the rule amendment proceeding. Simon, RR Tr., at 223–24; Maxey, RR Tr., at 224–25. To develop a record on this issue, the ANPR solicited comment on whether UFOC Guidelines Item 20 accurately reflects franchisees' performance history and, if it does not, how the Commission could modify the Item 20 disclosures to reflect performance history more accurately. ANPR, 62 FR at 9116. In response to the ANPR, several commenters confirmed that Item 20 results in ''double-counting'' of franchise turnover rates. *E.g.*, H&H, ANPR 28, at 6; AFA, ANPR 62, at 3; IL AG, ANPR 77, at 2; Tifford, ANPR 78, at 4; IFA, ANPR 82, at 2; Cendant, ANPR 140, at 3; Karp, 19 Sept. 97 Tr., at 91. Accordingly, in the Franchise NPR, the Commission attempted to address the identified problems with the UFOC version. Franchise NPR, 64 FR at 57342–44. However, commenters criticized proposed Item 20 of the Franchise NPR as inadequate to solve the problem. *E.g.*, IL AG, NPR 3, at 7; PMR&W, NPR 4, at 13–14; H&H, NPR 9, at 19; Snap-On, NPR 16, at 4; NASAA, NPR 17, at 5; Karp, NPR 24, at 11; Frandata, NPR 29, at 10. At that time, NASAA, in consultation with an Industry Advisory Committee, developed a comprehensive revamping of Item 20, which it submitted in its Franchise NPR comments. NASAA, NPR 17, at 5–10. Several additional commenters either submitted the same proposal or endorsed the NASAA proposal. PMR&W, NPR 4, at 14–66 and Exhibit A; NPC, NPR 12, at 31–32; Frandata, NPR 29, at 11. The Staff Report recommended adoption of NASAA's suggested revamping of Item 20. Staff Report, at 180. No Staff Report comments offered further criticism of the staff's recommendation for revising Item 20.

[595] *E.g.*, H&H, ANPR 28, at 6; AFA, ANPR 62, at 3; IL AG, ANPR 77, at 2; Tifford, ANPR 78, at 4; IFA, ANPR 82, at 2; Cendant, ANPR 140, at 3; Karp, ANPR, 19 Sept. 97 Tr., at 91; Simon, RR, Sept.95 Tr., at 223–24.

franchised outlet ownership according to five enumerated categories: (1) transferred; (2) canceled or terminated; (3) not renewed; (4) reacquired by the franchisor; or (5) reasonably known to have ''ceased to do business.'' The terms describing these categories, however, are undefined. The absence of precise definitions blurs the line between categories, resulting in a double-counting of outlet closures.[596] For example, a single transaction can quite correctly be characterized as either a transfer or a reacquisition. They are often two sides of the same coin: a franchisor's assumption of control of a franchised outlet that has gone out of business reasonably could be captured either as a transfer by the franchisee, or as a reacquisition by the franchisor.

Second, even if the definitions were clear, UFOC Item 20 can be interpreted to require the disclosure of each of a series of events associated with a single outlet ownership change.[597] For example, after terminating a franchise agreement, the franchisor may reacquire the outlet. The franchisor could then either operate the outlet as a franchisor-owned store, or sell it to a new franchisee. In such a case, UFOC Item 20 arguably calls for the franchisor to report a termination followed by a reacquisition as two separate events. Similarly, a franchisee may abandon an outlet, and, in response, the franchisor may send the franchisee a termination letter, reacquire the outlet, and then transfer it to a new franchisee. Although the outlet has changed franchisee-ownership only once, the franchisor conceivably would report this event four times as a ceased to do business, termination, reacquisition, and transfer.[598]

The final amended Rule remedies the imprecision that characterized the delineated reporting categories. Item 20 of the final amended Rule sets forth precise definitions to avoid overlapping categories. Specifically, ''termination'' means ''the franchisor's termination of a franchise agreement prior to the end of its term and without paying consideration to the franchisee (whether by payment or forgiveness or assumption of debt).'' ''Non-renewal'' occurs ''when the franchise agreement for a franchised outlet is not renewed at the end of its term.'' ''Reacquisition'' means ''the franchisor's acquisition of an outlet for consideration (whether by payment or forgiveness or assumption of debt) of a franchised outlet during its term.'' ''Transfer'' means ''the acquisition of a controlling interest in a franchised outlet during its term by a person other than the franchisor or an affiliate.''[599]

Beyond better defined reporting categories, commenters offered various suggestions to improve Item 20.[600] The approach suggested by NASAA garnered the most support. NASAA asserted that UFOC Item 20 needs to be revised in its entirety and, as noted above, submitted for the Commission's consideration an alternative that was produced with the assistance of an Industry Advisory Committee.[601] Several other commenters submitted the same proposal or endorsed the NASAA proposal.[602] The Staff Report recommended that the NASAA suggestion be incorporated into the final amended Rule. After careful consideration, the Commission has determined to adopt NASAA's proposal. It is the best way to solve the Item 20 double-counting problem. It will be easily understood by those in the industry, and it will provide prospective franchisees with the information they need without imposing undue compliance burdens on franchisors.

Accordingly, Item 20 of the final amended Rule contains five tables. Table No. 1 indicates the status of a franchisor's system. It shows the number of franchised and company-owned outlets at the beginning and end of each of the last three fiscal years, and the total net change.[603]

Table No. 2 shows transfers, treating them separately from terminations and non-renewals. This is appropriate because, as NASAA observed, transfers do not affect the total number of outlets in a franchise system, and the mere fact that an outlet has been transferred tells nothing about the reason for the transfer: ''While some transfers are

[596] *See* UFOC Item 20D. *See also* Wieczorek, ANPR, 18 Sept. 97 Tr., at 31.

[597] For a detailed discussion of this issue, see Franchise NPR, 64 FR at 57312; Staff Report, at 173–77.

[598] While the UFOC Item 20 instructions provide that the franchisor can add footnotes to clarify the numbers, the use of multiple explanatory footnotes removes the benefit of presenting information in a readily accessible tabular format. In addition, prospective franchisees may not read or fully appreciate the import of the footnotes. *See* Zarco & Pardo, ANPR 134, at 6–7 (''If the [Item 20] information becomes too complicated, the potential franchisee will not know how to interpret the data and thus, derive no benefit from the increased efforts at meaningful disclosure.'').

[599] Staff Report, at 48–53. The definitions of the terms ''transfer'' and ''reacquisition'' are the same as those proposed in the Franchise NPR, with minor reorganization for clarity. The definitions of the terms ''termination'' and ''non-renewal,'' however, have been revised for greater precision. Specifically, the Franchise NPR defined the terms ''termination'' and ''non-renewal'' as occurring when the franchisor sends out an ''unconditional notice of intent'' to exercise its rights to terminate or not to renew, respectively. Franchise NPR, 64 FR at 57343. One commenter noted, however, that these proposed definitions are inaccurate, noting that ''intent to exercise'' rights does not ''necessarily result in the completion of the event.'' PMR&W, NPR 4, at 13. The Commission agrees. In addition, the final amended Rule deletes the proposed definition for ''cancellation''—which would have been similar to the definition for ''termination''—because the ''cancellation'' reporting category has been deleted from Item 20 because it is duplicative of other reporting categories (termination, non-renewal, or ceased operations). No commenters raised any concerns in response to the Staff Report's revised definitions of the terms ''termination'' and ''non-renewal.''

[600] Three commenters suggested that the Commission address double-counting by adding additional reporting categories to the Item 20 disclosure. For example, Robert Zarco recommended that the Commission create multiple categories to capture various combinations of ownership changes. Transfers, for instance, would be divided into four distinct categories: (1) transfers by the franchisee to the franchisor; (2) transfers by franchisees to the franchisor, but ultimately re-franchised; (3) transfers by franchisee directly to new franchisee; and (4) transfers by franchisee directly to new franchisee more than once. Zarco & Pardo, ANPR 134, at 6–7. *See also* Karp, ANPR 136 (suggesting that the Commission add columns for newly developed outlets and outlets converted from franchisor-owned, as well as distinguish between units not renewed by franchisor and units not renewed by franchisee). Similarly, the AFA recommended that franchisors create as many categories as needed to capture all combinations of ownership changes that might occur at each outlet during the course of the year. For example, a termination followed by a transfer to a new owner would be reported as a ''termination and transfer,'' while a termination followed by a reacquisition to the franchisor and then a transfer to a new franchisee would be reported as a ''termination, reacquisition, transfer.'' AFA, ANPR 62, at 3. Another franchisor representative opined that most double-counting problems are attributable to the inclusion of transfers and reacquisitions in the table summarizing the status of franchised outlets. He advised that transfers and reacquisitions usually follow an initial closing, such as a termination or non-renewal. He suggested that transfers and reacquisitions—which are the consequence of an outlet closure—be offset from the outlet closing statistics. To that end, he proposed that transfers be removed from the main body of the franchisee statistics table and placed in a separate column located on the side of the franchisee statistics table. Further, he suggested that reacquisitions should be moved to the second Item 20 table concerning franchisor-owned outlets. Wieczorek, ANPR 122, at 3–4. Mr. Wieczorek attached sample tables for the Commission's consideration. *Id.*

[601] NASAA, NPR 17, at 5–10.

[602] *See, e.g.*, Gust Rosenfeld, at 6; PMR&W, NPR 4, at 14–66 and Exhibit A; NFC, NPR 12, at 31–32; Frandata, NPR 29, at 11.

[603] The instructions to Table No. 1—section 436.5(t)(1)—defines ''outlet'' to include ''outlets of a type substantially similar to that offered to the prospective franchisee.'' Piper Rudnick urged the Commission to clarify the phrase ''substantially similar'' further in the Compliance Guides. Specifically, the firm recommended that ''substantially similar'' should be limited to where the outlet does ''business under the same trademark and system.'' Piper Rudnick, at 6. We disagree. Section 436.5(t)(1)'s ''substantially similar'' outlet disclosure serves an important anti-fraud purpose, ensuring that a franchise system does not simply sell outlets under a new name in order to hide a poor growth record or high turnover history. For that reason, the focus of the disclosure is properly on the similarities between the goods or services sold at the outlets, not the name under which the outlets conduct business.

problematic for franchisees or prompted from disputes, many other transfers simply reflect a desire on the part of the franchisee to cease operating a franchise or to pursue other opportunities.''[604] Nonetheless, the total number of transfers within a system is material because it goes to the stability within the franchise system over time. Table No. 2 indicates the number of franchise transfers in each state over the last three fiscal years.

Table No. 3 tracks the turnover rate of franchised outlets.[605] Franchisors must report, by state and for each of the last three fiscal years, the outlets at the start of the year, new outlets opened, terminations, non-renewals, reacquisitions by the franchisor, outlets that ceased to do business,[606] and outlets at the end of the year.

Table No. 4 tracks the turnover at company-owned outlets. Franchisors must disclose, for each of the last three fiscal years, the number of their outlets at the start of the year, new outlets, reacquired outlets, closed outlets, outlets sold to franchisees, and outlets at the end of the year.

Finally, Table No. 5 retains the current UFOC projected openings table. This table gives prospective franchisees insight into anticipated growth within the system by requiring the disclosure of both projected franchised and company-owned openings in the next fiscal year. It also reveals the number of franchise agreements signed in the previous year where a store has not yet been opened. This information is material because it enables a prospective franchisee to gauge how long it may take before his or her store actually becomes operational.

During the Rule amendment proceeding, Eric Karp submitted a variation of the NASAA proposal for the Commission's consideration that would greatly expand the NASAA proposal. For example, according to the Karp proposal, Table No. 2 would require franchisors to disclose not only the number of transfers in each of the last three fiscal years, but also the number of completed transfers, requests for transfer that were denied, and those transfers in progress at the end of the fiscal year. His Table No. 3 would divide new outlets into two categories: new outlets that are newly developed and new outlets that were purchased from a franchisor. Mr. Karp also proposed a new table that would calculate a specific turnover rate, expressed as a percentage, by comparing the number of outlets at the beginning of a fiscal year with the number of outlets during the year that were terminated by the franchisor, non-renewed, repurchased by the franchisor, transferred to another franchisee, or ceased operations for other reasons. Finally, Mr. Karp would revise the new growth projection chart, requiring franchisors to disclose for each of the last three fiscal years: previously projected franchised new outlets; actual number of franchised new outlets; franchise agreements signed but outlets not in operation; and projected franchised new outlets for next fiscal year.[607]

The Commission is not persuaded to expand Item 20 as Mr. Karp suggested. The additional proposed disclosures would greatly increase the size of the already extensive Item 20 disclosure, potentially overwhelming prospective franchisees while increasing franchisor compliance costs. Further, to streamline the Rule and reduce inconsistencies with the UFOC Guidelines, we are disinclined to add new Item 20 charts that merely restate information that can already be gleaned from the existing charts. For example, the amended Item 20 disclosures enables prospective franchisees to calculate turnover rates for themselves from the data contained in Tables 1 and 3 by comparing outlets at the beginning of a fiscal year with the number of outlets closed during the year.

b. Identification of former franchisees

Section 436.5(t)(5) of the final amended Rule adopts the Franchise NPR proposal that franchisors disclose contact information for franchisees who have exited the franchise system in the most recently completed fiscal year, consistent with the UFOC Guidelines.[608] This disclosure, like the parallel disclosure of contact information for current franchisees, prevents fraud by giving prospective franchisees additional sources of material information about the franchisor, the nature of the franchise system and the franchisor-franchisee relationship. As explained below, the final amended Rule provision differs from the UFOC Guidelines and the Franchise NPR proposal, however, to address privacy concerns regarding the disclosure of personal contact information.[609]

The Franchise NPR, incorporating UFOC Guidelines Item 20, would have required franchisors to disclose the name and last known home address and telephone number of every franchisee that exited the system within the last fiscal year.[610] While the Commission believes that such information serves a valuable anti-fraud purpose—enabling prospective franchisees to obtain material information from those with hands-on experience with the franchise system—it can be achieved in a more limited fashion that also protects former franchisees' privacy—notwithstanding that this type of information may be available in the public domain from such sources as telephone directories. To that end, the final amended Rule provision requires franchisors to disclose only the name, city and state, and current business telephone number, or, if unknown, the last known home telephone number of former franchisees. Further, to give prospective franchisees notice that their contact information may be disclosed even after they leave the franchise system, franchisors must state the following language in immediate conjunction with the list of former franchisees: ''If you buy this franchise, your contact information may be disclosed in the future to other buyers when you leave the franchise system.''[611] To allow for greater flexibility, footnote 10 to the final amended Rule provides that franchisors may substitute alternative contact

[604] NASAA, NPR 17, at 8.

[605] To reduce double-counting, Item 20 specifies that multiple events are to be reported using a ''last-in-time'' approach. *See* PMR&W, NPR 4, at 13–14. *See also* NASAA, NPR 17, at 5–10; Frandata, NPR 29, at 11. During the Rule amendment proceeding, other commenters offered other options, such as a ''first-in-time'' approach, or establishing an order of priority among events. We are persuaded that a last-in-time approach is appropriate, for the reasons noted in the PMR&W comment: ''A last-in-time prioritization is appropriate for at least three reasons: (1) it allows for an easily ascertainable confirmation of the event; (2) it represents a fact, rather than an intention (*e.g.*, a termination notice) or a proposal (*e.g.*, a transfer rather than request); (3) in dispute situations, it labels the event in a manner consistent with the parties' settlement of their dispute.'' PMR&W, NPR 4, at 13–14.

[606] The instructions accompanying Table No. 3 include the statement that the franchisor must, in column 8 of the table, ''state the total number of outlets in each state not operating as one of the franchisor's outlets at the end of each fiscal year for reasons other than termination, non-renewal, or reacquisition by the franchisor.''

[607] Karp, at 4; Karp, NPR 24, at 14-19.

[608] UFOC Guidelines Item 20 E. In contrast, the comparable provision of the original Rule required the disclosure of only the *number* of franchisees who left the system within the last fiscal year. 16 CFR 436.1(a)(16).

[609] No commenter—including current and former franchisees—raised any privacy concerns during the course of the Rule amendment proceeding. Accordingly, this was not addressed in the Staff Report.

[610] In contrast, the disclosure of current franchisees' contact information is limited to their business address and business telephone number.

[611] This approach is similar to the proposed disclosure of current business opportunity buyers' contact information in recently published Business Opportunity Rule Notice of Proposed Rulemaking, 71 FR 19054, 19071 (Apr. 12, 2006).

information at the request of the former franchisee, such as a home address, post office address, or a personal or business email address.

c. Identification of former franchisee-owners of a specific outlet being resold

Section 436.5(t)(6) of the final amended Rule extends the original Rule and UFOC Guidelines Item 20 by addressing turnover at a specific outlet. When a franchisor resells an outlet under its control that was previously owned by a franchisee,[612] Item 20 requires the franchisor to disclose contact information for each previous owner of that outlet, the time period when the previous owner controlled the outlet; the reason for each previous ownership change; and the time period(s) when the franchisor retained control of the outlet. As explained below, this provision is designed to prevent fraud in the resale of a specific franchised outlet, by giving prospective purchasers of that outlet sources of information with hands-on experience operating the outlet.[613]

During the Rule amendment proceeding, the IL AG asserted that a number of successive sales of a franchised outlet could indicate ''churning,'' the practice whereby a franchisor turns a blind eye to franchisee failures—or worse, encourages them—in order to sell the same outlet repeatedly. The IL AG urged the Commission to require franchisors to provide a prospect with a detailed site history when a buyer is being directed to a particular location. ''This could be a three year history that would chart prior franchisees, their dates of operation, dates of store management by the franchisor for the site, and the reasons previous franchisees departed from that site.''[614]

The Commission agrees, but is convinced that a five-year reporting period is warranted in order to allow sufficient time to identify a trend.[615] As noted throughout this document, the Commission believes that more disclosure is warranted to give prospective franchisees information about the quality of the relationship between the franchisor and franchisee. Information about franchise operations at a specific unit advances that goal. Surely, significant turnover at a particular location might indicate a lack of promised support for the location, or worse, as the IL AG explained, a possible franchisor strategy to have the franchisee fail in order to resell the unit. We believe any compliance costs to the franchisor, therefore, are outweighed by the countervailing benefits to prospective franchisees.

In response to the Staff Report, two commenters raised questions about the application of this provision. Specifically, they observed that a franchisor might not have a particular unit in mind when it begins negotiations with a prospective franchisee. They speculated as to whether this provision would be triggered if a franchisor were to direct a prospect to a particular unit after the franchisor has furnished the prospect with a disclosure document. In particular, they noted that it would be an open question under state law as to whether a franchisor would have to redisclose including unit-specific disclosures, and whether redisclosure would trigger an additional 14 days before signing the agreement.[616]

The commenters urged that a franchisor be permitted to furnish the unit-specific disclosures outside the disclosure document, just as a franchisor may make supplemental financial performance claims outside of the disclosure document without triggering a redisclosure obligation.[617] The Commission believes these comments are well-taken. The purpose of this provision is to provide prospective franchisees with material information about a specific unit being considered for purchase. The need for furnishing this information must be balanced against the legitimate concerns of franchisors about compliance costs. On balance, the Commission is persuaded that a franchisor who recommends a specific unit after having made proper disclosure should have the option of providing the unit-specific information in a supplement to the disclosure document, if it so chooses. Accordingly, Item 20 provides: ''This information may be attached as an addendum to a disclosure document, or, if disclosure has already been made, then in a supplement to the previously furnished disclosure document.''[618]

d. Confidentiality clauses

Section 436.5(t)(7) addresses franchisors' uses of confidentiality clauses, as proposed in the Franchise NPR.[619] This is a new provision that is not in the original Rule or UFOC Guidelines. If, during the last three fiscal years, franchisees signed a confidentiality clause in a franchise agreement, settlement, or in any other contract with the franchisor, the franchisor must insert in their Item 20 disclosure the following prescribed statement: ''In some instances, current and former franchisees sign provisions restricting their ability to speak openly about their experience with [name of franchise system]. You may wish to

[612] This modifies slightly the version of Item 20 set forth in the Staff Report, which stated: ''If a franchisor is selling an existing franchised outlet, disclose the following additional information . . .'' Staff Report, at 181 and proposed revised Rule, 64 FR at 57342–44. Two commenters correctly noted that this language is ambiguous because ordinarily a franchisor does not sell an existing franchised outlet. Rather, a franchisor may sell an outlet in its control that was previously owned by a franchisee. Wiggin & Dana, at 3; J&G, at 6. We agree. This provision applies only where the franchisor has reacquired or otherwise gained control of an outlet. It would not apply where an existing franchisee merely asks for the franchisor's assistance in transferring an outlet to a new owner.

[613] As discussed in the previous section in connection with the disclosure of contact information for former franchisees, the disclosure of contact information for former franchisees of a specific outlet differs from the Franchise NPR proposal to address privacy issues. To protect the privacy of former franchisee-owners of a specific outlet, the amended Item 20 requires the disclosure of only the name, city and state, business telephone number, or, if unknown, last known home telephone number of the former franchisee-owners.

[614] IL AG, NPR 3, at 7. *See also* Singler, at 1. This provision also complements Item 19 provision that permits a franchisor to provide supplemental financial performance information about a specific unit being offered for sale. In order to prevent misrepresentation, a prospective franchisee should be able to speak with former owners of a specific unit being offered for sale when a franchisor provides financial performance information about that specific unit.

[615] We note that the Staff Report urged the Commission to adopt a three-year reporting period, while the text of the proposed revised Rule attached to the Staff Report stated a five-year reporting period. *Compare* Staff Report, at 181 *with* proposed revised Rule, at 56. Some commenters urged the Commission to adopt a three year reporting period, Wiggin & Dana, at 3, while others said that even a five-year period is insufficient to ''discern the most egregious trends''). Singler, at 2. We are convinced that a three-year reporting period is too short to expose a trend of specific unit sales. For example, a single unit could be resold three times: once immediately before a three-year reporting period, a second time during a three-year period, and a third time immediately after the three-year period. In such a scenario, a three-year reporting period would capture only one resale. We believe a five-year reporting period strikes the right balance between ensuring material disclosure and reducing compliance burdens.

[616] Wiggin & Dana, at 4; J&G, at 6.

[617] Wiggin & Dana, at 4.

[618] Indeed, this approach is consistent with UFOC Guidelines Item 19, which permits franchisors who have made an Item 19 financial performance disclosure to provide prospective franchisees with supplemental data ''directed to a particular location or circumstance, apart from the [disclosure document.]'' UFOC Guidelines, Item 19A, Instructions (ii).

[619] Franchise NPR, 64 FR at 57312–14. As set forth in the definitions section, the term ''confidentiality clause'' means ''any contract, order, or settlement provision that directly or indirectly restricts a current or former franchisee from discussing his or her personal experience as a franchisee in the franchisor's system with any prospective franchisee. It does not include clauses that protect franchisor's trademarks or other proprietary information.'' Section 436.1(c).

speak with current and former franchisees, but be aware that not all such franchisees will be able to communicate with you.'' In addition, a franchisor may, at its option, also disclose the number and percentage of current and former franchisees who signed confidentiality agreements, as well as the circumstances under which such clauses were signed.

This provision was prompted by numerous comments from franchisees and their advocates urging the Commission to address the use of confidentiality clauses in franchising. Indeed, one quarter of the ANPR commenters (42 out of 166 commenters) and several speakers at public workshop conferences addressed the confidentiality clause issue, the majority opposing their use.[620] The most poignant example was a franchisee of an undisclosed franchise system who related that she had to speak quickly because she was on her way to sign a final agreement terminating her relationship with her franchisor. The agreement she was about to sign included a confidentiality clause.[621] These commenters complained that the use of confidentiality clauses is widespread,[622] and several commenters urged the Commission to ban the use of confidentiality clauses as a deceptive or unfair trade practice.[623]

Other opponents of confidentiality clauses—including state regulators and some franchisors—asserted that such provisions inhibit prospective franchisees from learning the truth as they conduct their due diligence investigation of a franchise offer. As noted above, current and former franchisees are often a valuable source of information about the franchise investment and can often verify or discredit the franchisor's claims, especially financial performance representations.[624] Attempts to restrict franchisee speech through confidentiality provisions may deceive prospects by effectively eliminating one crucial source of information, namely those current and former franchisees who may have a dispute with the franchisor or are otherwise disgruntled.[625] Indeed, a franchisor, if it wished to do so, could attempt to use confidentiality provisions to ensure that prospects speak with only those franchisees who are successful or otherwise inclined to give a positive report.[626] In addition, one franchisee representative, contended that the harm flowing from confidentiality provisions goes beyond individual franchise sales, noting that such provisions intimidate franchisees into not testifying before legislative committees and public agencies, such as the Federal Trade Commission.[627]

On the other hand, several franchisors and their representatives opposed banning the use of confidentiality clauses. For example, David Kaufmann asserted that confidentiality provisions prevent disgruntled franchisees from inflaming others and enable franchisors to end bad relationships with problem franchisees without spending considerable resources. He contended that banning confidentiality provisions would discourage informal settlements with franchisees.[628] Others added that franchisors must have the ability to protect their trade secrets from disclosure.[629]

The Commission believes that the record does not support an outright ban

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[620] *E.g.*, Manuszak, ANPR 13; Paquet, ANPR 18; Rachide, ANPR 32; Sibent, ANPR 41 (and 19 identical ANPR commenters); AFA, ANPR 62, at 3; Buckley, ANPR 97; Marks, ANPR 107, at 2; NASAA, ANPR 120, at 4; Dady & Garner, ANPR 127, at 2; Karp, ANPR, 19 Sept. 97 Tr., at 95. Opponents included several franchisor representatives. *E.g.*, Kestenbaum, ANPR 40, at 2. Cendant opposed the use of confidentiality clauses, except to protect trade secrets or other proprietary information. Cendant, ANPR 140, at 3.

[621] The franchisee stated:

''I am at this point not going to state the franchise because I am on my way at 1:00 to sign the final divorce papers, as such, the papers that separate us legally. There's a gag order there. So, if you are planning on putting this on the Internet, that could be a problem. . . . [T]he gag order . . . prohibits me from being able to answer questions, you know, and give cautionary remarks to other people who might be considering the franchise that I was with.''

Lundquist, ANPR, 22 Aug. 97 Tr., at 42–43. *See also* Maloney, ANPR 38, at 2 (''When it became apparent to both me and Southland Corporation that it was time to terminate our business relationship, we began negotiating my exit from the system. We came to a mutually acceptable agreement, however, the agreement contained a confidentiality clause. Even if my name appears in a UFOC as a former Franchisee, how much help can I give to anyone asking a question?'').

[622] For example, Susan Kezios of the AFA stated that ''the use of gag orders is almost 100 percent in some franchise systems.'' Kezios, ANPR, 6 Nov. 97 Tr., at 241. *See also* NASAA, at 6 (noting ''continued prevalence of confidentiality clauses in franchising''); Lagarias, ANPR 125, at 3 (''I have found that in most of the actions I have settled, the defendant franchisors and their counsel insist on confidentiality.''); Selden, ANPR 133, at Appendix B (''[Confidentiality clauses] are becoming increasingly problematic to franchisees.''). *See also* Karp, ANPR, 19 Sept. 97 Tr., at 92–93. Several franchisor representatives, on the other hand, insisted that confidentiality clauses are rare. *E.g.*, Tifford, ANPR 78, at 3; Duvall, ANPR, 6 Nov. 97 Tr., at 240.

It is apparent that franchisee and franchisor commenters addressed two different types confidentiality clauses: pre-sale and post-sale confidentiality clauses. The record indicates that franchisors do not routinely require franchisees to sign confidentiality agreements at the time of sale. *See* Wieczorek, ANPR, 18 Sept. 97 Tr., at 50. Indeed, no franchisees who commented on confidentiality clauses reported that they were required to sign a confidentiality provision in their initial franchise agreement. Nonetheless, it is clear that franchisors often require franchisees to sign post-sale confidentiality provisions in dispute settlements or as a condition to termination. *See, e.g.*, Slimak, NPR 130; Maloney, ANPR 38, at 2; D'Alessandro, ANPR, 22 Aug. 97 Tr., at 40; AFA, ANPR 62, at 3; Doe, ANPR, 7 Nov. 97 Tr., at 276; Rafizadeh, *id.*, at 299–300; Lundquist, ANPR, 22 Aug. 97 Tr., at 42–43; Lagarias, ANPR 125, at 3. Franchisors' forceful defense of confidentiality clauses on the grounds that they promote informal settlement of disputes also tends to support the view that such clauses are common in settlements. *See* Forseth, ANPR, 18 Sept. 97 Tr., at 40. *See also* Marks, ANPR, 19 Sept. 97 Tr., at 8-9.

[623] *See* IL AG, NPR 3, at 3 (''The ability of a prospective franchisee to freely discuss a present or former franchisee's experience with the franchisor may be the single most important step in a buyer's due diligence investment evaluation.''). *See also* IL AG, NPR Rebuttal 38, at 3; Manuszak, ANPR 13, at 1; Rachide, ANPR 32, at 3; Sibent, ANPR 41, at 1 (and 19 identical ANPR comments). Three franchisees— Raymond Buckley, Roger C. Haines, and David E. Myklebust—believed that they were kept in the dark about the failure of their franchisor's system due to confidentiality clauses imposed on current and former franchisees. Buckley, ANPR 97, at 1; Haines, ANPR 100, at 2; Myklebust, ANPR 101, at 1.

[624] For example, the AFA stressed that confidentiality clauses ''typically release the franchisor from legal liability and bar the franchisee (under threat of legal action) from making any oral or written statements about the franchise system or their experience with the franchised business. The purpose of such clauses is to shut down any negative public comment about the franchise system.'' AFA, NPR 14, at 3. *See also*, NCL, ANPR 35, at 3; Baer, ANPR 25, at 3; Karp, ANPR, 19 Sept. 97 Tr., at 95–96.

[625] For example, Roger Haines, a Scorecard Plus franchisee, related:

''I had spoken to some of the franchisees that had left the system. I now feel certain that they painted a picture that was not close to being the truth based on the gag order that [the franchisor] imposed. Had I gotten the truth from these people, my decision certainly would have been different. Every franchisee leaving the system has had a gag order placed on them, making it impossible for current and future franchisees to get the facts.''

Haines, ANPR 100, at 2. *See also* Cantone, ANPR, 18 Sept. 97 Tr., at 50 (''[T]he whole concept of a gag order is really destructive and . . . needs to be addressed.'').

[626] *See* NASAA, ANPR 120, at 4.

[627] Selden, ANPR 133, Appendix B.

[628] *E.g.*, Kaufmann, ANPR 33, at 5–6. *See also*, *e.g.*, Quizno's, NPR 1, at 2; H&H, NPR 9, at 20; Baer, NPR 11, at 14; NaturaLawn, NPR 26, at 2; Marriott, NPR 35, at 16; Snap-On, NPR 16, at 4 (urging the Commission either not to adopt the proposed disclosure or to revise it in a manner to accommodate franchisors' interests in fostering early and amicable settlements). J&G added that a confidentiality clause disclosure is unnecessary because the Rule already sheds light on the franchise relationship. ''If efforts at obtaining additional information are unsuccessful because of confidentiality agreements, a reasonable prospective franchisee should be able to take that fact into its evaluation of whether to buy the franchise. And additional disclosure about 'gag clauses' is not helpful.'' J&G, NPR 32, at 14.

[629] *E.g.*, Baer, ANPR 25, at 3. Franchisee advocates also recognized franchisor's legitimate need for trademark protection. *E.g.*, Singler, at 2; AFA, ANPR 62, at 3; Dady & Garner, ANPR 127, at 2; Zarco & Pardo, ANPR 134, at 4. For that reason, the definition of ''confidentiality clause'' specifically excludes confidentiality agreements to protect trademarks and other proprietary information.

on confidentiality clauses. Clearly there are instances where both franchisors and franchisees enter into such clauses voluntarily. As Marriott noted, franchisees in contract modification negotiations may seek or at least agree to confidentiality in order to gain certain advantages.[630] Under the circumstances, we cannot conclude that harm to franchisees from confidentiality clauses necessarily outweighs the potential benefits to franchisees, as well as franchisors. Nevertheless, based upon the record, the Commission is persuaded to adopt a balanced provision requiring franchisors to disclose their use of confidentiality clauses over the last three years. The Commission is convinced that franchisees often sign post-sale agreements containing confidentiality clauses in connection with dispute settlements and terminations. This practice may impede prospective franchisees' ability to conduct due diligence investigations of franchise offerings, undercutting the primary goal of pre-sale disclosure.[631]

The Commission believes that the final amended Rule's confidentiality clause disclosure requirement strikes the appropriate balance between informing prospective franchisees that franchisees in the system may not be able to share information with them, and minimizing compliance burdens. Of the various proposals offered by the commenters, a general disclosure notifying prospects about the franchisor's use of a confidentiality provision garnered the most support. For example, Howard Bundy told us that ''[i]n a perfect world I would have a list of those that are subject to [confidentiality provisions], so I didn't have to make all those extra 75 calls. But I could live with or without that. It's more important to disclose the fact that they do exist.''[632]

Other than the required statement explaining the nature of confidentiality clauses to prospects who may be unfamiliar with their use, any other disclosures—such as number and percentage or the reasons for the clauses—are entirely voluntary.[633] Moreover, we are unpersuaded that this approach would discourage settlements. Franchisors opting to pursue litigation in lieu of settlement in order to avoid the confidentiality disclosure would most likely have to disclose even more revealing information about the suit in their Item 3 disclosure.

Further, the confidentiality disclosure does not reach confidentiality clauses addressing specific contract negotiation terms and conditions.[634] We recognize that there may be instances where both franchisors and franchisees may not wish to discuss specific terms of an arrangement, such as the price paid for a franchise, or other concessions made to a franchisee. The confidentiality clause disclosure would be unwarranted, therefore, where the parties agree to a limited restriction that still enables franchisees to discuss their overall experience in the franchise system.[635]

In reaching our conclusion to adopt the confidentiality clause disclosure, we have carefully weighed suggestions to expand or to narrow the disclosure requirement. For example, we reject the suggestion that franchisors identify specific individual franchisees listed in Item 20 who are subject to a confidentiality clause.[636] We are persuaded that this suggestion goes beyond what is reasonably necessary to address the use of confidentiality clauses. No doubt a prospective franchisee's due diligence investigation of the franchise offering would be more efficient if the prospect could eliminate from its contact list those franchisees under a confidentiality agreement. However, we believe this approach would impose an unnecessary burden on those franchise systems that list all of their franchisees in Item 20 on a national basis. Presumably, franchisors would have to update records continually on each individual franchisee. Moreover, a requirement that franchisors note which specific franchisees are subject to a confidentiality clause may have the unintended consequence of actually encouraging large franchisors to eliminate from their list of 100 franchisees those who are subject to confidentiality clauses, thereby leaving a biased list of only those franchisees who are most successful or satisfied with the system.

We also reject suggestions to limit the disclosure to only those circumstances where franchisees have signed broad provisions restricting all speech[637] or where a threshold level of franchisees have signed confidentiality clauses.[638] If the purpose of the confidentiality clause disclosure were primarily to shed light on the extent of problems in the franchise relationship, then we might agree. As noted above, however, the disclosure aims to make prospective franchisees aware of the use of confidentiality clauses. Armed with such knowledge, prospective franchisees would understand that: (1) a refusal by one or more existing franchisees to speak is not necessarily benign; and (2) that the sample of

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[630] Marriott, NPR 35, at 16. *But see* Karp, at 8 (''It incorrectly implies that the franchisee that signed the confidentiality provision had a choice whether to do so or not.'').

[631] *See* AFA, at 3; Karp, at 8. *See also FTC v. Orion Prods.*, Bus. Franchise Guide (CCH) ¶ 10970 (N.D. Cal. 1997) and *United States v. Tutor Time Child Care Sys., Inc.*, No. 96–2603 (N.D. Cal. 1996). While in these two cases the Commission did not challenge the defendants' use of confidentiality clauses as either a Rule or Section 5 violation in its complaints, it did obtain fencing-in provisions in settlements that prohibited the defendants from enforcing or entering into confidentiality provisions for a limited time.

[632] Bundy, ANPR, 6 Nov. 97 Tr., at 249. *See also* AFA, at 3; Gee, at 2; Pu, at 1–2; Selden, ANPR 133, Appendix B; Zarco & Pardo, ANPR 134, at 4; Jeffers, ANPR, 6 Nov. 97 Tr., at 251–52; Wieczorek, ANPR, 6 Nov. 97 Tr., at 260. *But see* Singler, at 2 (permitting disclosure, but accepting that individuals may be contractually forbidden to discuss the franchisor makes little sense).

[633] Several commenters generally supported this provision. *See* NFA, NPR 27, at 1. *See also* AFA, NPR 14, at 3; Bundy, NPR 18, at 3; Stadfeld, NPR 23, at 5; Karp, NPR 24, at 21–22. *But see* NASAA, at 6; WA Securities, at 4–5; Singler, at 2 (asserting that franchisor should be required to disclose number and percentage information concerning their use of confidentiality agreements).

[634] *See* Tricon, NPR 34, at 3 (urging the Commission to exclude settlement details—such as the price paid to reacquire a franchised outlet—from the disclosure if the franchisee is otherwise free to discuss his or her personal experience as a franchisee). *See also* Quizno's, NPR 1, at 2; Marriott, NPR 35, at 16. Marriott asserted that the disclosure will create a disincentive for franchisors to accommodate franchisees' needs in non-standard deals. It noted that franchisors ''make a variety of concessions to franchisees in connection with workouts or in connection with sales, or purchasing or conversion of multiple units, among others, in exchange for which the franchisor will request the terms of such arrangements to be kept confidential.'' *Id.*

[635] The extent to which franchisors must disclose confidential settlement terms and conditions is spelled out in Item 3.

[636] Commenters maintained that such a requirement would accomplish two goals simultaneously. It would alert prospective franchisees that the franchisor may require franchisees to sign a confidentiality provision and would save prospects the time and trouble of trying to contact franchisees who are not free to speak. *See* AFA, NPR 14, at 3; Stadfeld, NPR 23, at 6; Cordell, ANPR, 6 Nov. 97 Tr., at 247–48; Kezios, *id.*, at 256. *But see* GPM, NPR Rebuttal 40, at 7 (opposing release of names); Wieczorek, ANPR, 6 Nov. 97 Tr., at 258–59 (this approach would be unnecessarily burdensome: franchisors would have to update their disclosures more frequently, especially in franchise registration states).

[637] PMR&W, for example, ''acknowledge[s] the FTC's concern about prospects being unable to raise questions with current or former franchisees who are subject to confidentiality requirements. The FTC's position is particularly understandable if a gag clause prevents *all* franchisee communication about the franchise system.'' PMR&W, NPR 4, at 15. Rather, the firm urged the Commission to limit the disclosure's application to only broad ''non-communication on any subject'' prohibitions. *Id.*

[638] The NFC advised that the disclosure should apply ''where either all franchisees, or at least twenty percent of the franchisee population, is barred from communicating with third parties.'' NFC, NPR 12, at 33. *See* Bundy, ANPR, 6 Nov. 97 Tr., at 249 and Jeffers, *id.*, at 251–52 (arguing in favor of a threshold).

franchisees listed in the disclosure document might actually be skewed. More important, adopting a threshold would not address the use of confidentiality clauses to restrict speech by a minority of franchisees (such as franchisees located in a particular city), which might be the most relevant universe of existing franchisees to an individual prospective franchisee.

e. Franchisee associations

One important difference between the original Rule and UFOC Guidelines, on the one hand, and the final amended Rule, on the other, is the new requirement that franchisors disclose trademark-specific franchisee associations.[639] The obligation to disclose such associations differs depending upon whether the association is sponsored or endorsed by the franchisor or is an independent association. Section 436.5(t)(8) provides that identifying information—name, address, telephone number, email address and Web address, to the extent known—must be included for each association ''created, sponsored, or endorsed by the franchisor.'' For independent associations, the same identifying information must disclosed only if the independent association:

> is incorporated or otherwise organized under state law and asks the franchisor to be included in the franchisor's disclosure document during the next fiscal year. Such organizations must renew their request on an annual basis by submitting a request no later than 60 days after the close the franchisor's fiscal year.[640]

During the Rule amendment proceeding, several franchisees and their representatives urged the Commission to adopt a trademark-specific franchisee association disclosure requirement. For example, one franchisee representative stated:

> The UFOC Guidelines currently require disclosure of the existence of purchasing cooperatives known to the franchisor, but this is not adequate disclosure of a fact of growing importance to franchisees, which is the existence, or non-existence, of an autonomous franchisee association representing franchisees in that particular franchise organization. When an organization represents a substantial plurality of franchisees in the system, perhaps over 30%, and its existence is known to the franchisor, that fact should be disclosed, possibly by an additional category in the list of existing franchisees required in Item 20, as an additional and critical source of information about the franchise opportunity.[641]

Some franchisors did not oppose a disclosure of franchisee associations, especially franchisor-sponsored franchisee advisory councils. However, they voiced concern about any mandate to disclose all independent franchisee associations. In their view, independent associations are often small, informal groups of individual franchisees that may come and go at any time, and are often formed on the local or regional level without the knowledge or involvement of the franchisor.[642] In short, they fear liability for failing to disclose a franchisee association that they did not know exists.

Based upon the record developed in this proceeding, the Commission is convinced that a trademark-specific association disclosure is warranted under certain circumstances. The disclosure of trademark-specific franchisee associations—both those sponsored or endorsed by the franchisor and independent franchisee associations—will greatly assist prospective franchisees in their due diligence investigation of the franchise offering, thereby preventing misrepresentations in the offer and sale of franchises. We recognize that Item 20 already requires franchisors to disclose the names of, and some contact information for, franchisees in their systems. This disclosure requirement, however, is limited to not more than 100 franchisees. This is true even for medium and large franchise systems with several hundred, if not several thousand, franchisees. Therefore, it is possible for some franchisors to hand-select franchisees listed in their disclosure documents, revealing only successful franchisees who maintain a good relationship with their franchisor.[643] Moreover, a franchisor

[639] The growth of trademark-specific system franchisee associations is a recent development in franchising. These associations are comprised of franchisees who operate a franchisor's particular brand. In some instances, these associations are franchisor sponsored or endorsed councils, where franchisee-participants are either selected by the franchisor or are elected by franchisees themselves. In other instances, the associations are independent of the franchisor. The emergence of independent franchisee associations is not always well-received by the franchisor. *See* Winslow, at 141 (''I believe franchisors ought to be allowed to put in the contract that if any franchisees get together and form a franchise association to use as a collective bargaining power against the franchisor, other than an association approved by the franchisor, then the franchisor should have the right to terminate the franchise contract with all franchisees in that region immediately and shut down further operations under the brand name in that area indefinitely.''). Some commenters reported that, in some instances, franchisors have filed suit to stop the formation of an independent group or have retaliated against individuals who have participated in such groups. *E.g.*, Donafin, ANPR 14 (noting pending federal lawsuit alleging franchisor interference with franchisees' right to form organizations). *Cf.* Mueller, ANPR 29 (''The FTC should take actions against franchisors who intimidate or retaliate against franchisees for getting together for any legitimate business purpose.''); Rachide, ANPR 32 (''[The FTC should prohibit [t]he use of retaliation against franchisees involved in franchisee organizations that work to educate or rally the franchise group.''). *See also* Karp, at 4; Karp, NPR 24, Appendix A (listing cases addressing franchisee organizations). A few states, including California, Illinois, and Washington, have addressed this issue by specifically prohibiting franchisors from restricting franchisees from freely associating or joining franchisee organizations. *See* Cal. Corp. Code 31220; 815 Ill. Comp. Stat. 705/17; Wash. Rev. Code 19.100.180(2)(a).

[640] As discussed below, section 436.5(t)(8) also makes clear that the franchisor has no obligation to verify the association's continued existence at the end of each fiscal year. Franchisors may also include the following statement in conjunction with the disclosure of independent franchisee associations: ''The following independent franchisee associations have asked to be included in this disclosure document.''

[641] Selden, ANPR 133, Appendix B. Similarly, Martin Cordell, a franchise examiner for the State of Washington, observed that disclosing trade associations could ''be a much more ready source of information as opposed to individual franchisees who have to take time out of their businesses to share information with the prospective franchisee.'' Cordell, ANPR, 6 Nov. 97 Tr., at 168-69. Susan Kezios of the AFA added that these associations ''have a collective memory of what has been going on historically in the franchise system that one or another individual franchisees may or may not have.'' *Id.*, at 176. *See also*, NFA, NPR 27, at 2; Stadfeld, NPR 23, at 14; Karp, NPR 24, at 9; Bundy, ANPR, 6 Nov. 97 Tr., at 173; Manuszak, ANPR 13; Zarco & Pardo, ANPR 134, at 3.

[642] *See* Baer, NPR 11, at 14; Shay, ANPR, 18 Sept. 97 Tr., at 71; Wieczorek, ANPR, 6 Nov. 97 Tr., at 169–70; Duvall, *id.*, at 171. J&G asserted that independent franchisee associations should qualify for inclusion only if they are representative of system franchisees and meet or communicate with the franchisor at least twice annually for the purpose of addressing franchise relationship issues. Further, the firm would require the association to:

> ''provide written notice to the franchisor no later than 30 days after the close of the franchisor's fiscal year end identifying the organization, its mission, its form of organization and the number of franchisees and franchised units which are dues-paying members or otherwise accredited members of the organization. If some franchisees are not dues-paying members, standards used for accreditation should be enclosed in the notice.''

J&G, NPR 32, at 13. *See also* PMR&W, NPR 4, at 15; Marriott, NPR 35, at 16.

[643] While 100 franchisees may know about franchisor-sponsored associations, they would not necessarily know about independent associations, such as those in particular locations, or about associations for specific-use franchisee groups (*e.g.*, those operating kiosks in malls). Further, there is also evidence in the record that franchisors do not readily inform prospects about the existence of independent associations. For example, Michael W. Chiodo, the executive director of the Domino's Franchisee Organization, explained that Domino's does not inform franchisees about the existence of

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could use confidentiality clauses to achieve the same goal. Therefore, the Item 20 list of franchisees may not be a random sample or otherwise representative of franchisees within a particular system. One approach to counter any franchisor-bias in Item 20 is to require that franchisors disclose the existence of certain franchisee associations, providing prospective franchisees with an alternative view of the franchise system.

The record also suggests that individual franchisees often are reluctant to share information with prospective franchisees. For example, Howard Bundy told us that he often instructs his franchisee-clients to state only their ''name, rank, and serial number and refer [the prospect] back to the franchisor for everything else.''[644] In his view, franchisees who speak in connection with a franchise sale might be deemed franchise brokers under state law and could be liable for any claims or damages resulting from the sale. Franchisees who volunteer information also might be subject to a defamation suit by the franchisor.[645] The trademark-specific franchisee association disclosure, therefore, is an important alternative source of information about the franchise system.[646]

Finally, a franchisee association disclosure is particularly important given that the final amended Rule does not mandate financial performance disclosures. One rationale for not mandating performance information is that prospects can contact franchisees directly to obtain such information. Indeed, franchisees are the best source of information about their own earnings. If true, then prospective franchisees, at the very least, should be able to contact as many existing and former franchisees as possible to learn about franchisee performance. A franchisee association disclosure may greatly assist prospective franchisees in their effort to obtain and review franchisees' financial performance by providing an independent source of information.

At the same time, the disclosure of franchisee associations is very narrowly tailored to address franchisors' concerns about the disclosure of independent franchisee associations. Specifically, Item 20 of the final amended Rule provides that a franchisor must list in its disclosure document independent trademark-specific associations only to the extent such associations make their existence known to the franchisor on an annual basis. This will reduce franchisors' burdens by requiring franchisors to disclose only those independent associations actually known to them. It requires no special research or recordkeeping or updating requirements on a franchisor's part. Accordingly, the compliance burden imposed by disclosing independent franchisee associations is minimal.

The final Rule amendment differs from the Franchise NPR, however, to add more precision. Specifically, Item 20 of the final amended Rule: (1) broadens the types of associations that qualify for inclusion as a trademark-specific franchisee association; (2) requires franchisee associations to request inclusion in the franchisor's disclosure document within 60 days of the end of the franchisor's fiscal year end; and (3) permits franchisors to add qualifying language alerting prospective franchisees that the associations listed in its disclosure document are independent associations. Each of these modifications is discussed in the section immediately below.

Item 20 of the final amended Rule requires franchisors to disclose only those independent franchisee associations that are incorporated or otherwise organized under state law. This differs slightly from the Franchise NPR and Staff Report, which recommended that only *incorporated* franchisee associations qualify for inclusion in a disclosure document.[647] The Commission is persuaded that informal, unorganized groups of franchisees are more akin to individual franchisees, than an association. In such instances, additional disclosure is unwarranted because a prospective franchisee can already speak with individual franchisees, whose contact information is also provided in Item 20. At the same time, the Commission agrees with Staff Report commenters that Item 20 should be read broadly to enable any *organized* independent franchisee association to seek inclusion in the franchisor's disclosure document.[648] Accordingly, any organized independent association—whether it is incorporated, a partnership, limited liability company, or trust, among other forms of association—qualifies for inclusion under Item 20.

Item 20 of the final amended Rule makes explicit that an independent franchisee association's request for inclusion in a disclosure document must be renewed annually by submitting a request for inclusion no later than 60 days after the close of the franchisor's fiscal year. This is more precise than the Franchise NPR, which contains no specific time frame during which independent associations should submit their request to the franchisor.[649]

Third, Item 20 of the final amended Rule permits franchisors to include a limited disclaimer, if they wish. Specifically, Item 20 provides that a franchisor can add to the independent franchisee association disclosure the following statement: ''The following independent franchisee associations have asked to be included in this disclosure document.''[650] We believe

the Organization, nor does Domino's inform the Organization about new franchisees. Chiodo, ANPR, 21 Nov. 97 Tr., at 294-95.

[644] Bundy, ANPR, 6 Nov. 97 Tr., at 236–37. *See also, e.g.,* Hayden, RR 42; Spencer, RR, Sept.95 Tr., at 74.

[645] Bundy, ANPR, 6 Nov. 97 Tr., at 237.

[646] Chiodo, ANPR, 21 Nov. 97 Tr., at 294–95. *See also* Galloway, *id.*, at 317–18; Manuszak, ANPR 13.

[647] Franchise NPR, 64 FR at 57344; Staff Report, at 58. The original approach was taken in response to commenters' concerns that requiring the disclosure of independent associations would be too broad, requiring the disclosure of even informal groups of franchisees, as noted above. However, several comments contended that the incorporation requirement was too restrictive, asserting that the Commission should permit the inclusion of all franchisee association that make their existence known to the franchisor. Bundy, at 9; Gust Rosenfeld, at 6–7; Singler, at 2–3; Stadfield, NPR 23.

[648] In response to the Staff Report, AAFD, in particular, noted that it is organized as a trust and its member franchisee associations form as chapters of that trust. It asserted that such association members, although not incorporated, are organized and should qualify for inclusion in a disclosure document. AAFD. *See also* IL AG, at 8.

[649] The Staff Report recommended that the Commission add precision to the Rule by requiring franchisee associations to submit their requests 90 days after the close of the franchisor's fiscal year. Staff Report, at 197. The staff's thinking was that a 90-day period would afford franchisors sufficient time to include any franchisee association information well before the expiration of the 120-day annual update period. *Id.* This view, however, was based on the assumption that a significant number of franchisors need 120 days to complete their annual updates. One commenter, however, argued that 60 days would be sufficient, noting that many franchisors complete their annual updates earlier than 120 days. Wiggin & Dana, at 4. In determining the appropriate time period for inclusion requests, it is appropriate not to interfere with franchisor's ordinary business practices. In particular, requiring franchisors ready to disseminate their updated disclosure documents to wait 90 days on the mere chance that a franchisee association may ask for inclusion in their document is unwarranted. Independent franchisee associations seeking inclusion should make their requests known to the franchisor as soon as possible. Surely, a franchisee association can submit its request before the close of the franchisor's fiscal year or soon thereafter. We are convinced that a 60-day period is a more balanced approach, enabling franchisee associations to request inclusion, while minimizing franchisor's compliance burden.

[650] This revises the disclaimer recommended in the Staff Report, which added the following additional sentence: ''We do not endorse these associations and their members may not represent all franchisees in the [name of franchisor] franchise system.'' Several commenters criticized this additional statement on the grounds that no association is going to represent 100% of all franchisees in a system. AFA, at 3–4. The

this statement makes clear that the franchisor is not necessarily endorsing or supporting the associations listed. This statement, coupled with the requirement that only an organized independent association must be disclosed and only upon the association's request, strikes the right balance between pre-sale disclosure and compliance burdens.

At the same time, the Commission has rejected the suggestion offered by some commenters that independent franchisee associations seeking inclusion in the franchisor's disclosure document should be representative of a significant number of franchisees in the franchise system.[651] These commenters urged the Commission to apply a threshold qualification test whereby a franchisor would not have to disclose an independent franchisee association unless the association represented a portion of system franchisees, such as 25% of system franchisees.[652]

The Commission recognizes that Item 20 may result in the disclosure of independent franchisee associations that are not necessarily representative of franchisees as a whole. However, we believe there is value in enabling prospective franchisees to speak with an association representing similar interests, even if not representative of the entire system. For example, a small independent association of franchisees in Anchorage, Alaska, might provide prospective franchisees with valuable information about local labor costs, financial performance data, as well as information about third-party suppliers. For this reason, we reject the notion that an independent association should be forced to establish that they represent a specific percentage of franchisees in a system. Rather, prospective franchisees can determine for themselves whether to contact independent franchisee associations and what weight to give any information such associations provide.

23. Section 436.5(u) (Item 21): Financial statements

Section 436.5(u) of the final amended Rule retains the original Rule's basic requirement that franchisors disclose three years of audited financial statements prepared according to generally accepted accounting principals (''GAAP'').[653] To maximize consistency with the UFOC Guidelines, it expands the original Rule by incorporating the UFOC Guidelines' requirement that financial disclosures be in a tabular format that compares at least two fiscal years. This provides prospective franchisees with information with which to assess financial trends, rather than just an isolated snap-shot of the franchisor's finances.

The final amended Rule provision differs from UFOC Guidelines Item 2, however, in three respects. First, while it requires the use of GAAP, it also recognizes that what currently is ''GAAP'' may change by federal government oversight of the accounting profession. Accordingly, it provides that franchisors must use GAAP, as revised by any future government mandated accounting principles. It also allows flexibility by permitting accounting standards recognized by the Securities and Exchange Commission. Second, consistent with other provisions of the final amended Rule, it requires the disclosure of a parent's financial information in limited circumstances. Specifically, a franchisor must include a parent's financial statements if the parent has post-sale performance obligations or guarantees the franchisor's performance. Third, Item 23 retains the Commission's long-standing policy of permitting franchisors to phase-in audited financial statements over three years.[654]

Four aspects of section 436.5(u) that prompted comment are discussed in the following section: (1) the required use of GAAP in preparing financial statements; (2) the scope of a parent's obligation to disclose financial information; (3) the obligation of subfranchisors to disclose financial information; and (4) the phase-in of audited financial statements. We discuss each of these issues below.

a. The requirement to prepare financial statements according to GAAP

Section 436.5(u)(1) of the final amended Rule requires franchisors to prepare financial statements according to ''United States generally accepted accounting principles, as revised by any future government mandated accounting principles, or as permitted by the Securities and Exchange Commission.'' This differs from the Franchise NPR, which proposed that franchisors use United States GAAP only in preparing their financial statements, consistent with the original Rule and UFOC Guidelines.[655]

During the Rule amendment proceeding, a few commenters opposed the Franchise NPR's proposed requirement that foreign franchisors prepare financial statements according to United States GAAP only. These commenters asserted that this requirement would impose expenses and burdens on foreign corporations entering the American market. H&H's comment was typical: ''For companies located in many foreign countries, . . . a requirement to convert to US accounting standards would be enormously expensive.''[656] H&H urged the Commission to permit foreign franchisors to prepare financial statements that ''conform to U.S. GAAP or otherwise to generally accepted accounting principles established in the country of the company's domicile.''[657] IL AG, however, argued that foreign companies should follow United States GAAP or be permitted to reconcile their financial statements to United States

commenters also noted that the proposed additional sentence is unnecessarily negative in tone. It should suffice that a franchisor simply notes that the independent associations have asked to be included, without implying that the independent association is a renegade group. AFA, at 3–4; Blumenthal, at 1–2; Bundy, at 9; Karp, at 5. While we are persuaded that an introductory statement may be warranted before listing independent associations—to distinguish them from franchisor endorsed or sponsored associations—the statement should be neutral and not imply any opinion on the merits of the independent associations. This is the same approach taken with respect to franchisor-endorsed or sponsored associations, where no such disclaimer is required. Accordingly, Item 20 of the final amended Rule deletes the last sentence from the Staff Report's version of the trademark-specific franchisee association voluntary disclaimer.

[651] *See* PMR&W, NPR 4, at 15; BI, NPR 28, at 13.

[652] Stadfeld, NPR 23, at 14–15. *See also* H&H, NPR 9, at 20–21 (if the organization represents 30% of franchisees); NFC, NPR 12, at 33 (if the organization represents 20% of the franchisees); BI, NPR 28 (unspecified threshold). *But see* IL AG, NPR Rebuttal 38, at 4 (''Setting a minimum percentage of franchisees to be a qualified association is virtually unworkable.'').

[653] 16 CFR 436.1(a)(20). In the original SBP, the Commission noted that a franchisee is purchasing, ''along with the franchise itself, some assurance of the financial stability of the franchisor, of the franchisor's ultimate ability to meet its obligations to its franchisees.'' Original SBP, 43 FR at 59679. For that reason, the Commission concluded that the disclosure of basic financial information by all franchisors ''is essential.''

[654] ''Without the auditing requirement, the financial statements remain nothing more than the franchisor's own representation of its financial condition.'' Original SBP, 43 FR at 59679-680. Nonetheless, the costs associated with preparing audited financial statements might create a barrier to entry by start-up franchisors. In the original SBP, the Commission made it clear that, as a matter of policy, franchisors can use unaudited financials during a phase-in period. *Id.*, at 59681.

[655] Franchise NPR, 64 FR at 57344. *See* 16 CFR 436.1(a)(20); UFOC Item 21. *See also* Advisory 02–4, Bus. Franchise Guide (CCH), ¶ 6515 (Nov. 18, 2002).

[656] H&H, NPR 9, at 13. *See also* NFC, NPR 12, at 33.

[657] H&H, NPR 9, at 13. Warren Lewis suggested that the Commission permit foreign franchisors to ''use financial statements prepared according to their countries' GAAPs, provided that those GAAPs are comparable to US GAAP.'' Lewis, NPR 15, at 17. Mr. Lewis, however, provided no criteria or examples that would help us determine what GAAP are or are not ''comparable.''

GAAP through footnotes and explanations.[658]

As noted in our discussion of section 436.2 concerning the scope of the Rule, the sale of franchises outside the United States was not an important issue when the Commission promulgated the Franchise Rule in 1978. The Commission recognizes, however, that application of only United States GAAP in today's global economy may impede competition from foreign franchisors. Accordingly, a more flexible approach is warranted, especially in the absence of any evidence in the record that financial statements prepared by foreign franchisors to date have been deceptive or misleading.

In determining whether to maintain the original Rule's stance on the use of GAAP in Item 21 financial statements, the Commission focuses strongly on the primary purpose of a disclosure document, which is to provide prospective franchisees with material information in a clear and conspicuous manner. Consistent with that principle, the Commission believes that franchisors must present financial data in a format that is meaningful to American prospective franchisees, as well as to their advisors. To that end, the suggestion offered by IL AG—that foreign franchisors use United States GAAP or reconcile their financial statements to United States GAAP—adds needed flexibility, while reducing costs and burdens on foreign franchisors. As noted in the Staff Report, this is the very position adopted by the SEC for the registration of securities by foreign companies.[659]

The SEC permits foreign companies registering securities to prepare financial statements using accounting procedures other than United States GAAP under limited circumstances. The first prerequisite is that such statements be prepared ''according to a comprehensive body of accounting principles.''[660] The company must also disclose the specific comprehensive body of accounting principles used to prepare the statements and explain material differences between the principles and United States GAAP. The company must also reconcile its statements with United States GAAP. For example, through additional notes, franchisors must reconcile figures for net income and total shareholders' equity for the period presented. Finally, the statements must provide all additional disclosures required by United States GAAP and applicable SEC regulations.[661]

The Staff Report recommended that the final amended Rule permit foreign financial statements that satisfy the SEC criteria. The Commission has determined that that recommendation is sound. As a starting point, application of the SEC accounting standards ensures against deception by requiring foreign franchisors to establish that their financials are prepared ''according to a comprehensive body of accounting principles.'' Further, it adds flexibility and minimizes costs and burdens on foreign franchisors, while ensuring that prospective franchisees receive the same material financial information as they would receive from a domestic franchisor. The Commission has determined to adopt this flexible approach, given the absence of any showing or suggestion in the record that reconciled foreign financial statements are inherently deceptive or misleading.[662] At the same time, we recognize the possibility exists that American accounting principles may evolve over time. Under the circumstances, Item 21 updates the original Rule by adding language designed to ensure that financial statements are prepared according to United States GAAP, ''as revised by any future government mandated accounting principles, or as permitted by the Securities and Exchange Commission.''[663]

b. Parent financial information

Section 436.5(u)(iv) of the final amended Rule requires a franchisor to disclose a parent's financial statements in two circumstances: (1) when the parent commits to perform post-sale obligations for the franchisor; or (2) when the parent guarantees obligations of the franchisor. This narrows the Franchise NPR proposal, which would have required disclosure of parent financial information in all instances.[664] As with other Rule provisions, several commenters questioned the routine inclusion of parent information in a disclosure document. For example, PMR&W observed that the UFOC Guidelines specify only that state examiners may ask for audited financials of a parent, but the Guidelines do not mandate it. In its view, parent financial statements are not relevant and are rarely requested.[665] Warren Lewis suggested that the Commission require the disclosure of parent financial statements ''only if (i) the company with the control chooses to guarantee the obligations of the franchisor or subfranchisor to the franchisee in writing, and (ii) a copy of the written guarantee is included in Item 21 or an exhibit.''[666]

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[658] IL AG, NPR Rebuttal 38, at 5.

[659] Staff Report, at 201.

[660] We noted that NASAA, in response to the Staff Report, suggested that the Rule simply mandate United States GAAP, or a reconciliation to United States GAAP, without referencing the SEC. NASAA, at 7. *See also* WA Securities, at 5. The Commission concludes that referencing the SEC is appropriate. Given the absence of any indication in the record that foreign accounting principles are inherently deceptive, flexibility in preparing financial statements is warranted. As long as the SEC would permit foreign accounting standards or foreign financial statements, we see no policy reason to differ. This is particularly true of financial statements prepared according to Canadian GAAP, which receives more lenient treatment under SEC law. *See* Spandorf, at 8 (recommending an accommodation to permit the use of Canadian GAAP).

[661] *See* SEC Form 20–F, Part III, Items 17 and 18. The SEC has also made clear that even if a foreign company reconciles its financial statements to United States GAAP, it must audit the financials according to United States generally accepted auditing standards (United States GAAS) and the auditor must comply with the United States standards for auditor independence. *See* Id., General Instruction E(c).

[662] Of course, the Commission retains its Section 5 authority to challenge any deceptive foreign statements.

[663] This modifies the version of Item 21 in the Staff Report, which would permit financial statements prepared according to ''United States generally accepted accounting principles, or as permitted by the Securities and Exchange Commission, or as revised by any future government mandated accounting principles.'' One comment questioned whether the third part—revised by any future government mandated accounting principles—was a third option distinct from the other two. Piper Rudnick, at 3–4. The language ''or as revised by any future government mandated accounting principles'' recognizes that what is currently considered United States GAAP may be modified in the future by government mandate, especially by regulations or rulings of the Federal Accounting Standards Board. Accordingly, it is not intended to comprise a separate option, but should be read to modify ''United States generally accepted accounting principles.'' The final amended Rule adopts this revised language.

[664] Franchise NPR, 64 FR at 57315. We also note that the Staff Report recommended that franchisors disclose financial statements of any parent ''or other entity'' with post-sale performance obligations or which guarantees the franchisor's performance. The inclusion of the phrase ''other entity'' prompted three comments voicing concern that it would sweep in suppliers that provide goods or services to franchisees. Piper Rudnick, at 3; Spandorf, at 8–9; Starwood, at 3. The Commission agrees that a reference to ''other entity'' would be an unwarranted expansion of Item 21. According, the reference to ''other entity'' has been deleted from the final amended Rule.

[665] PMR&W, NPR 4, at 16. *See also* Lewis, NPR 15, at 18; Snap-On, NPR 16, at 4; PREA, NPR 20, at 2; Marriott, NPR 35, at 17. Similarly, J&G opposed consolidated financial statements of affiliates where the franchisor has included its own financial statements. ''The increased cost and potential liability of other affiliates is unwarranted.'' J&G, NPR 32, at 13.

[666] Lewis, NPR 15, at 18. *See also* Baer, NPR 11, at 5; IL AG, NPR Rebuttal 38, at 4. In the same vein, Howard Bundy suggested that a franchisor should be permitted to use an affiliate's financial statements only ''if the affiliate guarantees *all* of the duties and obligations of the franchisor *in writing* and *for the entire* term of the franchise, including any renewals and extensions'' and a copy of the

The Commission believes these points are well-taken and are consistent with our view expressed in other sections of this document that a franchisor need not disclose parent information in all instances. Therefore, proposed Item 21 has been modified to limit a parent's financial information to those circumstances when the parent either: (1) commits to perform post-sale obligations for the franchisor; or (2) guarantees obligations of the franchisor. To the extent that a prospective franchisee is asked to rely on a parent to perform post-sale contractual obligations,[667] or relies on a parent's guarantee, the financial stability of the parent becomes a material fact that should be disclosed.[668]

c. Subfranchisor financial information

Section 436.5(u)(iv) of the final amended Rule also requires the disclosure of financial information of any subfranchisor. During the Rule amendment proceeding, a few commenters opined that it is unnecessary to require routine financial statements of subfranchisors: financial statements should be provided only by the entity with whom the franchisee will have a contractual relationship.[669] The commenters, however, interpreted the term ''subfranchisor'' more broadly than it is used in the final amended Rule. As noted in our discussion of the term ''franchisor'' above, the term ''subfranchisor'' is limited in the Rule to circumstances where the subfranchisor steps into the shoes of the franchisor by selling and performing post-sale obligations. It does not reach those individuals who may be called ''subfranchisors,'' but who act like brokers, having no post-sale commitments to franchisees.[670] Where a person—be it subfranchisor or parent —commits to perform under the franchise agreement, its financial information becomes material in order to provide prospective franchisees with the opportunity to assess the person's financial stability before risking their own investment.

d. Phase-in of audited financial statements

Section 436.5(u)(2) of the final amended Rule retains the original Rule provision permitting start-up franchise systems to phase-in audited financial statements within three years.[671] However, the final amended Rule streamlines the phase-in. Under the original Rule's phase-in, a franchisor could furnish a balance sheet for ''the first full fiscal year following the date on which the franchisor must first comply with [the Rule.]''[672] This can be problematic because it is often unclear when the franchisor's first fiscal year ends. For example, a franchisor may have started selling franchises three months into its first fiscal year (e.g., in March 1, 2006, using a calendar fiscal year). At the conclusion of that fiscal year (December 31, 2006), the franchisor would have sold franchises for ten months. Yet, under the original Rule's phase-in, the franchisor's first fiscal year would not end until December 31, 2007, because the phase-in uses the language ''first *full* fiscal year'' after starting to sell franchises.[673]

To clarify the timing of the phase-in, section 436.5(u)(2) of the final amended Rule replaces the word ''full'' with ''first *partial or full* fiscal year'' so that a franchisor's first fiscal year will end consistent with its general accounting practices, regardless of when the franchisor may have started offering franchises within that year.[674] Under this revised approach, the Commission will look to the close of the franchisor's first fiscal year after selling franchises, regardless of whether that time period was a partial or full year.[675]

The phase-in of audited financial statements generated little comment during the Rule amendment proceeding. Franchisors, the AFA, and IL AG supported the phase-in.[676] One franchisee advocate, however, noted, among other things, that the states do not have a comparable provision. He also cited Small Business Administration statistics showing that only 25% of franchisors survive five years. ''If we excuse audited financial statements for the first two years, for all practical purposes, even more investors will risk losing everything.''[677] On the other hand, John Baer not only supported the phase-in, as drafted in the Franchise NPR, but urged the Commission to make it preemptive.[678]

NASAA supported the phase-in generally, but raised two concerns. First, NASAA observed that the phase-in section of the Rule does not specifically reference GAAP, possibly leading franchisors to conclude that unaudited financial statements need not be prepared according to GAAP. It urged

written guarantee is included in the disclosure document. Bundy, NPR 18, at 11 (emphasis in original).

[667] Two commenters voiced concern about the ''post-sale performance obligation'' language set forth in the Staff Report. Specifically, they contended that sections 436.5(u)(1)(ii) and 436.5(u)(1)(iv) of the Staff Report are inconsistent. In their view, section 436.5(u)(1)(iv) requires a franchisor to furnish financial statements if the franchisor has post-sale performance obligations. They then noted that is it highly unlike that a franchisor would ever enter into a franchise relationship without some post-sale obligations to the franchisee. The commenters concluded therefore that section 436.5(u)(1)(iv) requires franchisor financials in all instances. This interpretation is in direct conflict with section 436.5(u)(1)(ii), however, that expressly permits a franchisor to use the financials of an affiliate-guarantor. Piper Rudnick, at 3–4; Spandorf, at 8–9. The commenters misread section 436.5(u)(1)(iv) of the Staff Report. Under that section of the Staff Report, a franchisor must provide financial statements ''for the franchisor, subfranchisor, and any parent . . . that commits to perform post-sale obligations for the franchisor or guarantees the franchisor's obligations.'' The reference to ''post-sale obligations'' refers to ''parent,'' not to the ''franchisor.'' If the commenter's reading of section 436.5(u)(1)(iv) were correct, then the section would have the following absurd meaning: ''a franchisor must provide financial statements for the franchisor . . . that commits to perform post-sale obligations for the franchisor.'' To avoid any confusion on this point, section 436.5(u)(1)(iv) of the final amended Rule has been revised to read: ''Include separate financial statements for the franchisor and subfranchisor, as well as for any parent that commits to perform post-sale obligations for the franchisor or guarantees the franchisor's obligations.''

[668] Where a parent guarantees performance, Item 21 also requires a franchisor to attach a copy of the guarantee to the disclosure document. Although the UFOC Guidelines are not clear on this point, we believe that Item 21, Instruction v. contemplates this requirement. Moreover, it is sound policy. Before a prospective franchisee is asked to invest in a franchise, he or she should be able to assess the extent of any performance or financial guarantees.

[669] Bundy, at 9; H&H, NPR 9, at 21; Lewis, NPR 15, at 17.

[670] This approach parallels the UFOC Guidelines, which require subfranchisor financial statements only when the subfranchisor is the applicant for franchise registration.

[671] There is no comparable provision in the UFOC Guidelines. The extent to which any state may permit a phase-in of audited financial statements is a matter of individual state law. For example, California and Illinois permit a phase-in of audited financial statements under limited conditions set forth in their franchise regulations. On the other hand, Virginia and Minnesota, for example, always require audited financial statements.

[672] 16 CFR 436.1(a)(20)(ii).

[673] *Id.*

[674] *See* Franchise NPR, 64 FR at 57315.

[675] No comments were submitted on this modification of the original Rule's phase-in of audited financial statements.

[676] *E.g.*, Duvall, ANPR 19, at 1; Baer, ANPR 25, at 4; Kaufmann, ANPR 33, at 6; Kestenbaum, ANPR 40, at 2; AFA, ANPR 62, at 3; IL AG, ANPR 77, at 3; Tifford, ANPR 78, at 4; IFA, ANPR 82, at 1; Jeffers, ANPR 116, at 2.

[677] Bundy, NPR 18, at 11. Mr. Bundy also noted that an audit gives a franchisee a potential remedy that otherwise would be unavailable. ''[T]here is no doubt that the auditor has liability to the franchisee if the auditor did not follow proper procedures and provide the appropriate warnings—including notes to the effect that the company may not be solvent or may be reliant upon selling more franchises for its economic survival.'' Bundy, NPR 18, at 11.

[678] ''The Commission should be aware that several of the states require the use of audited opening balance sheets in order to register a start-up franchisor. We believe that this is another example of why the Franchise Rule should preempt inconsistent state law requirements. One set of financials should be acceptable throughout the country.'' Baer, NPR 11, at 15.

the Commission to apply GAAP to all financial statements, audited or unaudited.[679] We agree. There are two prerequisites for financial statements: (1) the data underlying the statement must be prepared according to GAAP (or according to SEC standards), and (2) the financials must be audited according to United States generally accepted audited standards (''GAAS'').[680] The phase-in of audited financials addresses only the second prerequisite—audits. Where a franchisor takes advantage of the phase-in, it nonetheless must satisfy the first prerequisite, preparing its financial data according to GAAP (or SEC standards).

Nevertheless, we believe that the final amended Rule already is clear on this point. As noted above, the introduction to Item 21 starts with the first prerequisite—that financial statements must be prepared according to ''United States generally accepted accounting principles, as revised by any future government mandated accounting principles, or as permitted by the Securities and Exchange Commission.'' Item 21 then discusses the second prerequisite—audits: with the exception of the phase-in of audited financials, ''financial statements must be audited . . . using generally accepted United States auditing standards.'' Thus, the Rule makes clear that the phase-in modifies the GAAS prerequisite only; the accounting prerequisite still continues to apply to all financial statements prepared under Item 21.[681]

NASAA also questioned the reference to ''start-ups'' in the phase-in provision. It voiced concern that: ''[i]f a major corporation that has been in business for many years and then begins to franchise, that corporation should not enjoy the same exemption from disclosing audited financial statements as a new company that just organized as a true 'start up' franchise system.''[682] The NASAA Project Group suggested that franchisors that have been in any type of business for three years or more, not just the business of selling franchises, should be required to provide audited financial statements.[683]

The Commission believes NASAA's point is well-taken, and, therefore we wish to clarify that for Item 21 purposes, the term ''start-up'' is to be read narrowly, meaning entities that are new to franchising and that ordinarily have not prepared audited financials statements to date. Any non-franchise company that has prepared audited financials in the ordinary course of business must include such audited financials in its disclosure documents if it decides to begin offering franchises.[684] The phase-in is also not intended for spin-offs, affiliates, or subsidiaries of a franchisor, where the franchisor has been engaged in franchising or has prepared audited financial statements for any other purpose.

24. Section 436.5(v) (Item 22): Contracts

Consistent with the UFOC Guidelines, section 436.5(v) requires franchisors to attach to the disclosure document a copy of all relevant agreements, such as the franchise agreement, leases, options, or purchase agreements.[685] This is substantively similar to the original Rule requirement that franchisors provide prospective franchisees with copies of relevant documents at least five business days prior to the date of execution.[686] The final amended Rule's Item 22 is identical to the Item 22 proposed in the Franchise NPR.

Only one comment was submitted on Item 22. In response to the Franchise NPR, David Gurnick expressed concern that the term ''contract'' could be misinterpreted to suggest that Item 22 requires the disclosure of post-sale settlement agreements. He suggested that Item 22 should expressly state that ''the contracts to be attached do not include forms of negotiated settlement agreements,'' especially since the terms of any such agreements are unknown at the time of sale.[687] While it is possible that a franchisor may misread Item 22 to include future settlement negotiations, we do not believe this is likely. Item 22 refers to those contracts that involve the franchise offering at the time of the sale. Clearly, franchisors cannot disclose something that may only exist at some future date. Therefore, we decline to revise Item 22, as this commenter suggested.

25. Section 436.5(w) (Item 23): Receipts

Section 436.5(w) of the final amended Rule reduces inconsistencies with the UFOC Guidelines by adopting the UFOC Guidelines Item 23 requirement that franchisors include an acknowledgment of receipt in the disclosure document.[688] The original Rule has no counterpart. Like the cover page, the receipt serves an important educational purpose,[689] informing prospects that they have 14 calendar-days to review the disclosures, that they should receive certain attachments, and that they can report possible law violations.[690]

At the same time, Item 23 is flexible, affording franchisors and franchisees greater latitude in demonstrating receipt than the comparable UFOC Guidelines provision. Whereas UFOC Item 23 requires franchisors to acknowledge receipt with a handwritten signature, Item 23 updates the Rule by allowing the parties to use electronic acknowledgments of receipt. As discussed in the definitions section above, the term ''signature'' includes not only written signatures, but electronic

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[679] NASAA, at 7. *See also* WA Securities, at 6; CA Dept of Corps., at 2.

[680] 16 CFR 436.1(a)(20)(i) (''such statements are required to have been examined in accordance with generally accepted auditing standards by an independent certified or licensed public accountant). *See also* IL AG, at 9.

[681] NASAA also noted that the Staff Report referred incorrectly to ''United States auditing principles,'' when the proper accounting term is ''United States auditing standards'' or ''GAAS.'' NASAA, at 7-8. *See also* WA Securities, at 6. Item 21 of the amended Rule makes that correction.

[682] NASAA, NPR 17, at 11.

[683] *Id.*

[684] *See* Interpretive Guides, 44 FR at 49981 (''Franchisors may use unaudited financial statements . . . if they lack audited statements for the fiscal years to be reported when they are first required to furnish a basic Disclosure Document.'').

[685] UFOC Guidelines, Item 22.

[686] See 16 CFR 436.1(g). The attached documents would enable prospective franchisees to compare a franchisor's disclosure about the parties' legal obligations with the actual agreements that will govern the franchise relationship. In the original SBP, the Commission recognized that this requirement ''will therefore have a remedial effect in that it will encourage accurate discussion of the required information in the disclosure statement.'' Original SBP, 43 FR at 59696.

[687] Gurnick, NPR 21, at 7.

[688] Item 23 of the final amended Rule differs from the Franchise NPR in one respect. It deletes the Franchise NPR proposal that franchisors obtain a signed copy of the Item 23 receipt five days in advance of a prospective franchisee's signing the franchise agreement or payment of a fee in connection with the franchise sale. Franchise NPR, 64 FR at 57344. The Commission proposed this requirement in the Franchise NPR to ensure that the prospective franchisee in fact received the disclosures before the franchisor finalized the franchise sale. This proposal prompted comments both for and against the proposal. *Compare* PMR&W, NPR 4, at 5 *with* Baer, NPR 11, at 15. The Staff Report recommended that this provision be deleted. Staff Report, at 207–08. For the reasons stated in the Staff Report, we agree. Franchisors always have the burden of proof to establish compliance with the Rule's disclosure and timing provisions. In addition, the amended Rule's general recordkeeping requirements at section 436.6—requiring franchisors to retain a copy of each signed receipt for at least three years—are sufficient to prove compliance. Finally, given the elimination of the automatic contract review waiting period from the final amended Rule, the addition of another waiting period would add an unnecessary compliance burden.

[689] Other Commission trade regulation rules contain similar messages. *E.g.*, Energy Guides, 16 CFR Part 305, App. L. (''Compare the energy use . . . with others before you buy.''); Cooling-Off Rule, 16 CFR 429.1 (Notice of right to cancel); Used Car Rule, 16 CFR 455.2 (''Below is a list of some major defects that may occur in used motor vehicles.'').

[690] *See* IL AG, NPR 3, at 9 (''If no disclosure document is provided we would hope it would make the franchisee refuse to sign the receipt. . . . [T]he receipt is an extremely important document when a franchisee later alleges that disclosure was never effected.''). *See also* Baer, NPR 11, at 15.

signatures, passwords, security codes, and other devices that enable a prospective franchisee to easily acknowledge receipt, confirm his or her identity, and submit the information to the franchisor.[691]

Item 23 of the final amended Rule also incorporates several suggestions offered by commenters. For example, Warren Lewis advised that the title of Item 23 should be ''receipts,'' observing that the current industry practices is to have two receipts at the end of the disclosure document, one the franchisee retains as part of the disclosure document and the other returned to the franchisor.[692] He also urged the Commission to replace ''franchisee's signature'' used in the Franchise NPR version of Item 23 with ''prospective franchisee's signature,'' noting that some prospective franchisees object to signing receipts as ''franchisees,'' since this designation is inaccurate until they have actually signed the franchise agreement.[693] NASAA also suggested that the Commission clarify that the acknowledgment page must be placed as the last two pages of the disclosure document. It observed that ''[t]he States that review franchise offerings have noted many instances where this page was buried in the middle of the disclosure document.''[694] We believe these suggestions are sound, and Item 23 of the final amended Rule reflects these changes.

Another commenter addressed the second paragraph of the Item 23 receipt. As proposed in the Franchise NPR, this paragraph stated, in relevant part: ''If [name of the franchisor] offers you a franchise, it must provide this disclosure document to you 14 days before the earlier of: (1) the signing of a binding agreement; or (2) any payment to [name of franchisor or affiliate].'' H&H urged the Commission to substitute ''binding agreement'' with ''binding agreement with the franchisor or any of its affiliates.'' The firm asserted that the franchisor cannot control whether a prospective franchisee proceeds to commit with independent, third parties before expiration of the 14 day period.[695] As noted in our discussion of the disclosure trigger above, we agree with this approach and have revised Item 23 of the final amended Rule accordingly.[696]

At the same time, we reject several suggestions offered in response to the Staff Report to modify Item 23. Four commenters noted that Item 23, as recommended in the Staff Report, requires franchisors to state the name, principal business address, and telephone number of each ''franchise seller'' in the receipt.[697] These commenters maintained that this disclosure requirement is a carry-over from the UFOC Item 2 requirement, now eliminated in the final amended Rule, that franchisors disclose brokers. They urged the Commission to delete the reference to ''sellers'' in Item 23 as well, asserting that this requirement would result in franchisors having to disclose potentially hundreds of names.[698]

As a preliminary matter, we note that UFOC Item 2 requires not only the naming of brokers, but a statement about their prior experience. Also, once an individual is named in Item 2, the franchisor must also disclose their litigation history in UFOC Item 3 and their bankruptcy history in UFOC Item 4. As discussed previously, we believe such extensive disclosures are unnecessary with respect to brokers. Nonetheless, we believe that a prospective franchisee should have contact information for any seller with whom he or she is dealing.[699] Accordingly, the disclosure of ''sellers'' in the Item 23 receipt is to be read narrowly, referring to the specific individual(s) dealing with the prospective franchisee. This approach is also helpful for law enforcement purposes, identifying who may be responsible for furnishing the disclosures. Accordingly, we believe there are sufficient grounds for retaining the seller disclosure in Item 23.

D. Section 436.6: General Instructions

Section 436.6 of part 436 sets forth the basic instructions for preparing a disclosure document. In the Franchise NPR, the Commission proposed two new sections that would set forth the basic instructions for preparing a disclosure document. The first section—Franchise NPR section 436.6—set forth general instructions applicable to all disclosure documents.[700] Specifically, the Franchise NPR proposed retaining the original Rule's three basic instructions: (1) that disclosures be prepared clearly, legibly, and concisely in a single document; (2) that franchisors respond positively or negatively to each disclosure item; and (3) that franchisors do not add any materials to a disclosure document, except for information required or permitted by non-preempted state law. The proposed instructions also contained the Commission's current policy that subfranchisors should provide disclosures about the franchisor, and, to the extent applicable, about themselves. Consistent with the UFOC Guidelines, disclosure documents would also have to be written in plain English.[701] None of these basic instructions generated any significant comment in response to the Franchise NPR or Staff Report.

In a second section—Franchise NPR section 436.7—the Franchise NPR proposed specific instructions pertaining to electronic disclosures.[702] In order to prevent fraud and circumvention of the Rule's pre-sale disclosure requirements, the Franchise NPR proposed, among other things, that: (1) prospective franchisees consent to receiving electronic disclosures; and (2) franchisors using electronic media provide prospective franchisees with a paper summary document containing an expanded cover page, table of contents, and acknowledgment of receipt. In addition, it called for all disclosures to be in a form that would permit each prospective franchisee to download, print, or otherwise maintain the document for future reference. Multimedia features—such as audio, video, ''pop-up'' screens, and external links—would be prohibited in all disclosure documents. In order to facilitate the reading of an electronic disclosure document, however, the Franchise NPR proposed permitting franchisors to include navigational tools, such as internal links, scroll bars, and search features. Finally, the Franchise NPR proposed that franchisors furnishing disclosure documents electronically retain a

[691] Item 23 also provides that franchisors may include specific instructions on how prospects should submit the receipt, such as via facsimile or email. This enables the parties to determine for themselves the most efficient and cost-effective way for the prospective franchisee to transmit the acknowledgment.

[692] Lewis, NPR 15, at 18.

[693] Lewis, NPR 15, at 18.

[694] NASAA, NPR 17, at 11.

[695] H&H, NPR 9, at 21.

[696] At the same time, the final amended Rule prohibits a franchisor from failing to furnish disclosures earlier in the sale process, upon reasonable request. *See* section 436.9(e).

[697] The version of Item 23 proposed in the Franchise NPR referenced ''any subfranchisor or broker.'' Staff recommended instead ''franchise seller,'' and the Commission has adopted this approach.

[698] Wiggin & Dana, at 4; Piper Rudnick, at 4; J&G, at 7; Duvall, at 2.

[699] This does not mean that a franchisor must create individualized disclosure documents for each franchise sale. Clearly, a franchisor could create a receipt with a fill-in-the-blank for the seller's information. The company or its agent could fill in the blank with the appropriate information prior to furnishing the disclosure document.

[700] Franchise NPR, 64 FR at 57345.

[701] The Staff Report proposed the same general instructions. Staff Report, at 208–09.

[702] Franchise NPR, 64 FR at 57345.

specimen copy of their disclosures for a period of three years.

On June 30, 2000, Congress enacted the Electronic Signatures in Global and National Commerce Act (''E–SIGN'').[703] E–SIGN eliminates barriers to ecommerce by, among other things, giving legal effect to electronic transactions, including pre-sale disclosure, and permitting electronic signatures. Further, E–SIGN preserves certain consumer rights. Specifically, it provides that consumers must give their informed consent before engaging in electronic transactions and requires companies to disclose any rights consumers may have to receive paper records and to withdraw previously-given consent to receive electronic records. E–SIGN, however, limits such rights to ''consumer'' transactions, defining ''consumer'' to mean an ''individual who obtains, through a transaction, products or services which are used primarily for personal, family, or household purposes.''[704] Thus, by its terms, E–SIGN may have prohibited restrictions such as those proposed in the Franchise NPR for electronic franchise disclosure.

In light of E–SIGN, the Commission has reconsidered the Franchise NPR proposals. As explained below, the final amended Rule eliminates the Franchise NPR's proposed electronic disclosure instructions—Franchise NPR section 436.7. In lieu of specific electronic disclosure instructions, the final amended Rule contains a broad general instructions section that covers the furnishing of all disclosure documents, paper and electronic alike. We discuss each general instruction immediately below.

1. Section 436.6(a): Requirement to follow the Rule's disclosure and updating provisions

Section 436.6(a) of the final amended Rule provides that it is an ''unfair or deceptive act or practice in violation of Section 5 of the FTC Act for any franchisor to fail to include the information and follow the instructions for preparing disclosure documents set out in Subpart C (basic disclosure requirements) and Subpart D (updating requirements) of the Rule. The Commission will enforce this provision according to the standards of liability applicable in actions under Sections 5, 13(b), and 19 of the FTC Act.''[705]

The original Rule specified that franchisors and franchise brokers are jointly and severally liable for furnishing disclosure documents. However, it did not specifically address who would be liable for a disclosure document's content. During the Rule amendment proceeding, the Commission sought to clarify liability for preparing disclosures, proposing in the Franchise NPR that franchise sellers would be liable for the contents of a disclosure document if they knew or should have known of the violation.[706]

A few commenters voiced concern about the proposed standard. John Baer, for example, stated that the Franchise NPR proposal imposed an ''impossible'' standard of liability:

> As anyone who has drafted an Offering Circular can testify, there is no certainty as to the nature of the information that has to be included in the various disclosure sections of the Offering Circular and reasonable persons often differ in good faith as to what has to be disclosed.[707]

He suggested that the Commission revise the standard to ''make it a violation for a franchisor to fail to use 'commercially reasonable good faith efforts' to disclose the required information.''[708] Similarly, Tricon stated that the proposal would result in all employees being potentially liable for Rule violations, even those employees who are not involved in any franchise sales. According to Tricon, an employee should not be liable, even if that person had actual knowledge, unless that person:

> (a) knew (or should have known) the legal significance of those facts, and (b) was in a position to influence the outcome of the matter. For example, a secretary could ''know'' that financial performance data was routinely provided to buyers, but neither knew the significance of doing so nor be in a position to stop the practice.[709]

In contrast, NASAA supported the view that franchisors and individual owners of franchisors should be held liable for Rule violations ''regardless of whether they knew or should have known of the violation.''[710]

Based upon the comments, the staff recommended a revised liability standard in the Staff Report. The staff noted that all Commission trade regulation rules implement Section 5 of the FTC Act and, therefore, the final amended Rule should incorporate the standard of liability developed in Section 5 cases. Under Section 5 law, individuals can be enjoined in connection with a corporation's law violations if they participated directly in them or had the authority to control them.[711] Applying this standard to the Franchise Rule, the Staff recommended that franchise sellers (for example, third-party brokers and franchisor employees) be liable for the content of a disclosure document if they either directly participated in the document's creation or had authority to control it.

Several commenters voiced concern about the Staff Report's proposed ''direct participation or control'' liability standard. In particular, the commenters asserted that the ''authority to control'' language is too broad. For example, David Kaufmann noted that all senior officers of a corporate franchisor technically could be deemed to have the authority to control the contents of a disclosure document and, therefore, could be deemed liable, even if they were unaware of the particular violation, or had no responsibility for it.[712] Mr. Kaufmann opined, however, that it is appropriate to hold an individual liable for directly participating in a content violation.[713]

J&G criticized the Staff Report's proposed liability standard as imposing strict liability for all sellers even where their ''control'' is limited, attenuated, or indirect. According to J&G, under the standard recommended in the Staff Report, liability could be found for employees, advisors, consultants, attorneys, and accountants of a franchisor who ''participate'' in the preparation of a disclosure document or in the sales process in some manner. Outside consultants, advisors, and attorneys could be held liable even if

[703] 15 U.S.C. 7001.

[704] 15 U.S.C. 7006(1).

[705] 15 U.S.C 45(a); 53(b); 57b.

[706] Franchise NPR, 64 FR at 57301, 57333. A showing of knowledge is necessary when seeking to hold an individual liable for redress for a corporation's law violations in Section 5 matters, as discussed further below.

[707] Baer, NPR 11, at 10.

[708] *Id.*

[709] Tricon, NPR 34, at 6. *See also* Baer, NPR 11, at 10.

[710] NASAA, NPR 17, at 3.

[711] *E.g.*, *FTC v. Amy Travel Servs., Inc.*, 875 F.2d 564, 573 (7th Cir.), *cert denied*, 439 U.S. 954 (1989); *FTC v. Atlantex Assocs.*, 1987–2 Trade Cas. (CCH), ¶ 67788 at 59255 (S.D. Fla. 1978), *aff'd*, 872 F.2d 966 (11th Cir. 1989); *FTC v. Kitco of Nevada*, 612 F. Supp. 1282, 1292 (D. Minn. 1985). Under Section 5 case law, it is also clear that individual franchise salespersons are also directly liable for their own misrepresentations in connection with franchise sales. *See*, *e.g.*, *FTC v. J.K. Publ'ns, Inc.*, 99 F. Supp. 2d 1176, 1203 and note 67 (C.D. Cal. 2000).

[712] Mr. Kaufmann observed that the New York Franchise Act imposes liability upon any officer, director, or management employee who materially aids in the act or transaction constituting the violation of the Act. Lack of knowledge after due diligence is a defense. Kaufmann, at 7–8.

[713] *See also* Cendant, at 2–3 (suggesting that the following liability standard: ''Any other franchise seller will be liable for the violations . . . if he or she directly participated in preparation of the disclosure document.'').

they had no knowledge of the facts underlying the violation.[714]

On the other hand, Howard Bundy argued that those in a corporate structure who have ''authority to control'' content should be liable for conduct of the corporation. ''This is consistent with what Congress and the SEC have mandated in the post-Enron world with regard to officers of a public corporation.''[715] Mr. Bundy stated that a broad standard is important to force responsibility for accuracy and completeness to the highest levels in the franchisor's organization.

Because violations of part 436 constitute violations of Section 5, the Commission is persuaded that liability for the content of a disclosure document must be based upon liability standards applicable in FTC enforcement actions under Sections 5, 13(b), and 19. In that regard, there is a distinction between the standard of liability for injunctive relief and that for redress. In general, case law establishes that an individual may be enjoined for corporate misconduct if he or she participated directly in the wrongful practice or had the authority to control the corporate defendant.[716] In the franchise context, an officer or director of a franchisor may be enjoined against violating the Rule if the officer or director, for example, has authority to control or directly prepared, or directed others to prepare, false or otherwise inaccurate disclosure documents.[717]

In order to hold an individual liable to pay consumer redress, however, the Commission must show more than just authority to control the corporation. It must show the individual possessed some level of knowledge or awareness of the misrepresentations.[718] The Commission may establish the requisite knowledge by showing that the individual had ''actual knowledge of material misrepresentations, or an awareness of a high probability of fraud along with an intentional avoidance of the truth.''[719] For example, an officer or director of a franchisor would be liable for redress if he or she directed the franchisor's employees to prepare false or misrepresented disclosures, or failed to stop the company from using a faulty disclosure document that one or more states had previously rejected as insufficient.[720] Similarly, a franchisor's sales manager could be held individually liable for redress where the sales manager has authority to control those preparing disclosure documents, and has knowledge that the disclosures are false, or otherwise inaccurate.[721]

2. Section 436.6(b): Formatting requirements

As proposed in the Franchise NPR, section 436.6(b) of the final amended Rule specifies that all disclosures must be prepared ''clearly, legibly, and concisely in a single document.''[722] At the same time, it includes the UFOC Guidelines requirement that disclosures must be prepared using plain English. It also updates the UFOC Guidelines to address electronic disclosure: section 436.6(b) provides that disclosures must be in a form that ''permits each prospective franchisee to store, download, print, or otherwise maintain the document for future reference.'' This prevents deception, ensuring that prospective franchisees can review the disclosure document at will, as well as show a copy of the disclosure document to their advisors, if they wish to do so.[723] Thus, for example, a franchisor would violate section 436.6(b) if it sought to provide disclosures merely by permitting a prospect to glance at a paper copy of its disclosure document, providing a continuous loop video of its disclosure document at a trade show, or transmitting its disclosures via email or the Internet in a format that was incapable of being downloaded or printed. No comments addressed this issue. Accordingly, the final amended Rule adopts this provision as proposed in the Franchise NPR.

3. Section 436.6(c): Affirmative responses

Consistent with the original Rule and Franchise NPR, section 436.6(c) of the final amended Rule specifies that franchisors must respond affirmatively or negatively to each disclosure item.[724] If a disclosure item is not applicable, then the franchisor must respond negatively, including a reference to the type of information required to be disclosed by the Item. For example, a franchisor without any litigation would state something to the effect: ''The franchisor has no litigation required to be disclosed by Item 3.'' In addition, each disclosure item must contain the appropriate heading.[725] No comments addressed this issue. Accordingly, the final amended Rule adopts this provision as proposed in the Franchise NPR.

4. Section 436.6(d): Additional materials

The final amended Rule retains the original Rule's policy prohibiting franchisors from including additional materials in their disclosures, except for information ''required or permitted by this Rule or by state law not pre-empted

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[714] J&G, at 3–4.

[715] Bundy, at 2.

[716] *FTC v. Publ'g Clearing House, Inc.*, 104 F.3d 1168, 1170 (9th Cir. 1997). *See also FTC v. J.K. Publ'ns, Inc.*, 99 F. Supp. 2d at 1203; *FTC v. Am. Standard Credit Sys., Inc.*, 874 F. Supp. 1080, 1087 (C.D. Cal. 1994). Authority to control the company can be evidenced by active involvement in business affairs and the making of corporate policy, including assuming the duties of a corporate officer. *FTC v. Amy Travel Serv., Inc.*, 875 F.2d at 573. Similarly, an individual's status as a corporate officer and authority to sign documents on behalf of the corporate defendant can be sufficient to demonstrate the requisite control. *FTC v. Publ'g Clearing House, Inc.*, 104 F.3d at 1170.

[717] *See FTC v. Five*-Star Auto Club, Inc., 97 F. Supp. 2d 501 (S.D.N.Y. 2000) (individual defendant participated directly in the deceptive acts or practices by, among other things, drafting and/or approving marketing materials); *FTC v. Atlantex Assocs.*,1987–2 Trade Cas. (CCH), ¶ 67788 (individual defendant liable because he had the authority to control the company's actions, including the authority to control representations made by salespeople).

[718] *FTC v. Amy Travel Serv., Inc.*, 875 F.2d at 574. *See also FTC v. J.K. Publ'ns, Inc.*, 99 F. Supp. 2d 1176 at 1204; *FTC v. Atlantex Assocs.*, 1987–2 Trade Cas. ¶ 67788; *FTC v. Kitco of Nevada, Inc.*, 612 F. Supp. at 1282. For the Commission to obtain civil penalties against a defendant, the standard of knowledge is even higher: ''actual knowledge or knowledge fairly implied on the basis of objective circumstances that [the] act or practice is unfair or deceptive and is prohibited by such rule.'' 15 U.S.C. 45(m)(1)(A).

[719] *FTC v. Publ'g Clearing House*,104 F.3d at 1171; *FTC v. Am. Standard Credit Sys., Inc.*, 874 F. Supp. at 1089; *FTC v. Minuteman Press, Int'l*, 53 F. Supp. 2d 248, 259–260 (E.D.N.Y. 1998); *FTC v. Int'l Diamond Corp.*, 1983–2 Trade Cas., ¶ 65725 at 69707 (N.D. Cal. 1983). It is axiomatic that the Commission need not show intent to defraud, or bad faith. *See*, *e.g.*, *FTC v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1029 (7th Cir. 1988) (*citing Beneficial Corp. v. FTC*, 542 F.2d 611, 617 (3rd Cir. 1976), *cert denied*, 430 U.S. 983 (1977)); *Removatron Int'l Corp. v. FTC*, 884 F.2d 1489, 1495 (1st Cir. 1989) (*citing Chrysler Corp. v. FTC*, 561 F.2d 357, 363 (D.C. Cir. 1977)); *Regina Corp. v. FTC*, 322 F.2d 765, 768 (3rd Cir. 1963); *FTC v. Patriot Alcohol Testers, Inc.*, 798 F. Supp. 851, 855 (D. Mass. 1992).

[720] *See*, *e.g.*, *FTC v. Five*-Star Auto Club, 97 F. Supp. 2d at 501 (failure to reform program in light of extensive state law enforcement cease and desist orders shows reckless indifference to the truth, or an awareness of high probability of fraud coupled with an intentional avoidance of the truth); *FTC v. Safety Plus, Inc.*, No. 91–352 (E.D. Ky. 1992) (taking affirmative steps to remedy deceptive practices shows knowledge of the deceptive practices).

[721] *See FTC. v. H.N. Singer, Inc.*, 668 F.2d 1107 (9th Cir. 1982) (sales manager liable for restitution because of his authority to control and knowledge of the deceptive acts and practices of his salespeople).

[722] Franchise NPR, 64 FR at 57345. *See* 16 CFR 436.1(a) and 436.1(a)(21). The ''single document'' requirement prevents ''piecemeal and confusing disclosures by the franchisor.'' Original SBP, 43 FR at 59682.

[723] *See* Bundy, ANPR, 6 Nov. 97 Tr., at 129 (disclosures need to be either downloaded onto disk or provided in paper form).

[724] Franchise NPR, 64 FR at 57345. *See* 16 CFR 436.1(a)(24). This instruction is intended to ''aid the franchisee in using the disclosure document and [is] intended as a remedial measure to prevent franchisors' violations of the rule and the [FTC] Act.'' Original SBP, 43 FR at 59684.

[725] *See* 16 CFR 436.1(a)(24).

by this Rule.''[726] This prohibition is necessary to ensure that franchisors do not include information that is non-material, confusing, or distracting from the core disclosures.[727] As proposed in the Franchise NPR, the final amended Rule also updates the original Rule by prohibiting the use of new technological developments, such as audio, video, and ''pop-up'' screens, and external links,[728] which could be used to call attention to favorable portions of a disclosure document or to distract prospective franchisees from damaging disclosures.[729] The Commission recognizes, however, that navigational features may benefit prospective franchisees by making it easier to read an electronic disclosure document.[730] To that end, the final amended Rule, consistent with the Franchise NPR, specifically permits the use of ''scroll bars, internal links, and search features.''

The prohibition against adding to a disclosure document generated a number of comments during the Rule amendment proceeding. Several commenters voiced concern that the prohibition against adding to a disclosure document ''is an unfair trap for franchisors and subfranchisors.'' For example, Warren Lewis asserted:

> [W]e note that a franchisor or subfranchisor sometimes needs to include information in a disclosure document that it believes is material or possibly material (even though the information is not required or permitted under federal or state law) or that it believes will help a prospect to better understand required information or its significance. Providing supplementary or explanatory information of this type should not be a rule violation, unless the information is excessive, misleading, or intentionally diversionary.[731]

The Commission believes that its long-standing policy limiting disclosures to only authorized or permitted materials is sound. As discussed above, this limitation is necessary to ensure that a franchisor does not bulk-up a disclosure document with unnecessary information or features that will discourage a prospective franchisee from reading the document or distract a prospective franchisee's attention from negative disclosures. For example, it is entirely proper to prohibit a franchisor from including general advertising, testimonials, or— in the case of electronic media— multimedia tools, in its disclosure documents. On the other hand, the Commission recognizes that unique features of electronic media, such as scroll bars, internal links, and search features that may aid prospective franchisees in reviewing their disclosures. Such features serve a useful purpose in an electronic environment, and the final amended Rule specifically permits their use.[732]

In reaching this conclusion, we agree with the commenters' concern that it may be desirable to include additional material information in a disclosure document to ensure that required disclosures are accurate. The prohibition on adding to a disclosure document should be read narrowly to prohibit the inclusion of materials that are not specifically required or permitted by the Rule.[733] Where the Rule requires a franchisor to make a disclosure, however, the franchisor always may add brief footnotes or other clarifications to ensure that the disclosure is complete and not misleading.

Finally, in response to the Staff Report, David Kaufmann asserted that the prohibition against adding to a disclosure document set forth at section 436.6(d) creates an inconsistency with state anti-fraud laws that require a disclosure document to contain all material information.[734]

Section 436.6(d) is not intended to preempt state law. As previously discussed, a franchisor can always include information in a disclosure document that is required by state law. Typically, such state disclosures will arise in two circumstances. First, state law may require specific disclosures that go beyond those required by the Franchise Rule, or may contain a broad anti-fraud provision requiring franchisors to include in their disclosure document all material information. Second, a state franchise examiner may require, as a matter of discretion, on a case-by-case basis, a particular disclosure in order to prevent deception by a franchisor. In either instance, the final amended Rule accommodates state interests by permitting the franchisor to add state

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[726] Franchise NPR, 64 FR at 57345. *See* 16 CFR 436.1(a)(21). The Franchise NPR referred to ''any materials or information other than that required by this Rule or by state law not preempted by this Rule.'' One commenter noted that because some of the proposed Rule's disclosures are optional (such as the Item 19 financial performance disclosures), the prohibition on additional information should read ''any materials or information other than that required or permitted by this Rule . . .'' Lewis, NPR 15, at 19. We agree, and the final amended Rule reflects this change.

[727] *See* Original SBP, 43 FR at 59682. Accordingly, franchisors may include information expressly required or expressly permitted by state law or information requested by a state franchise examiner. This provision is not intended to permit franchisors to include any information (such as testimonials or general promotional materials) in a disclosure document on the ground that it is not specifically prohibited by state law.

[728] The prohibition on external links, like the requirement that a disclosure be a single document, effectively prevents franchisors from furnishing disclosures through a series of linked, but separate, documents. This ensures that electronic disclosures, in particular, can be downloaded and printed in their entirety. *See* Bundy, NPR 18, at 13 (suggesting that the Rule should expressly require that all exhibits and attachments must be part of the single disclosure document and it should prohibit external links). If not, a prospective franchisee downloading or printing an electronic disclosure document may only capture isolated sections. This would violate the very concept of full disclosure underlying the Rule.

[729] BI commented that a prohibition on the use of multimedia features ''appears to be overly broad.'' BI, NPR 28, at 8. It proposed that the Commission consider that some features may assist a prospective franchisee in reading a disclosure document. BI, however, did not specify which features it had in mind or how those features might assist prospective franchisees.

[730] Frandata, for example, observed that internal links will enable a prospective franchisee to shift between the disclosure document and corresponding agreement provisions, ''thus affording a franchisee a more intelligent and efficient review of a disclosure document.'' Frandata, NPR 29, at 4. Indeed, Frandata suggested that the Commission formulate a specific set of cross-links and features in order to ensure that all electronic disclosure documents are uniform. In its view, uniformity would foster comparison shopping among franchise offers. In addition, it would avoid stigmatizing those franchise systems that fail to incorporate features in their electronic disclosure documents. ''For example, viewing a document with extensive search features keyed to words in the disclosure document might predispose a prospect to envision that *all* electronic versions contained such a feature, and would therefore create a negative impression (or customer service issues) for other systems which have not incorporated such a feature, while simultaneously confusing the prospect.'' *Id.* We would not go so far. Rather than dictate the features that a franchisor should use in preparing disclosure documents, we believe the Rule should allow for maximum flexibility, enabling franchisors to incorporate those navigational features it believes are warranted.

[731] Lewis, NPR 15, at 19. *See also* Holmes, NPR 8, at 9; Stadfeld, NPR 23, at 15; BI, NPR 28, at 8.

[732] Section 436.6(d), however, makes clear that navigational tools must be for the prospective franchisee's benefit. Accordingly, a franchisor's selective use of navigational tools for its own benefit (*i.e.,* to draw the prospect's attention to, or away from, certain disclosure items) is prohibited.

[733] We note that nothing in the Rule prohibits a franchisor from furnishing prospective franchisees with non-deceptive and non-contradictory information outside of its disclosure document. *See* 16 CFR 436.1(a)(21) (''This does not preclude franchisors . . . from giving other nondeceptive information orally, visually, or in separate literature so long as such information is not contradictory to the information in the disclosure statement.'').

[734] Kaufmann, Attachment 1, at 10–11. In the same vein, Howard Bundy recommended that the Commission create a separate, miscellaneous section of a disclosure document, where a franchisor can add other material disclosures necessary to make the disclosure document non-deceptive. Bundy, at 2-3.

information to its basic disclosure document.

5. Section 436.6(e): Multi-state documents

As proposed in the Franchise NPR, section 436.6(e) of the final amended Rule permits franchisors to ''prepare multi-state disclosure documents by including non-preempted, state-specific information in the text of the document or in Exhibits attached to the disclosure document.''[735] This instruction will decrease compliance costs significantly, by enabling franchisors to use one, united disclosure document for both federal and state purposes. No comments were submitted on this issue. Accordingly, the final amended Rule adopts this provision, as proposed in the Franchise NPR.

6. Section 436.6(f): Subfranchisor disclosures

Consistent with the original Rule, section 436.6(f) makes clear that subfranchisors must disclose the required information about the franchisor, and, to the extent applicable, the same information concerning the subfranchisor.[736]

The Franchise NPR proposed that subfranchisors ''should'' disclose the required information. Howard Bundy suggested that the subfranchisor instructions be revised to replace ''should disclose'' with ''shall disclose.''[737] He noted that the word ''should'' implies an advisory only, that is, that a subfranchisor has the discretion to include its own information in the disclosure document. We agree, and section 436.6(f) of the final amended Rule is revised accordingly.

At the same time, H&H voiced concern about subfranchisors' disclosure obligations, correctly observing that ''subfranchising'' takes many different forms. For example, a subfranchisor may in fact function as a franchisor by signing a franchise agreement with a subfranchisee, or the franchisor may sign the franchise agreement, but delegate many support functions to the subfranchisor. In the first ''example, the proposed [disclosure] requirement may lead to disclosure about the franchisor in a subfranchise offering that is irrelevant and, in some circumstances, could be misleading to prospective franchisees.''[738] As discussed above in connection with the definition of ''franchisor,'' subfranchisors are treated the same as franchisors under the Rule in narrow circumstances only: where the subfranchisor steps into the shoes of the franchisor by both granting franchises, as well as by performing post-sale disclosure obligations.[739] Accordingly, we believe that the subfranchisor instructions set forth at section 436.6(f) are clear and no additional revision is necessary.

7. Section 436.6(g): Disclosure of any prerequisites to receiving or reviewing disclosure documents

Section 436.6(g) requires that, before a franchisor furnishes a disclosure document, it must ''advise the prospective franchisee of the formats in which the disclosure document is made available, any prerequisites for obtaining the disclosure document in a particular format, and any conditions necessary for reviewing the disclosure document in a particular format.''[740]

This provision was not previously noted in the Franchise NPR.[741] It is intended to prevent deception, by ensuring that prospective franchisees, prior to disclosure, know whether or not they will receive a disclosure document in a form they can easily review.[742] For example, a franchisor would disclose if it furnishes disclosures via CD-ROM only. In addition, the franchisor must disclose if there are any special conditions to reviewing a disclosure document. The franchisor would disclose, for example, whether the prospective franchisee's computer must be capable of reading pdf files or whether any specific applications are necessary to view the disclosures (such as Windows 2000 or DOS, or a particular Internet browser). No comments were submitted on this proposed Rule amendment. Accordingly, the Commission adopts this provision in the final amended Rule.[743]

8. Section 436.6(h): Disclosure document recordkeeping

Section 436.6(h) of the final amended Rule requires franchisors to ''retain, and make available to the Commission upon request, a sample copy of each materially different version of their disclosure documents for three years after the close of the fiscal year when it was last used.'' This provision modifies slightly the language used in the Franchise NPR—which limited the recordkeeping instruction to electronic disclosure documents.[744] Section 436.6(h) now applies to all disclosure documents, regardless of the medium

[735] Franchise NPR, 64 FR at 57345.

[736] *See* Interpretive Guides, 44 FR at 49969. While the Commission has allowed some flexibility in how franchisors and subfranchisors should prepare disclosure documents, it also made clear that both ''the franchisor and the subfranchisor are responsible for each other's compliance with the rule, and are jointly and severally liable for each other's violations.'' *Id.* The Commission also stated that it expects franchisors and subfranchisors to provide the required background information, litigation, and bankruptcy disclosures of both parties, and that subfranchisors should provide franchisee statistical information in all instances. *Id.*

[737] Bundy, NPR 18, at 11.

[738] H&H, NPR 9, at 6.

[739] In our view, a new definition to address subfranchising is unnecessary because the term ''franchisor'' adequately addresses the issue. The Commission anticipates that staff will also explain subfranchising more fully in the Compliance Guides, with hypothetical examples.

[740] This instruction is an alternative to the originally proposed prior-consent mandate for electronic disclosures. Several commenters opposed a prior consent requirement. *See* NFC, NPR 12, at 15; Frandata, NPR 29, at 5; AFC, NPR 30, at 2. The NFC, for example, feared that an advance consent precondition would stifle new technological advances that would enable franchisors and prospective franchisees to conduct business online ''seamlessly,'' without any additional contacts or discussions. NFC, NPR 12, at 15. *See also* McDonalds, NPR 7, at 2. We agree. Section 436.6 permits a wide variety of disclosure formats, provided that the prospective franchisee is made aware of any prerequisites to using them.

[741] As noted above, the Franchise NPR proposed a new section—section 436.7—that set forth comprehensive electronic disclosure instructions. Among other things, that proposed section would have permitted prospective franchisees to furnish disclosures electronically only with the prospective franchisee's ''express consent.'' Proposed section 436.7(a). While an ''express consent'' requirement is now prohibited by E–SIGN, the underlying concepts—that a prospective franchisee should know the formats in which disclosure documents will be provided, and any prerequisites to obtaining one—nonetheless continue to apply, regardless of the media (i.e., paper document or electronic document) selected by the franchisor to comply with the final amended Rule.

[742] This is consistent with section 436.3(f) of the final amended Rule, allowing franchisors to state in the cover page whether alternative disclosure formats are available and how prospective franchisees may obtain one.

[743] One commenter, however, observed that this section does not specify how or when the franchisor should communicate this information to the prospect. Kaufmann, at 3. He suggested that the Commission advise in the Compliance Guides that franchisors may communicate this information in any fashion and at any time prior to furnishing the disclosure document it chooses— in person, telephonically, in writing, in email, in its marketing materials, or applications. *Id. But see* Bundy, at 10 (asserting that the provision does not provide sufficient guidance, recommending that the Commission specify which formats are preferred). We agree that the final amended Rule should be as flexible as possible. Section 436.6(g) is not intended to be a new trigger or timing for disclosures provision. As long as the franchisor has communicated this information before the 14 calendar-days for disclosure starts running, the franchisor has complied with this provision. Flexibility is also called for, provided that the franchisor can demonstrate that it has communicated the required information. For many systems, the easiest way to impart this information will be in the franchisor's initial application form, or in the first written contact after acceptance of the application when the issue of furnishing the disclosure document first arises.

[744] Franchise NPR, 64 FR at 57345.

used.[745] This is consistent with E–SIGN, which generally prohibits discriminating between paper and electronic commerce. It is also consistent with standard business practices and state law requirements, and, therefore, should impose only a *de minimis* burden on franchisors. At the same time, a three-year recordkeeping provision will greatly assist the Commission in its law enforcement work, by ensuring the availability of evidence in rule enforcement actions.[746]

During the Rule amendment proceeding, a few commenters urged the Commission to adopt a longer recordkeeping requirement.[747] A longer recordkeeping provision, no doubt, might also assist franchisees who wish to bring common law actions with longer limitations periods. However, we believe such a step is unnecessary in light of the other Rule instructions ensuring that prospective franchisees can retain copies of their disclosures for future reference. In short, franchisees should safeguard their disclosure documents post-sale, and the Rule instructions, as noted above, accommodate that interest.

9. Section 436.6(i): Receipt recordkeeping

Finally, section 436.6(i) of the final amended Rule requires franchisors to ''retain a copy of the signed receipt for at least three years.''[748] This section was proposed in the Franchise NPR in connection with the Item 23 receipt requirement. However, because this recordkeeping requirement is not a disclosure, but is more akin to an instruction, it has been moved to the final amended Rule's general instructions section.

Section 436.6(i)'s three-year record retention period is consistent with the statute of limitations for trade regulation rule enforcement actions brought under Section 19 of the FTC Act.[749] Further, many franchise registration states already require franchisors to maintain complete records involving each franchise sales transaction.[750] Therefore, franchisors routinely ask for and retain some kind of receipt in the ordinary course of business to protect themselves from any future allegations that they sold franchises without disclosure. Thus, a recordkeeping requirement is likely to foster compliance with the Rule's disclosure obligation without imposing significant compliance costs.[751]

E. Section 436.7: Updating Requirements

Section 436.7 of the final amended Rule specifies three updating requirements to ensure that franchisors' disclosures are timely. In most respects, the updating requirements are identical to those set forth in the original Rule and Franchise NPR, and have generated few comments.

First, section 436.7(a) of the final amended Rule retains the current requirement that franchisors prepare annual updates after the close of their fiscal year,[752] but it has expanded the number of days in which franchisors are permitted to prepare updates from 90 to 120 days.

Second, sections 436.7(b) and (c) retain the requirement that franchisors update their disclosures within a reasonable time after the close of each quarter to reflect any material changes.[753]

Third, section 436.7(d) continues the original Rule's policy that franchise sellers, when furnishing their disclosures, must notify prospective franchisees of any material changes that the seller knows or should have known in any Item 19 financial performance representations.[754] We discuss each of these provisions immediately below.

1. Section 436.7(a): Annual updates

As noted above, section 436.7(a) expands the time period proposed in the Franchise NPR for making annual updates from 90 to 120 days after the close of the franchisor's fiscal year.[755] In response to the Franchise NPR, several commenters urged the Commission to adopt a 120-day requirement. For example, PMR&W stated that many franchisors have difficultly obtaining annual audited financial statements from their auditors within the current 90-day period. Because most franchisors use the calendar fiscal year, company auditors are usually overwhelmed at the beginning of the fiscal year, given the busy tax season. Recognizing this problem, many state franchise regulators allow franchisors 120 days to prepare updated disclosures.[756] For these reasons, the Commission is persuaded that the updating requirement should be expanded from the original Rule's 90 days to 120 days. This revision has the potential of reducing franchisors' compliance burdens, while potentially reducing inconsistencies with state updating policies.[757]

2. Sections 436.7(b)–(c): Quarterly updates

Sections 436.7(b) and (c) of the final amended Rule retain the original Rule and Franchise NPR requirement that franchisors update their disclosures at least quarterly to reflect any material changes.[758] This requirement generated no significant comment during the Rule amendment proceeding.[759] We believe it

[745] Many states require franchisors to keep records on franchise sales transactions. *E.g.*, Cal. Corp. Code at 31150; Haw. Rev. Stat. at 482E–5; 815 Ill. Comp. Stat. at 705/36; Md. Code Ann, Bus. Reg. at 14–224; Minn. Stat. at 80C.10; N.D. Cent. Code at 51–19–16; Or. Rev. Stat. at 650.010; R.I. Gen. Laws at 19–28.1–13; Wash. Rev. Code at 19.100.150.

[746] Rule enforcement actions brought under Section 19 of the FTC Act have a three-year statute of limitations. 15 U.S.C. 57b. Reliance on franchisees for copies of disclosure documents in law enforcement work is impracticable. Franchisees may not retain copies or may not have complete copies. Moreover, large franchise systems may use multiple versions of their disclosures over time and in different states. Obtaining all relevant copies from franchisees may be unworkable. Therefore, for law enforcement purposes, it is essential that franchisors retain copies of their disclosures for some length of time, consistent with state practices.

[747] Bundy, NPR 18, at 13; Stadfeld, NPR 23, at 5.

[748] *See* BI, NPR 28, at 7–8 (This ''provides useful clarification regarding the minimum time period the Commission expects franchisors to maintain such records.'').

[749] Several Commission trade regulation rules also require a three-year recordkeeping requirement. *See*, *e.g.*, Wool Labeling Rule, 16 CFR 300.31(c); Fur Labeling Rule, 16 CFR 301.41(b); Textile Labeling Rule, 16 CFR 303.39(c); Alternative Fuel Labeling Rule, 16 CFR 309.23; R-Value Rule, 16 CFR 460.9.

[750] *E.g.*, Cal. Corp. Code at 31150; Haw. Rev. Stat. at 482E–5; 815 Ill. Comp. Stat. at 705/36; Md. Code Ann, Bus. Reg. at 14–224; Minn. Stat. at 80C.10; N.D. Cent. Code at 51–19–16; Or. Rev. Stat. at 650.010; R.I. Gen. Laws at 19–28.1–13; Wash. Rev. Code at 19.100.150.

[751] No comments were submitted on this proposed Rule section.

[752] *See* 16 CFR 436.1(a)(22).

[753] *See* 16 CFR 436.1(a)(22).

[754] *See* 16 CFR §§ 436.1(d)(2) and (e)(6). Section 436.7(e) also retains the Commission's current policy that audited information in a disclosure document need not be re-audited on a quarterly basis. Rather, a franchisor can update its audited disclosures by including unaudited information, provided the franchisor discloses that the information is unaudited. *See* 16 CFR 436.1(22).

[755] Franchise NPR, 64 FR at 57345 (retaining the original Rule's 90-day annual update requirement).

[756] PMR&W, NPR 4, at 5. *See also* Baer, NPR 11, at 4; Lewis, NPR 15, at 19–20; IFA, NPR 22, at 11; J&G, NPR 32, Attachment, at 3.

[757] In response to the Staff Report, however, Gust Rosenfeld suggested that ''120 days'' should be expressed as ''four months.'' The firm noted that during leap years, 120 days would fall on April 29, or if the franchisor's fiscal year end is June 30th, 120 days would fall on October 28. Gust Rosenfeld, at 7. While we recognize there may be rare instances where 120 days does not fall at the end of a month, we are reluctant to change the language of section 436.7(a) to be inconsistent with state law.

[758] Franchise NPR, 64 FR at 57345. *See also* 16 CFR 436.1(a)(22).

[759] PMR&W, for example, noted that the original Rule's quarterly update requirement is a bright-line rule that ''is clear and intelligible to franchisors and their counsel.'' PMR&W, NPR 4, at 6. Similarly, the NFC states that a quarterly update requirement is consistent with long-standing Commission policy. NFC, NPR 12, at 16. One commenter, responding to the comparable provision in the Staff Report, noted that the Franchise NPR would have required a franchisor to update information quarterly ''relating to the franchise business of the franchisor.'' J&G, at

strikes the right balance between ensuring the timeliness of disclosures and reducing compliance burdens. Franchisors need to prepare quarterly updates only if there is a material change, and they may include the quarterly update in an addendum. In short, franchisors need not prepare new disclosure documents each quarter as a matter of course. We believe the current quarterly update requirement establishes a clear, bright line tied to each franchisor's fiscal year. It has worked well and has generated few, if any, complaints during the 20 years that the Rule has been in existence.

Section 436.7(c) modifies the quarterly update provision proposed in the Franchise NPR, however, to accommodate the extension of the annual update from 90 to 120 days, as previously discussed. The obligation to update disclosures quarterly necessarily precedes the conclusion of the 120-day annual update period. Accordingly, additional clarification of the interrelationship between the annual and quarterly update requirements is warranted. To that end, section 436.7(c) provides that a franchisor's annual update (120 days after the close of the fiscal year) ''shall include the franchisor's first quarterly update, either by incorporating the quarterly update information into the disclosure document itself, or through an addendum.'' The following tables illustrate the point, by comparing procedures under the original Rule with those under section 436.7(c).

HYPOTHETICAL USING PROCEDURES UNDER THE ORIGINAL RULE

December 31, 2005	Fiscal year ends.
January-March, 2006	First quarter of new fiscal year.
April 1, 2006	Franchisor must use annual updated disclosure document.
Reasonable time after April 1, 2006	Franchisor amends annual update with a quarterly update, if warranted.
Reasonable time after July 1, 2006	Franchisor amends annual update (and any previous quarterly update) with a quarterly update, if warranted.
Reasonable time after October 1, 2006	Franchisor amends annual update (and any previous quarterly update(s)) with a quarterly update, if warranted.
Reasonable time after January 1, 2007	Franchisor amends 2006 annual update (and any previous quarterly updates(s)) with a quarterly update, if warranted.

HYPOTHETICAL USING FINAL AMENDED RULE PROCEDURES

December 31, 2005	Fiscal year ends.
January-March, 2006	First quarter of new fiscal year.
May 1, 2006	Franchisor must use annual updated disclosure document containing any first quarter update either integrated in the body of the disclosure document itself or in an addendum.
Reasonable time after July 1, 2006	Franchisor amends annual update with a quarterly update, if warranted.
Reasonable time after October 1, 2006	Franchisor amends annual update (and any previous quarterly update(s)) with a quarterly update, if warranted.
Reasonable time after January 1, 2007	Franchisor amends annual update (and any previous quarterly updates(s)) with a quarterly update, if warranted.

3. Section 436.7(d): Material changes to financial performance information

Section 436.7(d) retains the original Rule requirement that a franchisor notify prospective franchisees of any material changes to previously furnished financial performance information.[760] The Franchise NPR proposed a broader updating requirement that would have compelled franchisors to notify prospects of *any* material changes before delivery of the disclosure document.[761] This proposal generated several comments, both supporting and opposing the expanded updating proposal.

IL AG and Howard Bundy favored the broader updating requirement, but they would require all such updates to be in writing. The IL AG, for example, stated that ''[o]ral notification is the ammunition for rescission litigation.''[762]

On the other hand, several franchisors opposed the updating requirement for various reasons. Marriott, for example, asserted the proposal would be extremely burdensome, imposing ''an impossible burden on large franchisors, especially if they actually operate the business that they franchise because of the uncertainty of what constitutes 'any material change' and the requirement of 'real time' ongoing disclosure.''[763] Marriott would eliminate the proposed expanded update provision in its entirety.[764]

PMR&W and the NFC advised that the proposal is confusing. In particular, PMR&W found the relationship between the basic quarterly update provision and the proposed continuing update provision less than clear:

> It is unclear whether these ''material changes'' must be more ''material'' than any changes disclosable in the quarterly updates.

7. The firm asserted that this language could require the disclosure of more information than is required by the actual disclosure Items. It suggested that the Commission adopt the alternative language: any material change to ''the disclosures included, or required to be included, in the disclosure document.'' We agree, and section 436.7(b) of the final amended Rule reflects that change.

[760] 16 CFR 436.1(d)(2) and 436.1(e)(6).

[761] NPR, 64 at 57319.

[762] IL AG, NPR 3, at 4. *See also* Bundy, NPR 18, at 13; BI, NPR 28, at 8–9. On the other hand, the NFC praised the Commission's flexibility in permitting notification by any means. NFC, NPR 12, at 16.

[763] Marriott, NPR 35, at 3–4. Marriott noted that it, and other large corporations, may have several thousand employees in different departments. Each department (e.g., training, legal, advertising, marketing) may have a different person responsible for a portion of the information that is in a disclosure document for each different brand offered. A continuous updating requirement:

> ''would place an unfair burden on franchisors like Marriott. For example, it will be virtually impossible for the Training Department (every time they change a subject or the hours allotted to a particular subject in the training program) . . . to contact Legal and for Legal to determine if the change is material and to then contact development to make sure before the closing of every franchise deal that there is not a particular piece of information that must be notified to a franchisee. This requirement will cause complete havoc in the franchise sales process. Franchisors will not be able to close sales without notifying every department out of fear that some minute change in fact may later be deemed to be material.''

Marriott, NPR 35, at 4.

[764] Marriott, NPR 35, at 4. *See also* PMR&W, NPR 4, at 6.

> Depending on the answer to this question, is there any need to require quarterly updates when immediate updates are mandated; i.e., does the immediate update rule preclude the need for the quarterly update?[765]

In a similar vein, the NFC questioned whether a franchisor must provide a prospective franchisee with each and every quarterly update, as long as the prospect is in the sales cycle. If so, it asked how franchisors should determine whether prospects are no longer in the sales cycle.[766]

It is clear from the comments that there are two competing concerns. On the one hand, prospective franchisees should have all material information they need to make an informed purchase decision, regardless of when they entered the sales process. On the other hand, there are practical considerations, including the costs and burdens on franchisors to update each franchisee on a continuing basis, as Marriott observed. Indeed, at some point, the burden and cost to franchisors (which inevitably will be passed along to prospective franchisees or other consumers) outweighs the potential benefit of more frequent updating.

Based upon the record, the Commission is persuaded that, on balance, a continuing update requirement is unwarranted. We are convinced that franchisors should have a bright-line directive when they can be assured that they have complied with the Rule's disclosure requirements. We believe that the original Rule's quarterly update requirement is sufficient to ensure timely disclosures, while minimizing compliance costs.

Further, any prospective franchisee who has been in the sales cycle can always request a copy of the franchisor's most recent disclosure document before he or she agrees to execute the franchise agreement. To facilitate that goal, the Commission has adopted a new prohibition that would bar franchisors from failing to honor a prospective franchisee's reasonable request for a copy of the franchisor's most recent disclosure document and/or quarterly update before he or she signs a franchise agreement.[767] We believe this prohibition is unlikely to increase franchisor's compliance costs and burdens. Franchisors most likely will have updated disclosures documents prepared in the ordinary course of their business. With the advent of electronic communications, emailing a copy of the updated disclosure document to a prospective franchisee, or otherwise permitting a prospective franchisee to see a copy of the updated disclosure document on the franchisor's website, would impose only a small cost.

At the same time, we are persuaded that the final amended Rule should retain the original Rule's continuing update requirement for financial performance information.[768] The original Rule required franchisors to notify prospective franchisees of any material changes in a financial performance representation before the prospective franchisee pays a fee or signs the franchise agreement.[769] We believe this provision is sound, recognizing the particular materiality of financial data to prospective franchisees. Any false impression created by stale data at the time of sale is likely to cause significant injury to prospective franchisees who rely on financial data in making their investment decision.[770]

F. Section 436.8: Exemptions

Section 436.8 of part 436 sets forth exemptions from the final amended Rule. In the original Rule, the exemptions were set out in the middle of the Rule's definitions, where they modified the term ''franchise.''[771] To make the exemptions easier to find, the Commission has decided to move them to a separate ''exemptions'' section in the final amended Rule.[772]

Section 436.8 retains the original Rule exemptions for: (1) franchise sales under $500;[773] (2) fractional franchises;[774] (3) leased departments;[775] and (4) oral contracts.[776] Section 436.8 also adds two new exemptions, one for franchise sales involving petroleum marketers, and one for three categories of ''sophisticated investors.'' Finally, the final amended Rule deletes the original Rule's four exclusions found at 16 CFR 436.2(a)(4)(i)-(iv) for non-franchise relationships involving: (1) employer-employees and general partnerships; (2) cooperative organizations; (3) testing or certification services; and (4) single trademark licenses.[777]

The final amended Rule section 436.8 is substantially similar in both form and content to its counterpart proposed in the Franchise NPR.[778] The principal difference is a lowering of the dollar threshold for the sophisticated investor ''large investment'' exemption from $1.5 million to $1 million. This and the other substantive differences between the proposed and final amended Rules are explained below.

1. Section 436.8(a)(1): Minimum payment exemption

Section 436.8(a)(1) retains the original Rule's $500 required minimum payment exemption found at 16 CFR 436.2(a)(3)(iii). This exemption ensures that the Rule ''focus[es] upon those franchisees who have made a personally significant monetary investment and who cannot extricate themselves from the unsatisfactory relationship without suffering a financial setback.''[779] As explained below, the Commission believes the exemption and its $500

[765] PMR&W, NPR 4, at 6.

[766] NFC, NPR 12, at 16.

[767] *See* section 436.9(f). This provision also address the commenters' concerns about permitting franchisors to furnish updates orally.

[768] *But see* IL AG, at 10 (suggesting that the Rule state that franchisors may have other disclosure obligations under Section 5 of the FTC Act); Bundy, at 3 (suggesting a continuous updating requirement for ''materially adverse events.''). The quarterly update provision specifies when a franchisor must prepare revised disclosures to ensure that they are timely. It does not address whether a franchisor may have other obligations to notify prospective franchisees of material changes under state common law fraud or misrepresentation principles.

[769] *See* 16 CFR 436.1(d)(2) and 436.1(e)(6). Like the original Rule, the final amended Rule requires the franchisor to ''notify'' the prospective franchisee of any material change in financial performance information. It does not require a franchisor to update its disclosures more often than quarterly, nor does it require a franchisor to re-disclose to a prospective franchisee. Rather, ''notification'' means that the franchisor must inform the prospective franchisee, which can be accomplished outside of the disclosure document. How a franchisor ''notifies'' a prospective franchisee is within the sound discretion of the franchisor. Notification can be made in writing, or by telephone call, email, or other electronic transmission, provided that the franchisor can prove that it has informed the prospective franchisee about the material change to the performance data.

[770] *But see* J&G, at 11 (asserting that financial performance information should be updated only quarterly).

[771] 16 CFR 436.2(a)(3).

[772] This approach is consistent with other Commission rules, including the Telemarketing Sales Rule, 16 CFR 310.6; the Care Labeling Rule, 16 CFR 423.8, and the Cooling-Off Period Rule, 16 CFR 429.3. The UFOC Guidelines do not contain any exemptions. Rather, at most, some of the 15 franchise disclosure states may exempt franchisors from registration requirements as a matter of statute or regulation. *See generally* Duvall & Mandel, ANPR 114. Thus, franchisors exempted from disclosure under the final amended Rule may nonetheless have to prepare and disseminate UFOCs for state law purposes.

[773] *See* 16 CFR 436.2(a)(3)(iii).

[774] *See* 16 CFR 436.2(a)(3)(i).

[775] *See* 16 CFR 436.2(a)(3)(ii).

[776] *See* 16 CFR 436.2(a)(3)(iv).

[777] As discussed below, although the Commission is deleting the exclusions from the final amended Rule text, it is retaining the exclusions as a matter of policy and incorporating them by reference in this Document.

[778] Franchise NPR, 64 FR at 57345. The final amended Rule provision, however, has been renumbered as section 436.8. In the Franchise NPR, it was numbered section 436.9.

[779] Original SBP, 43 FR at 59704.

threshold continue to serve a useful purpose.

During this Rule amendment proceeding, no commenter recommended eliminating or reducing the $500 minimum payment threshold. Several commenters, however, urged the Commission to raise the $500 minimum threshold, with some commenters suggesting a $1,000 threshold,[780] while others suggested a $2,500,[781] or a $5,000 threshold.[782] These commenters maintained that an upward adjustment is warranted to reflect the increase in costs since the Rule was promulgated in 1978. In addition, two commenters also urged the Commission to increase the thresholds periodically, perhaps every four years, to reflect the rate of inflation.[783]

In contrast, the IL AG urged the Commission to retain the $500 threshold in order to protect small investors.[784] In a similar vein, a franchisee representative urged the Commission to modify the minimum payment exemption to provide that the $500 threshold includes ''both amounts the franchisee actually pays, but also any amounts that the franchisee, during the first six months, agrees to pay in the future—either by contract or by practical necessity.''[785]

The Commission has determined to retain the original Rule's $500 minimum payment exemption. The original Rule included a threshold dollar amount to exclude transactions where the prospective franchisee was at risk to lose an amount of money too small to justify imposition of the expense and burden of preparing a disclosure document upon sellers. This is particularly true with less complex business opportunities, which, even today, may cost under $500. However, with the extraction of business opportunity regulation to a new rule separate from the Franchise Rule, it can be argued that *any* investment in a franchise, as a practical matter, will be a significant investment risk. This may suggest that the exemption may no longer serve a useful purpose.

We note that the Staff Report described research exploring the relevance of the $500 threshold to the amounts actually charged for initial franchise fees in the current market. The staff examined over 1,000 franchise profiles listed in Bond's Franchise Guide (13th ed. 2001).[786] All but 41 of the franchise systems responding to Bond's survey reported initial franchise fees of $5,000 or more (approximately 96% of reporting systems). Indeed, only 22 systems reported that an initial fee was ''not applicable,'' or that they charged an initial franchisee fee of $1,000 or less.[787] Thus, even a $5,000 threshold would not reduce significantly the number of franchisors that must comply with the Rule's disclosure obligations.

Given the significant investment required to purchase nearly any franchise, a plausible argument could be made for eliminating the threshold altogether. However, the minimum payment exemption continues to serve a very narrow, but important, purpose: To the extent that a less complex business opportunity might come close to satisfying the elements of a franchise, the $500 threshold would help to make it clear that such opportunities are exempt from the Franchise Rule. Thus, the final amended Rule retains the minimum payment exemption.[788]

2. 436.8(a)(4): Petroleum marketers and resellers exemption

Section 436.8(a)(4) of the final amended Rule expressly exempts petroleum marketers and resellers covered by the Petroleum Marketing Practices Act (''PMPA'').[789] Although this exemption was not part of the original Rule, in 1980 the Commission granted a petition for an exemption from the Rule filed by several oil companies and oil jobbers, pursuant to Section 18(g) of the FTC Act.[790]

In considering the petition, the Commission noted that the most frequently cited complaint about the petroleum franchise industry concerned termination and renewal practices. The Commission also noted that, after the close of the original franchise rulemaking record, Congress had passed the PMPA, which specifically addressed those complaints, requiring, among other things, pre-sale disclosure of franchisees' termination and renewal rights. In light of that legislation, the Commission concluded that the Franchise Rule was largely duplicative of the PMPA and related federal regulations.

In granting the petition, the Commission stated that the Rule ''shall not apply to the advertising, sale or other promotion of a [petroleum] 'franchise,' as the term 'franchise' is defined by the [PMPA].''[791] The final amended Rule incorporates the 1980 exemption as an express Rule exemption.

Two commenters voiced concern about this exemption. J&G maintained that the exemption leaves unanswered whether disclosure is warranted when other businesses—such as convenience stores, fast food, and ice cream shops—operate in these exempt gasoline franchise establishments.[792] In the same vein, Chevron noted that the PMPA covers agreements not only for gasoline sales, but for other refiner-branded services or products at a gasoline station. For example, a Chevron gasoline station may also have a Chevron branded (or no brand) car wash, repair

[780] Typical of these comments was H&H, which urged the Commission to raise the threshold to $1,000 in order to recognize the fact that costs in general have increased substantially since the Rule was initially promulgated. H&H, NPR 9, at 4. *See also* Gurnick, NPR 21A, at 8; GPM, NPR Rebuttal 40, at 9.

[781] Baer, NPR 11, at 15-16. In the alternative, Mr. Baer suggested that the threshold should be set at 1% of the amount of average retail sales achieved by outlets using the franchise system in the United States in the most recent year for which data is available. Mr. Baer asserted that if ''a system has average retail sales of $1 million, $10,000 is not a number which should trigger concerns. There is no need for the Commission to regulate *de minimis* investments with this type of burdensome and costly disclosure obligation.'' *Id.*

[782] J&G, NPR 32, at 14.

[783] *See* H&H, NPR 9, at 4; Baer, NPR 11, at 15-16.

[784] IL AG, NPR Rebuttal 38, at 2 (''To exempt franchises that do not have an initial fee, or ones that have what appears to be a modest fee of $1,000 or $2,500, would put too many ''small'' investors at risk.'').

[785] Bundy, NPR 18, at 14.

[786] Bond's keeps files on 2,500 American and Canadian franchise systems. Of these, Bond's surveyed 2294 systems that it identified as current and active. Detailed profiles of the 1050 systems responding to the survey appear in Bond's 2001 edition.

[787] The Staff Report noted that Bond's does not report ''required payments,'' but initial franchisees fees and total investments. Therefore, it is likely that at least some franchise systems charging a minimum fee or even no initial fee (14 systems) actually collect other required payments (e.g., royalties, equipment), making the overall financial risk in purchasing a franchise significant.

[788] Howard Bundy opined that the $500 minimum payment exemption should reference payments by contract or by practical necessity. Bundy, NPR 18, at 4. The $500 minimum payment exemption, however, already references the term ''required payment,'' which in turn is defined to include both payments by contract and by practical necessity. Accordingly, no further refinement of the Rule is necessary on this point.

[789] 15 U.S.C. 2801.

[790] 45 FR 51765 (Aug. 5, 1980).

[791] 45 FR at 51766. In reaching its conclusion, the Commission nonetheless recognized that circumstances may change in the industry that would warrant a fresh review:

''[I]f circumstances change in the future and evidence of renewed misrepresentations in the sale of petroleum franchises reappears on a significant scale, a new rulemaking proceeding may be undertaken that is tailored to the specific needs of the industry. In the interim, if isolated abuses occur, they will be subject to the adjudicative procedures and remedies provided by Section 5 of the FTC Act.''

45 FR at 51766. Since 1980, the Commission has received only isolated complaints regarding abuses in the relationship between petroleum company franchisors and their franchisees, and has no reason to believe that a pattern of abuse is likely to develop in the near future.

[792] J&G, NPR 32, Attachment at 6.

center, or mart. According to Chevron, all of these services or products are sold as part of a unified deal when the prospective franchisee purchases the franchised gasoline outlet. Therefore, the Commission should also exempt the sale of such tangential services or goods sold along with a gasoline station under a unified agreement.[793]

In response to these comments, the Commission intends that it be clear that the PMPA exemption should be read broadly to cover other branded services and products (such as a car wash or mart) sold to the prospective franchisee under the same franchise agreement as the gasoline station. The Commission believes that, as a practical matter, it may be impossible to divide a single franchise agreement for gasoline and other services into its component parts for disclosure purposes, and such an approach is inconsistent with the PMPA. Nevertheless, separate or subsequent sales of a franchise to a gasoline station owner, such as a 7-Eleven or Subway outlet, fall outside of the exemption. An individual who operates a gasoline station is just as much in need of pre-sale disclosure for the purchase of a non-related franchise, such as an ice cream store, as any other prospective franchisee.

3. Sections 436.8(a)(5) and (a)(6): Sophisticated investor exemptions

Sections 436.8(a)(5) and (a)(6) add three new exemptions to the final amended Rule, collectively referred to as the ''sophisticated investor exemptions.'' As noted, the sophisticated investor exemptions as adopted are substantially similar to their counterparts as proposed in the Franchise NPR.[794]

Franchisors enthusiastically supported the creation of sophisticated investor exemptions.[795] They maintained that franchising today often involves heavily-negotiated, multi-million dollar deals between franchisors and highly sophisticated individuals and corporate franchisees with highly competent counsel. In the course of such deals, prospective franchisees often demand and receive material information from the franchisor that equals or exceeds the disclosures required by the Rule. These commenters asserted that such business arrangements are not the kinds of franchise sales that the Commission originally intended to cover.

On the other hand, several franchisees and their advocates opposed the exemptions, or expressed reservations about them.[796] Some feared that while prospective franchisees may appear to be sophisticated—either because of their net worth or general prior business experience—they actually may have limited knowledge of the risks inherent in operating the specific franchise being offered. In short, these commenters advised the Commission to protect the wealthy, but inexperienced.[797]

Section 436.8(a)(5)(i)—the ''large franchise investment'' exemption—exempts franchise sales where the initial investment is at least $1 million, exclusive of unimproved land and franchisor financing. Section 436.8(a)(5)(ii)—the ''large franchisee'' exemption—exempts franchise sale to ongoing entities—such as airports, hospitals, and universities—with at least $5 million net worth and five years of prior business experience. Section 436.8(a)(6)—the ''insiders'' exemption—exempts franchise sales to the owners, directors, and managers of an entity before it becomes a franchisor.[798] Each of these exemptions is discussed in the section below.

a. Section 436.8(a)(5)(i): Large investment exemption

Section 436.8(a)(5)(i) exempts from the Rule franchise sales where the prospective franchisee makes an initial investment totaling at least $1 million, excluding the cost of unimproved land.[799] To ensure that the large investment exemption is not overly broad and does not create a loophole, section 436.8(a)(5)(i) sets forth additional safeguards beyond the $1 million threshold to preserve protection for the average investor.[800] First, section 436.8(a)(5)(i) makes clear that funds obtained from the franchisor (or an affiliate) cannot be counted toward the $1 million initial investment threshold. Second, section 436.8(a)(5)(i) requires the prospective franchisee to sign an acknowledgment that the franchise sale is exempt from the Franchise Rule because the prospective franchisee will be making an initial investment of at least $1 million.

i. Need for the large initial investment exemption

As noted above, franchisors urged the Commission to adopt a large initial investment exemption,[801] while franchisees either opposed it or offered suggestions to limit it.[802] Specifically, several franchisee commenters asserted that wealth or ability to make a large franchise investment does not necessarily equate with business sophistication. They urged the Commission to focus instead on the investor and his or her business background, rather than ability to pay alone.[803]

For example, Eric Karp criticized the notion of a large investment exemption because it does not consider the source of the prospective franchisee's funds:

> Did she re-mortgage her residence? Did he borrow from a friend or relative? Did they cash in their retirement fund? The investment standard also does not consider what other assets, liabilities, and

[793] *See* Pillsbury Winthrop (on behalf of Chevron U.S.A. Inc.).

[794] Franchise NPR, 64 FR at 57345.

[795] *E.g.*, Gust Rosenfeld, at 7; J&G, at 7; Marriott, at 2-4; Starwood, at 2-3; 7-Eleven, NPR 10, at 2; NFC, NPR 12, at 17; IFA, NPR 22, at 7; AFC, NPR 30, at 2-3; Marriott, NPR 35, at 6. *See also* Kaufmann, ANPR, 18 Sept. 97 Tr., at 165; Wieczorek, *id.*, at 187-88; Tifford, *id.*, at 194 (noting that the Rule imposes unnecessary costs on sophisticated franchisees and adds unwarranted delay in the high-paced negotiation process, where parties often are anxious to cement their deals quickly to beat out the competition).

[796] *See*, *e.g.*, Bundy, NPR 18, at 14; Stadfeld, NPR 23, at 7-8; Karp, NPR 24, at 6-8. *But see* Caruso, ANPR 118 (''[F]ranchisees in the larger successful systems are themselves fairly sophisticated and in less need of protection by the FTC or any other government agency.'').

[797] *See* Selden, at 1; Gee, at 2; Karp, at 6-7; Pu, at 2; Zarco & Pardo, ANPR 134, at 4-5; Kezios, ANPR, 6 Nov. 97 Tr., at 47-48; Bundy, *id.*, at 48-49; Stadfeld, NPR 23, at 8; Karp, NPR 24, at 6-8; NFA, NPR 27, at 3. *See also* NADA (urging the Commission to consider exemptions on a case-by-case basis only).

[798] Two commenters noted that the inclusion of the three sophisticated investor exemptions in the final amended Rule could be misleading because a franchisor may still have obligations to make disclosures under state law. Bundy, at 3; IL AG, at 10. Howard Bundy, for example, urged the Commission to include a warning in the final amended Rule itself that exemption from the Franchise Rule does not necessarily mean exemption from state disclosure law. While this observation is true, the Commission believes the appropriate place to delineate the relationship between the final amended Rule and state law is in anticipated Compliance Guides and other business and consumer education materials.

[799] At least two states provide some form of exemption for transactions involving large initial investments. Illinois permits a franchisor to apply for an exemption from both registration and disclosure where the investment for a single franchise unit exceeds $1 million. Maryland exempts franchises that require an initial investment of $750,000 or more from registration, but not from disclosure.

[800] These safeguards were included in the proposed version of this provision. Franchise NPR, 64 FR at 57321 and 57345.

[801] *E.g.*, PMRW, NPR 4, at 3; Wendy's, NPR 5, at 2; McDonalds, NPR 7, at 2; H&H, NPR 9, at 4; Baer, NPR 11, at 16; NFC, NPR 12, at 20. Marriott, for example, stated that not only are sophisticated franchisees able to protect their own interests, but the self-interest of others involved in the project, such as bankers, is sufficient to protect those interests as well. Marriott, NPR 35, at 6. *See*, *e.g.*, Baer, NPR 11, at 16; Gurnick, NPR 21, at 3; J&G, NPR 32, at 3.

[802] Stadfeld, NPR 23, at 8; Karp, NPR 24, at 6.

[803] Karp, at 7; Karp, NPR 24, at 6-7. *See also* Stadfeld, NPR 23, at 7-8 (''Being wealthy should not be a basis for being screwed.'').

> income the prospective franchisee has from which one can estimate his or her financial sophistication and tolerance of risk.[804]

In lieu of the ''investment'' model offered by the Commission, Mr. Karp urged the Commission to consider SEC Regulation D,[805] which ''properly focuses on the qualifications of the investor, not the size of the investment.'' In his view, the large franchise exemption does the opposite. ''The fact that a franchisee may be ready to invest a highly leveraged $1.5 million franchise investment does not prove that such a person is so sophisticated that a disclosure document would be of no benefit.''[806]

Mr. Karp also discounted the potential benefit of the large investment exemption to franchisors. According to Mr. Karp, the exemption would be of little benefit to the franchisor unless 100% of its franchise sales involved transactions over the threshold level. If so, he insisted, there is no additional compliance burden imposed by requiring disclosures be given to all prospective franchisees because the franchisor has to prepare the disclosures in any event.[807]

After reviewing the comments, we are persuaded that a large investment exemption is warranted. Since the Rule's inception, the Commission has considered a prospective franchisee's level of investment as one measure of sophistication. For example, in granting the Automobile Importers of America's petition for exemption from the Rule under Section 18(g), the Commission observed:

> Prospective motor vehicle dealers make extraordinarily large investments. As a practical matter, investments of this size and scope involve relatively knowledgeable investors or the use of independent business advisors, and an extended period of negotiation. The record is consistent with the conclusion that the transactions negotiated by such knowledgeable investors over time and with the aid of business advisors produce the pre-sale information disclosure necessary to ensure that investment decisions are the product of an informed assessment of the potential risks and benefits of the proposed investment.[808]

Accordingly, it is clear that investment level is one indicium of sophistication.

More important, we are convinced that franchisors should have a bright-line standard that will clearly indicate when and under what circumstances the sophisticated investor exemption will apply. An exemption based upon the specific business experience of each individual prospective franchisee would be burdensome to administer. For example, in some instances franchisors would not be able to take advantage of the exemption unless they first verified each prospective franchisee's business background. Similarly, absent such verification, law enforcers would not be able to discern whether any specific franchise relationship was covered by the Rule. This approach could create a regulatory nightmare for both franchisors and franchise law enforcers.

We are also convinced that the large investment exemption offers tangible benefits to franchisors. Clearly, there are franchise systems, such as lodging, where the typical franchise investment is likely to exceed the large investment exemption's monetary threshold. Accordingly, the large investment exemption will provide regulatory relief at least in those instances. We recognize that the large franchise investment exemption, however, will provide only limited relief for franchisors that sell franchises both above and below the threshold. In such instances, the franchisor must prepare disclosure documents in order to sell at levels below the threshold. Accordingly, the costs of providing disclosures to all franchisees, including those above the threshold, may not be large, but neither is the potential benefit to the purchaser. Indeed, the argument that sophisticated investors could benefit from disclosure misses the mark. The basis for the large investment exemption is not that ''sophisticated'' investors do not need pre-sale disclosure, but that they will demand and obtain material information with which to make an investment decision regardless of the application of the Rule. Where prospective franchisees are likely to demand and obtain pre-sale material information regardless of external prompting or compulsion, then the case for federal intervention is not compelling.

Further, the Rule's costs and burdens are unwarranted in situations where the likelihood of abuse is low. This concept is incorporated into the statutory provision of the FTC Act that gives franchisors the right to petition the Commission for a trade regulation rule exemption, including an exemption limited to a specific set of facts.[809] Thus, a franchisor, if it wished, could petition the Commission for an exemption only for sales above a certain dollar figure (although to date none has done so). The large investment exemption need not be ''all or nothing'' to benefit franchisors. The very fact that franchisors uniformly supported the large investment exemption tends to confirm that it will provide them with some desired regulatory relief. On balance, we believe that a narrowly crafted large investment exemption offers the potential for reducing franchisors' regulatory burdens and preserving Commission resources by reducing the number of exemption petitions, without sacrificing protections for the average investors the Franchise Rule was originally promulgated to protect.

ii. The $1 million investment threshold

Section 436.8(a)(5)(i) provides that franchise sales involving an investment of $1 million —excluding the cost of unimproved land and franchisor financing—qualify for the large investment exemption. We are convinced that a $1 million threshold strikes the right balance between providing relief for sophisticated investors and protecting consumers.

The large investment exemption proposed in the Franchise NPR incorporated a higher $1.5 million threshold, based upon the Commission staff's analysis of the costs to purchase more than 1,350 franchises listed in various trade publications, including Enterprise Magazine's *The Franchise*

[804] Karp, NPR 24, at 7. *See also* Selden, at 2 (''The idea that disclosure becomes unnecessary when the investment exceeds an arbitrary threshold, because scale is a proxy for sophistication or bargaining power, is an oxymoron.''); Gee, at 3 (''The FTC should focus on the capabilities of the investor as opposed to the size of the investment.''). Mr. Selden also asserted that franchisors are not always forthcoming with information, suggesting that had the Commission solicited the views of franchisees of large hotel systems, for example, we would have a different impression. *Id.* We note, however, that not a single hotel franchisee or large restaurant franchisee submitted any comment in response to the large investment exemption discussed in the ANPR, NPR, and Staff Report. Accordingly, we are unconvinced that Mr. Selden's concerns raise a serious issue.

[805] *See* 17 CFR 230.501(5), (6), and (8). *See also* Wendy's, NPR 5, at 2.

[806] Karp, NPR 24, at 8.

[807] Karp, NPR 24, at 6. *See also* Bundy, ANPR, 6 Nov. 97 Tr., at 21-22; Jeffers, *id.*, at 23-24; Stadfeld, NPR 23, at 8.

[808] 45 FR 51763-64 (Aug. 5, 1980).

[809] Section 18(g) of the FTC Act. 15 U.S.C. 57a(g). One commenter observed that while franchisors can file individual petitions for exemptions from the Rule under Section18(g) of the FTC Act, the process is costly and the delay involved often renders this approach an unviable option. Duvall & Mandel, ANPR 114, at 16. Section 18(g) of the FTC Act provides a mechanism for parties to petition for relief from Commission trade regulation rules where potential abuse is unlikely. Section 18(g) exemption petitions are placed on the public record for comment. The entire process of reviewing and granting such a petition may take several months to more than one year, depending on any comments received.

Handbook; (''*Franchise Handbook*''); Entrepreneur Magazine's *Franchise 500*, and the International Franchise Organization's *Franchise Opportunities Guide*.[810]

Very few single-unit franchises cost more than $1.5 million: the maximum estimated cost of establishing a franchise exceeded $1.5 million in only about 3% of the listed systems. Thus, an investment of $1.5 million most likely would involve the purchase of several units. For example, more than 90% of the franchise systems listed in the cited sources involve a maximum investment totaling less than $500,000. Thus, in order to qualify for the $1.5 million exemption, an investment in the vast majority of systems would involve the purchase of either a single large franchise—such as a hotel or the most expensive restaurant location—or multiple units.[811] Of the 12 restaurant systems listed in the *Franchise Handbook* with maximum investments of $1.5 million or above, all listed a minimum investment below $1.5 million to establish a location. Three listed less than $1 million as the minimum investment, and seven estimated the minimum investment to be between $1 million and $1.2 million, or the purchase of three or more units.[812]

During this proceeding no consensus emerged on the appropriate investment threshold for the large investment exemption. Several commenters supported the Franchise NPR's proposed $1.5 million threshold.[813] Other commenters urged the Commission to increase the threshold. For example, NASAA recommended a $3 million threshold. In its view, a $1.5 million threshold may place too many transactions outside the Rule's protections, because, according to NASAA, even unsophisticated investors may have access to $1.5 million to invest in a franchise.[814] On the other hand, several commenters suggested that the threshold should be lower. For example, McDonald's suggested that the threshold should be set at $1 million.[815] The IFA proposed a variation on this theme. It supported a $1 million threshold, excluding land.''[816] It observed that a 1997 update to the *Profile of Franchising* identified 52 franchise companies offering franchises with an initial investment exceeding $1 million, excluding land. This equates to 4.4% or less of all franchise systems.[817] Thus, at a $1 million threshold for the exemption, more than 95% of all franchise systems would remain within the ambit of the Rule.[818] Some commenters recommended an even lower threshold. PMR&W, for example, recommended $500,000.[819]

The Commission gives particular weight to the statements offered by franchisors such as McDonald's and Marriott that, in their experience, a $1 million investment is likely to involve sophisticated investors.[820] The Commission believes that a $3 million dollar threshold would be too high, effectively restricting the exemption to only the rarest of instances, mostly large hotel franchises. On the other hand, the suggested $500,000 threshold, in our view, is too low. There is insufficient record support for the proposition that investors at the $500,000 level are sophisticated. Thus, the Commission has adopted a $1 million threshold for the exemption.

Exclusion of unimproved land. The $1 million threshold for the large investment exemption excludes payments for unimproved land. The Commission believes that the inclusion of unimproved land in the exemption would have two negative consequences. First, inclusion of unimproved land would tend to inflate the initial cost of a franchise investment and place too many transactions outside the ambit of the Rule's protections. As the IFA noted, approximately 52 franchise systems, or less than 5% of the universe of franchise systems, would qualify for an exemption with a threshold investment of $1 million, excluding unimproved land.

Second, the Commission has a strong preference for a bright-line standard that can be readily applied across franchise systems. It seems unworkable to require a franchisor to calculate on an offer-by-

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[810] For a detailed discussion of staff's analysis, see Staff Report, at 238.

[811] In light of the management demands on operating multiple units, it is reasonable to believe that purchasers of multiple units may be persons with significant prior business experience.

[812] We also assume that in many instances this universe of sophisticated investors will include existing franchisees with significant ''hands-on'' experience with the franchisor. In its Franchise NPR comment, NFC describes at length the changing nature of franchising in the United States. Specifically, NFC notes that:

''While franchising's roots may be traced to the grant of an individual franchise to one entrepreneur (or a small group of entrepreneurs) possessing no prior knowledge of or experience in the subject industry . . . it is nevertheless the case that over the decade many of America's oldest and largest franchisors do not follow that paradigm. Instead, they find it far more efficient and profitable for all concerned to largely restrict the grant of United States franchises to: (i) sophisticated corporations with the resources and background necessary to optimally operate subject franchises and (ii) existing franchisees whose experience, profitability, and mastery of the franchisor's system strongly suggest future success.''

NFC, NPR 12, at 17. Accordingly, at least some franchisees purchasing multiple units are existing franchisees with prior ''hands-on'' experience with the franchisor.

[813] *E.g.*, Baer, NPR 11, at 16; Gurnick, NPR 21, at 3; Marriott, NPR 35, at 6.

[814] NASAA, NPR 17, at 12. Seth Stadfeld added that it is not difficult to invest $1.5 million when there is a down payment plus financing of a substantial portion of the investment. ''Indeed, because they are taking on larger obligations, there is all the more reason and urgency why they should get the material, factual and contractual information that is otherwise available under the Rule.'' Stadfeld, NPR 23, at 8. *See also* NFA, NPR 27, at 3.

[815] ''In our considerable experience, individuals purchasing franchises involving a $1 million investment have a clear understanding of the terms and conditions of the business arrangements and have obtained professional financial and/or legal advice before entering into the franchise agreement.'' McDonald's, NPR 7, at 2. *See also* 7-Eleven, NPR 10, at 3; NFC, NPR 12, at 20; BI, NPR 28, at 13. Wendy's suggested that the threshold be lowered, but did not offer any specific amount. Wendy's, NPR 5, at 2.

[816] As discussed below, IFA initially stated that ''real estate'' should be excluded in calculating the large investment threshold. IFA, NPR 22, at 7. In its Staff Report comment, however, the IFA clarified that by ''real estate,'' it mean raw, unimproved land. *See* IFA, at 3.

[817] IFA, NPR 22, at 7.

[818] The Staff Report recommended a $1 million threshold for the exemption, excluding land and franchisor financing, as discussed below. Staff Report, at 240.

[819] PMR&W opined that the $1.5 million threshold would benefit only:

''a very few franchised businesses, typically lodging facilities and perhaps the most expensive restaurant franchises. We suggest a $500,000 threshold as a more reasonable alternative based on the franchisee's likely resort to sophisticated advisory services from accountants and/or attorneys and the probable need for financing, and resulting due diligence oversight, from a financial institution.''

PMR&W, NPR 4, at 3. *See also* Cendant, ANPR 140, at 4 (suggesting a $750,000 threshold); H&H, NPR 9, at 4 (advocating a lowered threshold, but not specifying an amount); Duvall & Mandel, ANPR 114, at 21 (suggesting a $250,000 threshold provided there is a showing that the purchaser, alone or with counsel, can understand the merits and risks of the investment). The Commission rejects this approach as unworkable, because it would require franchisors to make subjective judgments about each purchaser's business acumen.

[820] The Commission has a history of considering and granting petitions for exemption to the Franchise Rule under section 18(g) of the FTC Act. In numerous exemption petition proceedings, the Commission has considered the size of investment as an indicium of sophistication. *E.g.*, Paccar, Inc., 68 FR 67442 (Dec. 2, 2003); Rolls-Royce Corp., 68 FR 67443 (Dec. 2, 2003); Austin Rover Cars of North America, 52 FR 6612 (Mar. 4, 1987); Volkswagen of America, Inc., 49 FR 13677 (Apr. 6, 1984); Automobile Importers of America, Inc., 45 FR 51783 (Aug. 5, 1980). Based upon this experience in analyzing various franchise systems, the Commission believes that a large investment typically entails a sophisticated purchaser: ''As a practical matter, investments of this size and scope typically involve knowledgeable investors, the use of independent business and legal advisors, and an extended period of negotiation that generates the exchange of information necessary to ensure that investment decisions are the product of an informed assessment of the potential risks and benefits.'' Mercedes-Benz of North America, Inc., 57 FR 1745 (Jan. 15, 1992) (granting petition for exemption).

offer basis the cost of land, which could vary widely depending on local market conditions. A single, clear threshold is vastly superior, in our view. Accordingly, for these reasons, we believe that $1 million, excluding unimproved land, strikes the appropriate balance.

Finally, we note that the Staff Report, adopting language offered by the IFA in response to the Franchise NPR, proposed to exclude ''real estate.'' In response to the Staff Report, three commenters urged the Commission to clarify the meaning of the term ''real estate'' either in the Rule or in Compliance Guides. The IFA, for example, noted that the term ''real estate'' may encompass ''raw land, buildings, leasehold improvements, fixtures, and the like.''[821] The IFA asserted that the value of the exemption would be diminished if all such items were excluded from consideration in determining whether an initial investment totals $1 million. It suggested that the term ''real estate'' be defined to exclude only the franchisee's investment in unimproved land.[822] Similarly, Starwood urged that only ''land'' should be excluded, but ''all real estate improvements and fixtures should be counted in the sum invested.''[823] Piper Rudnick offered yet a different version: ''any real property acquired to establish and operate the franchised business.''[824]

After considering the comments, the Commission has concluded that the phrase ''unimproved land'' is more appropriate than ''real estate.'' As IFA noted, the exclusion of fixtures, equipment, and other improvements to property from the $1 million threshold would leave the exemption so narrow, that it would be useless in all but the most expensive franchise offerings, defeating the very purpose of the exemption. Excluding ''real estate''—which is significantly broader than the more limited term ''unimproved land''—would also impact disproportionately real estate-intensive companies—such as hotels and restaurants. The justification for a large investment exemption is that individuals investing $1 million or more are sufficiently sophisticated that they do not need the Rule's protections. This rationale applies equally whether the prospective franchisee invests $1 million to purchase a building or the prospective franchisee buys equipment or other assets. Accordingly, excluding unimproved land from the large investment exemption's $1 million threshold strikes the appropriate balance between providing franchisors with a clear threshold, while ensuring regulatory relief for large investments.

Exclusion of franchisor financing. Section 436.8(5)(i) does not count monies that are obtained through franchisor (or affiliate) financing toward the large initial investment exemption's $1 million threshold. The exclusion of franchisor financing adds a measure of protection to the prospective franchisee because traditional lenders are very likely to require a due diligence investigation of the offering, whereas the franchisor or its affiliate likely would not.

A few commenters opposed the exclusion of franchisor-financing when calculating a prospective franchisee's initial investment. For example, Marriott asserted that it does not believe that there are inherent risks that would justify excluding financing from the franchisor. Indeed, it feared that this exclusion might have the unintended effect of harming franchisees by discouraging franchisors from offering financing to prospects in order to qualify for the exemption.[825]

After careful assessment of the comments, the Commission has concluded that financing obtained from the franchisor or an affiliate should not be counted toward the large investment exemption threshold. Otherwise, a franchisor could be tempted to increase the cost of the initial investment to qualify for the large investment exemption, while simultaneously offering to finance the deal itself, all without proper pre-sale disclosures. In that regard, the Commission agrees with Eric Karp, who observed that the assumption that a prospective franchisee will have a sufficient level of equity tends to disappear ''where a franchisee obtains financing from the franchisor or its affiliates or from a selling franchisee; in such instances, far less equity may be required.''[826]

Further, it is reasonable to assume that a lender, in order to minimize its own financial risk, will ensure that a prospective franchisee will conduct a due diligence investigation of the franchise offering. Indeed, by involving a lender, the prospective franchisee effectively ensures that there is an independent, sophisticated entity inserted into the sales process. This additional safeguard would be lost if sources of financing for purposes of the exemption included the franchisor and its affiliates.

iii. Acknowledgment

To take advantage of the large investment exemption, section 436.8(5)(i) requires the franchisor to obtain the prospective franchisee's signed acknowledgment that the investment satisfies the $1 million threshold. This will reduce the opportunity for fraud by enabling the prospect to verify that the investment meets or exceeds the exemption threshold. Therefore, it will reduce the probability that the franchisor will misrepresent the initial cost of the franchise to qualify for the exemption, as well as provide a paper trail in the event an enforcement action becomes necessary.

Several commenters failed to understand the purpose of the acknowledgment or believed that it would serve no useful purpose. For example, BI stated: ''We do not understand the purpose or the importance of the acknowledgment by the prospective franchisee of the application of the exemption. The acknowledgment does not protect the prospective franchisee, except, perhaps to put the prospect on notice that it may be entitled to receive a disclosure document.''[827]

Seth Stadfeld asserted that the acknowledgment requirement could be abused. ''[F]ranchisors could further a fraud by playing up to and flattering the prospective franchisee into thinking that he is so sophisticated that he doesn't need the disclosures that the little people need.''[828] On the other hand, Howard Bundy advised that the acknowledgment should be expanded. He would revise the Rule to read: ''The franchisee's estimated investment, excluding any affiliate financing, totals at least $1.5 million and the prospective franchisee signs an acknowledgment stating the basis for the exemption from the Rule and providing the CFR citation to the Rule and verifying the grounds for the exemption . . .''[829]

The Commission is convinced that the acknowledgment requirement serves a useful purpose. As previously noted, the acknowledgment will ensure that a

[821] IFA, at 3.

[822] IFA, NPR 22, at 7.

[823] Starwood, at 2. *See also* Marriott, at 2 (an ''investment'' should include buildings).

[824] Piper Rudnick, at 6-7.

[825] Marriott, NPR 35, at 6. *See also* J&G, NPR 32, at 4. At the same time, Eric Karp disputed the view expressed in the Franchise NPR that lenders may act as an effective check, requiring a prospect to have sufficient equity capital before granting a loan. He contended that there is ''no support in the record as to what amount of equity a bank might require on a franchise investment of $1.5 Million.'' Karp, NPR 24, at 7.

[826] Karp, NPR 24, at 7.

[827] BI, NPR 28, at 13.

[828] Stadfeld, NPR 23, at 8.

[829] Bundy, NPR 18, at 14.

prospective franchisee receives notice that the transaction is exempt from the Rule. This would tend to prevent fraud by enabling the prospective franchisee to verify the applicability of the exemption. Further, we believe that abuse of the acknowledgment requirement is unlikely. A prospective franchisee's signing of the acknowledgment does not give rise to the exemption. A franchisor must furnish disclosures unless the specific criteria for the exemption is satisfied. Thus, whether a prospective franchisee is flattered into signing an acknowledgment is irrelevant. At the same time, we agree with Mr. Bundy that the acknowledgment should reference the Franchise Rule itself. This would enable a prospective franchisee to review the Rule, understand the exemption, and, ultimately, verify the exemption's application. Accordingly, the acknowledgment requirement of the final amended Rule has been revised to incorporate these revisions.

iv. Meaning of ''initial investment''

During the Rule amendment proceeding, several commenters voiced concerns about how to define ''investment'' for purposes of the large investment exemption. For example, J&G questioned: ''Is it the initial investment described in Item 7? Is it the amount of the investment over the term of the franchise? Or is it some other calculation?''[830] The NFC voiced similar concerns and urged the Commission to clarify that the term ''investment'' means the franchisee's estimated investment, as set out in Item 7 of the disclosure document.[831]

The Commission's intent is that, for purposes of the large investment exemption, the level of a prospective franchisee's investment should be limited to the ''initial investment,'' as set forth in Item 7. For that reason, the phrase ''estimated investment'' has been replaced in the Rule's text with the phrase ''initial investment.'' Focusing on Item 7 when applying the exemption brings needed certainty to all parties, while ensuring that the exemption is narrowly focused to protect prospective franchisees making smaller investments. It is not farfetched to assume that a large universe of franchisees investing $100,000 or less today might actually pay more than $1 million (excluding unimproved land) to the franchisor during the course of a lengthy franchise agreement, especially when royalty and advertising fees, as well as ongoing product purchases, are considered. For that reason, a broad large investment exemption would effectively eviscerate the Rule's protection.[832]

The term ''initial investment,'' however, need not be limited to a single unit. The Commission notes with approval the comments of H&H and the NFC, urging revision of the Rule to clarify that the threshold includes the total projected investment, whether in single- or multiple-unit transactions. As the NFC noted: ''A multi-unit franchisee investing the threshold amount (or more) in a number of units is just as sophisticated as another franchisee investing a like amount in a single unit.''[833]

The Commission has carefully considered the Staff Report recommendation to place limits on the large investment exemption to protect investors who pool their resources to purchase a franchise at or above the threshold level.[834] The Commission shares the staff's concern. Clearly there is a significant difference between a single individual purchasing a franchise for $1 million, versus a group of 10, for instance, each contributing $100,000. Obviously, the larger the group of investors, the smaller each individual investor's risk. In such a circumstance, the level of each individual investment provides no indicium of sophistication. Accordingly, the Commission has added footnote 11 to the Rule to provide that the large franchise exemption applies only if at least one individual in an investor-group qualifies as ''sophisticated'' by investing at the threshold level.

Several commenters assessed this issue differently. IL AG suggested that *each* member of an investment group should be required to satisfy the $1 million investment threshold in order to be deemed ''sophisticated.[835] In contrast, Marriott asserted that franchisees in large transactions typically form joint ventures or obtain financing from outside equity investors. Marriott maintained that there is little benefit in requiring a franchisee to break down the relative financial responsibilities of each equity investor in order to determine the application of the large investment exemption.[836] Marriott also noted that the list of investors may change over the course of contract negotiations, making it difficult to determine at the time of sale whether any single investor qualifies for the exemption.

The Commission has concluded, however, that the limitation in footnote 11 is necessary to ensure that the large investment exemption strikes the right balance between providing relief for franchisors where the likelihood of abuse is reduced, and ensuring continued protection for those prospective franchisees who, although wealthy, may lack business experience. As explained above, the large investment exemption is premised on the Commission's assumption that ability to pay indicates sophistication. That assumption fails when no one investor standing alone is investing at the requisite threshold level. In short, sophistication does not arise merely by aggregating otherwise unsophisticated investors.

v. Conversion franchises and transfers

During this proceeding, several commenters questioned whether the large investment exemption would cover business arrangements such as conversion franchises and transfers. In a conversion franchise, a business owner has already invested in his or her existing business and now seeks to associate with a particular franchisor's brand by entering into a franchise agreement with that franchisor. H&H stated that the term '''investment' should include the fair market value of an existing facility as part of the investment, so as to include an existing facility that is being converted to the franchise system.''[837]

In a similar vein, the NFC questioned whether a transfer of a franchise directly from a franchisee to a new purchaser

[830] J&G, NPR 32, Attachment, at 6.

[831] NFC, NPR 12, at 20. *See also* CA Bar, at 7; Marriott, at 2; Marriott, NPR 35, at 6 (''Investment' for purposes of the exemption should be defined as the initial investment as set forth in Item 7, plus credit extended by any lender and commitments for real property (not just mortgage or lease payments for the first few months.'')). Others raised alternative calculation approaches. For example, Wendy's observed that the focus on the franchisee's investment should ''exclude those expenses to be incurred during the first three months of operation which are not offset by sales. . . . [This] artificially raises the threshold.'' Wendy's, NPR 5, at 2. Similarly, J&G urged the Commission to include all commitments for real property over the life of the contract, not just mortgage or lease payments for the first few months. J&G, NPR 32, at 4.

[832] CA Bar, at 7 (including expenses over the life of the franchise term ''would likely render the $1 million threshold meaningless . . . because the accumulated expenditures over a 10 or 20 year period could easily exceed $1 million dollars.'').

[833] NFC, NPR 12, at 21. *See also* H&H, NPR 9, at 4.

[834] Staff Report, at 243.

[835] IL AG, at 11.

[836] Marriott, at 3. *See also* Starwood, at 2.

[837] H&H, NPR 9, at 4. The NFC noted that conversion franchise activity is the ''dominant form of franchise activity extant in the guest lodging and real estate brokerage arenas, and is common in other sectors as well. While new construction of franchised hotels does transpire, much franchising activity in the guest lodging sector involves the conversion of existing hotels . . . to the name, mark, and system of a guest lodging franchisor.'' NFC, NPR 12, at 20. *See also* Starwood, at 2; PREA, NPR 20, at 3; Marriott, NPR 35, at 6.

can qualify for the exemption. It urged the Commission to include transfers in the definition of ''investment,'' where the purchasing franchisee pays an existing franchisee the threshold amount and then enters into a new franchise agreement with the franchisor. ''[W]e . . . submit that franchisees making such an investment prior to the execution of the subject franchise agreement are as 'sophisticated' as their brethren who make the investment after executing that agreement.''[838]

The Commission's view is that the definition of ''initial investment'' is broad enough to include conversion franchises and transfers without sacrificing necessary protection for franchise purchasers. Specifically, when considering a conversion franchisee's ''initial investment'' in a franchise, it is reasonable to consider the conversion franchisee's previous investment in the unit. Indeed, a strong argument can be made that a conversion franchisee is even more sophisticated than a new franchisee, having worked in the business for a period of time. Similarly, the sale of an existing franchise would qualify for the large investment exemption in a transfer. The fact that a transferee will assume an existing contract or may renegotiate an existing contract with the franchisor should have no bearing on his or her level of sophistication as an investor, as long as he or she satisfies the monetary threshold.

b. Section 436.8(a)(5)(ii): Large franchisee exemption

Section 436.8(a)(5)(ii) exempts from the final amended Rule franchise sales to large entities; namely, those who have been in any business for at least five years and have a net worth of at least $5 million.[839] The Commission is persuaded that large entities negotiating franchise deals—such as airports, hospitals, and universities—can obtain the benefits of the amended Rule without federal government intervention.

i. Need for the large franchisee exemption

In the Franchise NPR, the Commission proposed exempting franchise sales to large ''corporate'' franchisees.[840] For example, a fast food franchisor may sell a number of franchised outlets to a hotel chain. Such transactions often are heavily negotiated by sophisticated counsel who have significant experience in the franchise industry. Even if a large entity does not have prior experience in franchising, or in the franchised business in particular, it is reasonable to assume that it can nevertheless protect its own interests when negotiating a franchise deal.

Indeed, the Commission stated in the Franchise NPR that a large franchisee exemption is a logical extension of the original Rule's fractional franchise exemption. To qualify as a fractional franchisee, among other things, a prospect must have two years of experience in the same line of business. Thus, the fractional franchise exemption is very narrowly tailored, focusing only on persons who wish to expand their existing product lines. While the fractional franchise exemption is appropriate for individuals and small businesses seeking to expand, it may be unnecessarily narrow for larger, more sophisticated corporations seeking to become franchisees.[841]

The Staff Report proposed a large franchisee exemption identical to that in the Franchise NPR. Five franchisor representatives continued to support the proposed exemption,[842] while three franchisees opposed it for the same reasons previously voiced in response to the Franchise NPR.[843]

ii. Covered entities

The large franchisee exemption is intended to cover franchisees that are ''entities.'' In the Franchise NPR, the Commission proposed that the large franchisee exemption be limited to *corporations*. Many commenters supported the proposed exemption, but criticized its narrow application.[844] Specifically, several commenters urged the Commission to consider exempting other large entities, such as partnerships, finding no rationale for restricting the exemption only to corporations. The Commission agrees, and has expanded the provision in the final amended Rule to encompass corporations, partnerships, and similar arrangements.[845]

iii. Net worth

To qualify for the large franchisee exemption, section 436.8(a)(5)(ii) specifies that the prospective franchisee-entity must have a net worth of $5 million.[846] During the Rule amendment proceeding, several commenters opined that the exemption's net worth prerequisite is overly restrictive.[847] H&H, for example, contended that a $5 million net worth threshold is too high, limiting the exemption to a small number of publicly-traded companies. ''Many successful private companies do not seek to accumulate equity, but instead to maximize cash flow to their owners. Thus, such a high net worth requirement would prevent the exemption of many sophisticated investors.''[848] The firm urged a net worth requirement of $1 million.[849] On the other hand, Howard Bundy asserted that the $5 million net worth requirement is too low, sweeping in many very small companies. ''That is a

[838] NFC, NPR 12, at 21.

[839] No state has a comparable disclosure exemption. Several states—including California, Indiana, Maryland, New York, North Dakota, Rhode Island, South Dakota, and Washington—have an exemption from registration for ''experienced franchisors.'' To qualify for the exemption, a franchisor must typically have a net worth of at least $5 million and have had 25 franchise locations in operation during the previous five years.

[840] Franchise NPR, 64 FR at 57321. *See* Kaufmann, ANPR, 18 Sept. 97 Tr., at 190. *But see* Kezios, 18 Sept. 97 Tr., at 191-92 (opposing exemption for large institutions, suggesting that they need franchise advice and counsel as well).

[841] For example, in 1997, FTC staff was asked for an advisory opinion on whether a travel services company would be covered by the Rule if it sold outlets to hospitals. The staff advised that the hospital could not qualify as a fractional franchisee because it did not have the requisite two years of experience in providing travel-related services. Advisory 97-7, Bus. Franchise Guide (CCH) ¶ 6487 (1997). Hospitals and other large institutions such as airports and universities, however, are hardly unsophisticated prospective franchisees.

[842] Gust Rosenfeld, at 7; J&G, at 7; Marriott, at 2; Piper Rudnick, at 6-7; Starwood, at 3.

[843] Selden, at 1 (large franchisee exemption thresholds are too low); Gee, at 2; Pu, at 2 (Commission should focus on capabilities of franchisee, not size of investment). Two franchisee associations—the AAFD and the AFA—did not comment on this issue.

[844] *E.g.*, IL AG, NPR 3, at 2; PMR&W, NPR 4, at 3; Wendy's, NPR 5, at 3; Triarc, NPR 6, at 1; H&H, NPR 9, at 5; Baer, NPR 11, at 16; NFC, NPR 12, at 22; BI, NPR 28, at 14; Tricon, NPR 34, at 7; Marriott, NPR 35, at 7.

[845] Nothing prevents an ''entity'' under this provision from being an individual, but most individuals who have been in business for at least five years and have generated an individual net worth of at least $5 million are likely to have created a corporation or other formal organization through which to conduct business.

[846] Net worth of an entity can readily be determined from the entity's balance sheet or other financial information, typically submitted as part the application process.

[847] At the same time, several franchisee representatives criticized the large franchisee exemption as inappropriate. For example, Andrew Selden asserted that the large franchisee exemption will ''sweep in thousands of small business entrepreneurs who own three or four units or independent businesses, or perhaps unrelated family wealth. Personal net worth has no correlation whatsoever with the need for information to make an informed business investment decision in respect to an unfamiliar franchise.'' Selden, at 1. As noted above, however, the sophisticated investor exemptions are premised not on the notion that sophisticated investors do not need pre-sale disclosure, but that they are able to obtain such information, or greater information, without federal government intervention. This is particularly true of large franchisees, such as hospitals, airports, and universities, among others.

[848] H&H, NPR 9, at 5.

[849] *Id.*

small enough net worth to not be indicative of the level of sophistication that would indicate no need for mandatory disclosures.''[850] The Commission believes that the $5 million net worth requirement strikes the right balance, granting relief to sophisticated entities, while protecting those entities for whom the purchase of a franchise would be a significant financial risk.

iv. Prior experience

In addition to requiring $5 million net worth, section 436.8(a)(5)(ii) requires large franchisees to have five years of prior business experience in any line of business, as proposed in the Franchise NPR. A few commenters opined that the prior experience prerequisite is unnecessary, and urged the Commission to focus only on the large franchisee's net worth. The NFC, for example, asserted that: ''Even if a large corporation does not have prior experience in franchising specifically, it is reasonable to assume that it can protect its own interests when negotiating for the purchase of a franchise.''[851]

On the other hand, Triarc urged the Commission to focus on prior experience in lieu of net worth. It noted that it is possible that a franchisee with 10 years of experience and 50 units may wish to finance its operation with debt rather than equity. Under the circumstances, this presumably sophisticated franchisee would fail the net worth test:

> What if a large corporate franchisee with $20.0 million of net worth declares a $16.0 million dividend to its shareholders or otherwise does a recapitalization which takes its net worth below the threshold? Over the years, some gigantic companies that are financially healthy have had huge negative net worths and negative earnings. . . . We would suggest that net worth is often an indicator of how a company chooses to finance itself rather than of sophistication.[852]

After considering these arguments, the Commission concludes that both the $5 million net worth and five years experience prerequisites are necessary to ensure that the Rule continues to protect businesses with limited experience, limited assets, and, by inference, limited prior success. For example, a small sandwich shop franchisee is not necessarily sophisticated enough to purchase a hotel merely because the franchisee has operated one or more sandwich shops for five years. Similarly, several wealthy individuals who form a partnership without any prior *business experience* are not necessarily sophisticated merely because of their net worth. Both prerequisites are necessary to ensure that the large franchisee exemption does not create a loophole, putting small and unsophisticated entities at an unacceptable financial risk.

v. Affiliates and parents

Finally, section 436.8(a)(5)(ii) refines the proposed exemption published in the Franchise NPR, which used the term ''corporation'' and made no mention of parents or affiliates. As revised, a franchisor may consider the prior experience and net worth of the franchisee's affiliates and parents when determining whether the franchisee qualifies as a ''large franchisee.''

A few commenters noted that the prior experience and net worth prerequisites would essentially disqualify new corporations. They asserted that there are legitimate tax and liability reasons why an experienced franchisee may wish to establish a separate corporation for a particular franchise transaction. For example, according to Marriott, it is not unusual in the lodging and restaurant industries to form ''special purpose entities (SPEs) . . . to insulate either a parent company or the individual investors from liability.''[853] If so, then such a new corporation would not meet the exemption's net worth and prior experience prerequisites.[854] These commenters urged the Commission to permit the franchisor to consider the consolidated net worth and experience of franchisee affiliates and parents.[855] The Commission is persuaded that the net worth and prior experience prerequisites may not make sense when applied to franchisee spin-off subsidiaries or affiliates that are formed primarily for tax or limited-liability purposes. Accordingly, section 436.8(5)(ii) makes clear that a franchisor may aggregate commonly-owned franchisee assets in determining the availability of the large entity exemption:[856]

> The franchisee (or its parent and any affiliates) is an entity that has been in business for at least five years and has a net worth of at least $5 million.[857]

c. Section 436.8(a)(6): Officers, owners, and managers exemption

Section 436.8(a)(6) of the final amended Rule adds a new exemption for officers, owners,[858] and managers of a business before it becomes a franchisor.[859] In such circumstances, it reasonably can be assumed that the prospective franchisee already is familiar with every aspect of the business system and the associated risks. Thus, disclosure would serve little purpose. Indeed, in some instances, a company may wish to offer units only to its owners, officers, and managers. If not exempt from the Rule, these companies would have to go through the burden and expense of creating a disclosure document for isolated sales to company insiders. To ensure that individuals qualifying for the exemption have recent and sufficient experience with the business, however, section 436.8(a)(6) is limited to individuals who have been associated with the company within 60 days of the sale and who have been involved for at least two years with the company.

Section 436.(8)(a)(6) refines the proposed Rule's ''insiders'' exemption which would have limited the exemption to owners and officers. During the Rule amendment proceeding, several commenters urged the Commission to broaden the exemption to include ''trustees, general partners and any individual who has or had management responsibility for the offer

[850] Bundy, NPR 18, at 14.

[851] NFC, NPR 12, at 21-22. Similarly, J&G maintained that any ''entity or group of entities with a $5 million or more net worth should, by definition, be deemed to have the requisite sophistication to satisfy the exclusion or exemption.'' J&G, NPR 32, at 4.

[852] Triarc, NPR 6, at 2.

[853] Marriott, NPR 35, at 7.

[854] *See also, e.g.*, NFC, NPR 12, at 22; J&G, NPR 32, at 4; H&H, NPR 9, at 5. Triarc, for example, noted that one Arby's franchisee owns 700 units and is one of the largest privately owned restaurant operators in the world. It asked ''why should we have to give disclosure to that franchisee merely because he sets up a new corporate entity to own his next Arby's store?'' Triarc, NPR 6, at 1-2.

[855] Starwood, at 3; NFC, NPR 12, at 22; J&G, NPR 32, at 4; H&H, NPR 9, at 5.

[856] In the same vein, the definition of ''affiliate'' covers both franchisee and franchisor affiliates, as noted in our discussion of the definitions, above.

[857] This modifies slightly an earlier version of the large franchisee exemption which would have required the purchaser *and* its parent or affiliates to satisfy the net worth and prior experience prerequisites. *See* Marriott, at 3-4; J&G, at 7.

[858] CA Bar would limit this exemption to those with an equity ownership in the company. In its view, those with a non-equity interest, such as a lender, typically do not participate in the business, in contrast to an equity owner, and therefore should be excluded from the exemption. CA Bar, at 8. While CA Bar's observation is correct, the Rule need not be revised to address this issue. A lender or other non-equity interest owner will be excluded from the exemption because he or she will not satisfy the exemption's prior experience prerequisite.

[859] The ''insider'' exemption is modeled after nearly identical language in California's statute. Washington and Rhode Island have similar exemptions. *See* Duvall & Mandel, ANPR 114, at 21 (suggesting a narrower approach).

and sale of the franchisor's franchises or the administration of the franchised network.''[860] In short, these comments urged that the exemption parallel the list of company insiders disclosed in Item 2. Seth Stadfeld, however, questioned the need for the exemption if the company is already providing disclosures to others.[861] Howard Bundy urged the Commission to limit the exemption to *bona fide* officers, fearing that a franchisor could attempt to skirt disclosure obligations by putting a prospective franchisee on the board of directors, for example, for a few days or weeks before the sale and removing him or her shortly thereafter.[862]

Based upon the record, the Commission has adopted the NFC's suggestion that the exemption should cover not just owners and officers of a franchise system, but others with direct management experience.[863] It is reasonable to assume that managers and others with at least two years of direct experience in the business should be well-informed about its operations.[864] Where a non-franchised company wishes to sell a limited number of outlets to experienced company personnel only, it would be overly burdensome to force the company to create a disclosure document when the only beneficiaries of the disclosures are already knowledgeable individuals. The Commission notes that the exemption is company-specific: we do not mean to suggest that a manager of one company is deemed sophisticated for all franchise sales. Rather, the exemption would apply only to a manager or other officer seeking to purchase a franchise of that very company.

Howard Bundy's concern that franchisors may abuse the exemption in an effort to skirt the Rule is adequately addressed. Specifically, in order to qualify for the exemption, the prospective franchisee must have served in one of the enumerated positions for at least two years. Moreover, their relationship with the company must be current: within 60 days of the sale. These prerequisites are likely to ensure that the prospect is in fact a *bona fide* officer or owner.

d. Section 436.8(b): Inflation adjustment

Section 436.8(b) of the final amended Rule provides that the Commission shall adjust the size of the monetary thresholds for the exemptions listed in section 436.8 every fourth year based upon the Consumer Price Index.[865] This would affect the minimum payment exemption,[866] as well as the three sophisticated investor exemptions. As explained below, this approach differs from the proposed inflation adjustment published in the Franchise NPR in two respects: (1) it sets a specific time period when the adjustments must occur (every fourth year); and (2) adds specificity by tying the adjustment to the Consumer Price Index.

In the Franchise NPR, the Commission proposed revising the amended Rule's monetary thresholds once every four years to adjust for inflation.[867] The Commission believed that a four-year adjustment is necessary to ensure that the thresholds reasonably keep up with inflation.

The Franchise NPR proposal garnered three comments. PMR&W and John Bear agreed with the need for a threshold adjustment and supported the Franchise NPR proposal. The NFC supported the inflation adjustment, but offered a slightly different approach. It suggested that the Commission tie the threshold amounts automatically to reflect increases in the Consumer Price Index, while placing the burden on the franchisor to prove that it qualified for the exemption at the time in question.[868]

The Commission is persuaded that the final amended Rule should contain bright-line thresholds that are clear to both franchisor and franchisee alike. Thus, any adjustment to the Rule thresholds should be imposed only after an announcement to the public, where the effective date of the adjustment and the adjustment amount is clear. The most effective way to provide such notice is through **Federal Register** announcements and that the adjustments should be based upon a clear standard—the Consumer Price Index.[869] Accordingly, the Commission intends to publish every fourth year adjustments to the amended final Rule's monetary thresholds based upon the Consumer Price Index. Finally, to add greater specificity, the final amended Rule makes clear that the term ''Consumer Price Index'' means ''the Consumer Price Index for all urban consumers published by the Department of Labor.''[870]

4. Exclusions

Finally, the final amended Rule removes the four exclusions for non-franchise relationships found in the original Rule: (1) employer-employee and general partners; (2) cooperative associations; (3) certification and testing services; and (4) single trademark licenses.[871] In the original SBP, the Commission stressed that these four relationships are *not* franchises, but might be perceived as falling within the definition of a franchise.[872] To avoid any confusion, the Commission expressly excluded these four relationships from Rule coverage.

During the Rule amendment proceeding, several commenters opposed the removal of the exclusion for cooperatives for various reasons.[873] According to these commenters, the exclusion helps to distinguish between franchises and cooperatives, a distinction that may not be apparent to new cooperative members.[874] Second, removing the cooperative exclusion from the Rule could lead to costly

[860] NFC, NPR 12, at 23. *See also* AFC, NPR 30, at 3.

[861] Stadfeld, NPR 23, at 9.

[862] Bundy, NPR 18, at 14.

[863] For that reason, we decline to include ''trustees.'' Nothing in the designation ''trustee'' ensures that the individual will have an adequate level of experience within the system to justify an exemption from receiving pre-sale disclosures. On the other hand, if a trustee functions as an officer or manages the franchise systems, he or she will qualify for the exemption as either an officer or manager.

[864] CA Bar observed that section 436.8(a)(6) refers to ''purchasers'' It questioned whether the insider exemption is limited to individual insiders only, or to entities formed by individual-insiders. It correctly observed that insiders who are likely to purchase a franchise are likely to do so by forming a partnership, corporation, or other entity through which to conduct business. We believe the term ''purchaser'' is broad enough to include an individual who intends to operate as an entity.

[865] This approach is also consistent with the Commission's procedures for adjusting thresholds or other information in Commission enforced statutes. Under the Debt Collection Improvement Act of 1996, the Commission adjusted civil penalty amounts from $10,000 to $11,000 per violation to account for inflation. Those amounts must be adjusted at least once every four years. *See* 61 FR 54549 (Oct. 21, 1996). Similarly, the Appliance Labeling Rule, 16 CFR Part 305, sets forth ranges of estimated annual energy costs and consumption for various appliances. Because energy cost and appliance efficiencies fluctuate, the Commission adjusts the label requirements periodically by publishing in the **Federal Register** new costs and ranges, which then become part of that rule's labeling requirements. The Commission also publishes in the **Federal Register** adjustments for determining illegal interlocking directorates in connection with Section 19(a)(5) of the Clayton Act.

[866] *See, e.g.*, H&H, NPR 9, at 4; Baer, NPR 11, at 15-16.

[867] Franchise NPR, 64 FR at 57321-22.

[868] NFC, NPR 12, at 22.

[869] The Staff Report made the same recommendation. Staff Report, at 250-51. No comments were submitted on this recommendation.

[870] *See* Federal Maritime Commission, Civil Monetary Penalty Inflation Adjustment, 46 CFR 506.2(c) (''‘Consumer Price Index' means the Consumer Price Index for all urban consumers published by the Department of Labor.'').

[871] *See* 16 CFR 436.2(a)(4).

[872] 43 FR at 59708.

[873] *E.g,* Spandorf, at 12.; Duvall, at 2-3; AMF; CHS; IDS.

[874] *E.g.*, CHS, at 1-2; IDS, at 2; NCBA, at 2. *See also* J&G, NPR 32, Attachment, at 9; TruServ, NPR 33, at 2; Baer, NPR 11, at 5; IL AG, NPR 3, at 3; PMR&W, NPR 4, at 3; H&H, NPR 9, at 3; Gurnick, NPR 21, at 7.

litigation over Rule coverage issues.[875] Third, retaining an express exclusion in the Rule itself is needed to ensure that the Commission does not change its view and seek to enforce the Rule against cooperatives in the future.[876] Fourth, the value of retaining the exclusion outweighs any benefit from streamlining the Rule.[877]

The Commission appreciates the concern raised by these commenters. Nonetheless, we see no compelling reason to keep the exclusions in the Rule itself. As a preliminary matter, removing the exclusions from the Rule should not be equated with expanding the scope of part 436 to cover entities currently dealt with in these exclusions: the Commission continues to hold that these business relationships do not meet the criteria for such coverage. They simply do not satisfy the definitional elements of the term ''franchise.'' Removal of the exclusions from the Rule is part of the Commission's effort to streamline the Rule.

Nevertheless, the Commission included the exclusions in the original Rule to clarify the limits of the term ''franchise,'' and for that reason the concepts embodied in the exclusions continue to serve a valuable consumer education function.[878] However, as with other sections of this document, we are disinclined to include general consumer education materials in the text of the final amended Rule itself, absent compelling evidence that such messages are warranted to address specific problems identified in the record. While the commenters asserted that confusion exists over the definition of the term ''franchise,'' not a single individual cooperative member voiced any confusion over the scope of the ''franchise'' definition, nor any concern about the distinction between franchises and cooperatives, during the entire Rule amendment proceeding. Under the circumstances, the proper forum to discuss limits to the definition of the term ''franchise'' is in this document and in future Compliance Guides. To that end, the Commission reaffirms the four exclusions and specifically adopts the discussion of the exclusions set forth in the original SBP at 43 FR 59708-10.

G. Section 436.9: Additional Prohibitions

The final amended Rule prohibits nine acts or practices that violate Section 5 of the FTC Act. The original Rule contained four of them, namely, prohibitions against: (1) making statements that contradict the franchisor's disclosures;[879] (2) making financial performance representations without a reasonable basis and without written substantiation for the representation at the time the representation is made;[880] (3) failing to make available written substantiation for any financial performance representations;[881] and (4) failing to make promised refunds.[882]

Second, the final amended Rule adds two new prohibitions concerning the furnishing of disclosures. Specifically, section 436.9(e) prohibits franchise sellers from failing to furnish a copy of the basic disclosure documents to prospective franchisees early in the sales process, upon reasonable request. Section 436.9(f) prohibits franchise sellers from failing to furnish a prospect in the sales process who has already received the basic disclosure document with a copy of any updated disclosure document or quarterly update to an existing disclosure document, upon reasonable request, before the prospective franchisee signs a franchise agreement.[883]

Third, the final amended Rule adds two anti-fraud prohibitions designed to preserve the integrity of the disclosure document and franchise agreement. Section 436.9(g) prohibits franchise sellers from materially altering the terms and conditions of any franchise agreement presented to a prospective franchisee for signing, unless the seller informs the prospective franchisee of the changes seven days before execution of the agreement. Section 436.9(h) prohibits franchise sellers from disclaiming or requiring a franchisee to waive reliance on any representation made in a disclosure document or its exhibits or attachments.

Finally, section 436.9, based upon our law enforcement history and the obviously deceptive nature of the practice, adds a new anti-shill prohibition designed to prevent the use of paid testimonials or shill references. Specifically, section 436.9(b) prohibits franchise sellers from misrepresenting that any person has purchased a similar franchise or operated a similar franchise

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[875] *E.g.*, NCBA, at 4; NCFC, at 2.

[876] *E.g.*, AMF; CHS; NCBA, at 5.

[877] *E.g.*, Spandorf, at 12; CHS; Reizman Burger, at 3-4.

[878] We also note that there are many other business relationships that share some similarities with franchises, such as distributorships, multilevel marketing programs, and some work-at-home schemes. Yet, these arrangements were not expressly excluded from the Rule. Rather, the definition of the term ''franchise'' is sufficient to set out the parameters of the Rule's scope. To the extent that these relationships may be confused with franchises, the Commission has provided needed clarification in the Final Interpretative Guides. The same approach is warranted for cooperatives. Nonetheless, based upon the comments, the Commission specifically reaffirms the four exemptions in this Statement and anticipates that future Compliance Guides will do the same. As in other areas of Rule interpretation, the staff of the Commission can also address future questions concerning the definition of the term ''franchise'' on a case-by-case basis through informal advisory opinions.

[879] *See* 16 CFR 436.1(f). ''Without this provision, the Commission believes that the disclosures required by the rule could be contradicted in oral sales presentations and rendered of little value without violating the rule.'' Original SBP, 43 FR at 59695.

[880] *See* 16 CFR 436.1(b)(2) and (c)(2); UFOC Item 19. Original SBP, 43 FR at 59684-690 (The earnings representation standards are ''intended to prevent or minimize potential misrepresentations or distortions in the representations made by franchisors, while at the same time permitting franchisors to use informative representations as part of their marketing scheme.'').

[881] *See* 16 CFR 436.1(b)(2) and (c)(2); UFOC Item 19. In the original SBP, the Commission rejected the idea that franchisors should always provide a copy of their substantiation of financial performance claims to the prospective franchisee. At the same time, it found that ''the benefit to be derived from permitting those prospective franchisees who so wish to review the franchisor's substantiation far outweighs speculative harms that could arise from such disclosure.'' Original SBP, 43 FR at 59691.

[882] *See* 16 CFR 436.1(h). In the original SBP, the Commission observed that numerous consumers complained about the difficulty they experienced when they attempted to obtain refunds from their franchisors. ''It is clear from the record that all franchisors do not adequately adhere to the refund policies they themselves agree to in their contracts.'' Original SBP, 43 FR at 59696-97. *See also* Staff Review, at 29 (some franchisees continue to experience problems with obtaining refunds).

[883] We decline to adopt a third prohibition recommended in the Staff Report that would have prohibited franchisors from failing to furnish a prospective transferee of an existing franchised outlet with a copy of an existing disclosure document of the franchisor, upon request. As recommended in the Staff Report, this prohibition would not have required a franchisor to prepare a current disclosure document solely for the benefit of a transferee. Rather, a franchisor would have been permitted to give a prospective franchisee a copy of its most recent disclosure document. For example, a franchisor who stopped selling franchises and no longer possessed a current disclosure document could have complied with this prohibition by giving a prospective transferee a copy of its most recent disclosure document, even if that document were at the time out-of-date. *See* Staff Report, at 264. In response to the Staff Report, five commenters opined that this proposed prohibition would have resulted in franchisors being forced to disclose information that could have been misleading to the prospective transferee, subjecting the franchisor to potential liability. CA Bar, at 10; Kaufmann, at 6; Seid, at 7; Spandorf, at 10-11; Wiggin and Dana, at 5. We agree. An ''existing'' disclosure document would have no relevance to a transfer unless the document were current. Moreover, a current disclosure document may not accurately portray the business arrangement entailed in the transfer, because it would explain the terms and conditions of the franchisor's *current* franchise agreement, while a transferee assumes the terms and conditions of an *ongoing* franchise agreement. Moreover, to the extent that a potential transferee wishes to see a copy of the franchisor's disclosure document, he or she can obtain a copy from a commercial service, from a franchise registration state, and more frequently online (such as through California's Cal-Easi website). *But see* Bundy, at 10.

from the franchisor, or that any person can provide an independent and reliable report about the franchise or the experiences of any current or former franchisees. Each of these prohibitions is discussed in the following sections.

1. Section 436.9(a): Inconsistent statements

Section 436.9(a) of the final amended Rule retains the original Rule prohibition against making statements that contradict the information required to be disclosed in the disclosure document. Such prohibited contradictory statements include those made orally, visually, or in writing. Because the information in the disclosure document must be complete and accurate, any statements contradicting that information would be false or likely to mislead prospective franchisees. Moreover, such statements would likely influence the purchasing decision of a prospect giving reasonable interpretation to such statements.

This is particularly true of financial performance representations. Our law enforcement experience[884] and the record[885] show that franchisors often state in their disclosure document that they do not furnish financial performance claims, yet give prospective franchisees false or misleading financial performance data outside of the disclosure document. Thus, the purpose of this prohibition is to prevent deception and to preserve the integrity of the information disseminated to prospective franchisees by ensuring that all required information will be disclosed in the form of the disclosure document.[886]

2. Section 436.9(b): Shills

Section 436.9(b) of the final amended Rule prohibits the use of fictitious references or ''shills.''[887] Specifically, it prohibits franchise sellers from misrepresenting that any person has actually purchased or operated one of the franchisor's franchises or that any person can give an independent and reliable report about the experience of any current or former franchisee. Because information provided by shills is inherently false, it is likely to mislead prospective purchasers. Yet, a reasonable prospective purchaser would have no reason to doubt the shill's statements. Also, because shills are represented as having experience with the franchisor or otherwise able to give an independent and reliable report about the franchisor, their statements are likely to influence the prospect's purchasing decision. Indeed, the Commission's law enforcement experience[888] shows that shills are often the glue that holds a scam together by allaying consumers' concerns about the investment risks.[889]

The anti-shill provision generated only one comment. J&G expressed concern that actors or public figures used in a franchisor's advertising campaigns ''will need to exercise caution when making endorsements of franchises so as not to run afoul of prohibitions against misrepresenting that they are able to provide 'an independent and reliable report about the franchise or the experiences of any current or former franchisees.'''[890]

The Commission finds the rulemaking record lacks any evidence that would shed light on the extent to which franchisors use actors or public figures to sell franchises, as opposed to selling products and services to the end-user. Based upon our law enforcement experience, we believe such practices are rare. More important, our primary concern is with preventing deception: we see little difference between a franchisor paying (or otherwise inducing) unknown individuals to deceive prospective franchisees, on the one hand, and paying (or otherwise inducing) actors or celebrities to deceive prospective franchisees, on the other. In each case, a franchisor should not be able to pay (or otherwise induce) individuals to lie about their purported experience in order to lure unsuspecting consumers to buy a franchise.[891] We are persuaded, therefore, that the anti-shill prohibition is entirely proper.

3. Section 436.9(c): Financial performance representations

Section 436.9(c) of the final amended Rule retains the original Rule's prohibition on the making of financial performance representations, unless the franchisor has a reasonable basis and written substantiation for the representation at the time the representation is made. As discussed above in connection with Item 19, false and unsubstantiated financial performance claims have been prevalent in fraudulent sales, are highly material, and are inherently likely to mislead

[884] *E.g., FTC v. Netfran Dev. Corp.*, No. 05-CV-22223 (S.D. Fla. 2005); *FTC v. Morrone's Water Ice, Inc.*, No. 02-3720 (E.D. Pa. 2002).

[885] For example, Peter Lagarias stated: ''In my experience, the providing of earnings claims in contravention of . . . [Item 19] often occurs both orally and in writing. The most common written method of earnings claims is by newspaper or magazine articles about the franchise system which contain the earnings claims. These news articles are reproduced and provided to prospective franchisees in contravention of the Rule.'' Lagarias, RR 13, at 2. *See also* Brown, ANPR 4, at 4 (''There have therefore been endless variations of supposedly 'indirect' franchisor representations of profitability, [ranging] from the proverbial notation on a napkin or envelope, to prearranged referrals to 'typical'' franchisees, to use of 'company store' figures with plain implications of comparability, and to the required preparation of a 'business plan' by the prospective franchisee and its 'review' and 'oral adjustment' by franchisor or personnel.''); Bundy, ANPR 119, at 1 (''I have never met a franchisee who had been in operation more than a few weeks who did not receive earnings claims before investing in a franchise. It simply does not happen. They either have received them from the franchisor or its agent directly (often in writing or on floppy disk) or from third parties to whom they have been directed.''); IL AG, RR 25, at 2 (''The most common situation and opportunity for abuse is the franchisor sales representative who makes oral representations as to earnings potential when talking with prospects.''); WA Securities, RR 37, at 3 (''Our fraud investigations reveal that a substantial number of franchisors or their sales representatives are making written or oral earnings claims to prospective franchisees even when the disclosure document states that no earnings claims are made.''); AAFD, RR 39, at 6 (''Probably less than 2% of franchisors make formal earnings disclosures, [while] the vast majority of franchisees claim they have received oral (and often informal written) earnings claims and projections.'').

[886] Of course, franchisors are always free to disseminate additional truthful information to a prospective franchisee. *See* 16 CFR 436.1(a)(21) (franchisors are not precluded from giving other nondeceptive information orally, visually, or in separate literature so long as such information is not contradictory to the information in the disclosure document).

[887] The anti-shill prohibition is also broad enough to cover the use of ''institutional shills,'' companies that purport to act like a Better Business Bureau that provide consumers with ''independent'' reports on its members. *See FTC v. United States Bus. Bureau*, Bus. Franchise Guide (CCH) ¶ 10865 (S.D. Fla. 1995).

[888] Scam franchisors frequently use shill references in order to bolster their financial performance and success claims. *E.g., FTC v. Car Checkers of Am., Inc.*, No. 93-623 (mlp) (D.N.J. 1993); *FTC v. Am. Legal Distrib., Inc.*, No. 1:88-CV-519-MHS (N.D. Ga. 1988). Harm resulting from the use of shills is also demonstrated by numerous Commission business opportunity law enforcement actions. *E.g., FTC v. Am. Entertainment Distrib., Inc.*, No. 04-22431 CIV-Huck (S.D. Fla. 2004); *FTC v. Hart Mktg. Enter.*, No. 98-222-CIV-T-23 E (M.D. Fla. 1998); *FTC v. Unitel Sys., Inc.*, No. 3-97CV18780-D (N.D. Tex. 1997).

[889] The NCL reported that complaints about fake references are among the most common franchisee and business opportunity complaints it receives. NCL, ANPR 35, at 2. *See also* Staff Program Review at 39 (showing that false or deceptive representations pertaining to testimonials and references is the second most common Section 5 allegation (28 counts) in Commission business opportunity and franchise cases).

[890] J&G, NPR 32, Appendix, at 9.

[891] This view is consistent with the Commission's Guides Concerning The Use of Endorsements and Testimonials In Advertising, 16 CFR 255. These guides require that any representation in an ad that purports to represent the view of a consumer must, in fact, reflect the consumer's actual views or experience:

''Endorsements must always reflect the honest opinions, findings, beliefs, or experience of the endorser. Furthermore, they may not contain any representations which would deceive, or could not be substantiated if made directly by the advertiser.'' 16 CFR at 255.2(a). Therefore, any actor or public figure who might run afoul of this provision in the Franchise Rule already risks violating the FTC Act.

prospective franchisees acting reasonably under the circumstances.[892] Indeed, our law enforcement experience demonstrates that prospects rely on financial performance claims in making their investment decision.[893] Thus, this prohibition is necessary to prevent deception.

Section 436.9(c) of the amended Final Rule revises the original Rule, however, by permitting the franchisor to make financial representations in Item 19 of the disclosure document. This achieves greater uniformity with the UFOC Guidelines, by eliminating the original Rule's requirement that a franchisor making financial performance claims furnish prospects with a separate earnings disclosure document.

4. Section 436.9(d): Availability of financial performance substantiation

Section 436.9(d) of the final amended Rule also retains the original Rule's prohibition against failing to make available to prospective franchisees and to the Commission, upon reasonable request, written substantiation for any financial performance representation made in Item 19.[894] This prohibition is tied to the previous prohibition against the making of unreasonable and unsubstantiated financial performance representations. The prohibition against failing to make available written substantiation ensures that prospective franchisees and the Commission can review and verify the data underlying any performance representation, while relieving franchisors of the burden of having to present what could be voluminous data in the disclosure document itself. Knowing that their financial performance claims are subject to Commission review—coupled with the Commission's authority to bring Rule enforcement actions for false or unsubstantiated claims—helps discourage the making of unsubstantiated claims, thus ultimately preventing fraud.

5. Section 436.9(e): Earlier disclosure upon request

Section 436.9(e) of the final amended Rule prohibits a franchise seller from failing to furnish a copy of the franchisor's disclosure document to a prospective franchisee earlier than required, upon request.[895] Accordingly, any prospective franchisee in the sales process can obtain a copy of the franchisor's disclosure document before the standard 14-day time for making disclosures set out in section 436.2 (14 calendar-days before the signing of a franchise agreement or payment of any fee in connection with the franchise sale). Because prospects may incur a variety of costs in determining whether to consider a particular franchise offering, a franchisor's withholding of its disclosure document can result in economic injury. For example, as discussed above in connection with the timing of making disclosures, early disclosure may prevent injury by enabling prospects to review the franchisor's disclosure document before agreeing to pay money to advance the sale, such as incurring travel expenses to visit company headquarters.

Further, the Commission is convinced that this prohibition is also necessary in light of our decision to eliminate the original Rule's mandatory face-to-face disclosure trigger. As discussed in connection with section 436.2 above, the Commission is persuaded that the face-to-face meeting trigger is unnecessary given the explosion of alternative media since the original Rule was promulgated in the 1970s. Nonetheless, the Commission recognizes that several commenters voiced concern that, absent early disclosure, a franchise seller could influence a prospective franchisee's investment decision well before the prospect could verify the franchisor's claims through the disclosure document, or before the prospect expends funds reviewing the offering.[896] To address these concerns, we are persuaded that it is proper to require franchise sellers to furnish disclosures earlier than the standard 14 calendar-days disclosure trigger, upon the franchisee's reasonable request.[897] The Commission believes this prohibition strikes the right balance between relieving franchisors of the burden to furnish disclosures at the first face-to-face meeting in all instances, and the prospective franchisee's desire to review disclosures early in the sales process before investing significant time, effort, and money in considering the franchise offering.[898]

6. Section 436.9(f): Furnishing updated disclosures

Section 436.9(f) prohibits a franchisor from failing to furnish a prospective franchisee who has received a basic disclosure document with updated disclosures, upon the prospect's reasonable request. Specifically, it prohibits the franchisor from failing to furnish ''the franchisor's most recent disclosure document and any quarterly updates to a prospective franchisee, upon reasonable request, before the prospective franchisee signs a franchise agreement.''

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[892] *E.g.*, original SBP, 43 FR at 59684-85 (''The use of deceptive and inaccurate profit and loss statements by franchisors has resulted in a legion of 'horror stories.''). *See also* Staff Review, at 25 (earnings claims most frequently reported franchise problem).

[893] *E.g.*, *FTC v. Netfran Dev. Corp.*, No. 05-CV-22223 (S.D. Fla. 2005); *United States v. Robert Lasseter*, No. 3:03-1177 (M.D. Tenn. 2003); *FTC v. Morrone's Water Ice, Inc.*, No. 02-3720 (E.D. Pa. 2002); *FTC v. Car Wash Guys Int*'l., Inc., No. 00-8197 ABC (RNBx) (C.D. Cal.); *FTC v. Tower Cleaning Sys., Inc.*, No. 96 58 44 (E.D. Pa. 1996); *United States v. Tutor Time Child Care Sys., Inc.*, No. 96-2603 (N.D. Cal. 1996); *FTC v. Mortgage Serv. Assocs., Inc.*, No. 395-CV-1362 (AVC) (D. Conn. 1995); *FTC v. Sage Seminars, Inc.*, C-95-2854-SBA (N.D. Cal. 1995).

[894] 16 CFR 436.1(b)(2); 436.1(c)(2).

[895] The prohibition on failing to give out disclosures earlier in the sales process pertains to ''prospective franchisees'' only. A franchisor has no obligation to furnish disclosures to competitors, the media, academicians, or researchers. It applies to prospective franchisees already in the sales process. Accordingly, a franchisor need not furnish a copy of its disclosures to individuals seeking general information on the franchisor or who do not qualify to purchase a franchise. We would expect a franchisor to furnish disclosures, upon request, to any prospective franchisees who have submitted a franchise application and who have been notified that they qualify to purchase a franchise. *See* IFA, at 3. *See also* Winslow, at 91.

[896] Turner, NPR 13, at 1; Karp, NPR 24, at 5-6; Bundy, NPR 18, at 5-6. *See also* original SBP, 43 FR at 59639 (''[O]nce a prospect has been 'hooked,' it is difficult, if not impossible, to 'extricate himself.'''').

[897] IFA urged the Commission to define the term ''reasonable request.'' IFA, at 3. We note that the similar term ''reasonable demand'' has long been part of the original Rule in connection with the provision of written substantiation for financial performance representations. 16 CFR 436.1(b)(2) and 1(c)(2) (''such material is made available to any prospective franchisee and to the Commission or its staff upon reasonable demand.''). Similarly, the UFOC Guidelines provide that a franchisor making financial performance claims must include a statement in its Item 19 disclosure that ''substantiation of the data used in preparing the earnings claim will be made available to the prospective franchisee on reasonable request.'' UFOC, Item 19d. There is no indication in the record that the use of the terms ''reasonable request'' or ''reasonable demand'' has been confusing or otherwise unclear. We believe determinations about ''reasonableness'' can be made only on a case-by-case basis. At a minimum, we will consider whether a request is ''reasonable'' based upon the timing and manner in which the request has been made. For example, it may be unreasonable for a prospective franchisee to request a copy of the disclosure document on the morning of the day a franchisor's representative flies to the prospect's city for a meeting. Similarly, it may not be reasonable for a prospective franchisee to make the request by leaving a message with the doorman at the franchisor's headquarters, or at the hotel where a franchisor's representative is staying.

[898] It is noteworthy that state franchise laws, at the very least, require franchisors to file current disclosure documents before franchisors may offer franchises for sale. Franchisors typically have disclosure documents available at the time they make franchise offerings. Accordingly, this new prohibition imposes no requirement that did not already exist under the original Rule's first face-to-face meeting disclosure requirement and under state franchise filing laws. *But see* Duvall, at 2 (this prohibition negates any benefit gained from eliminating the ''first personal meeting requirement'').

Section 436.9(f) recognizes that the information contained in a disclosure document may become out-of-date by the time a prospect who relies on such information is ready to sign a franchise agreement.[899] It prevents deception by enabling such prospective franchisees, if they wish, to get any updated disclosures prepared by the franchisor. At the same time, section 436.9(f) imposes no continuous updating requirement on franchisors.[900] Rather, it strikes the appropriate balance, preventing deception by enabling a prospective franchisee to gain access to the most current updated disclosures prepared by the franchisor, while imposing no new affirmative disclosure obligations on the franchisor.[901]

7. Section 436.9(g): Unilateral modifications

As previously discussed, the final amended Rule eliminates the original Rule's requirement that franchisors in every case afford a prospective franchisee five business days to review the completed franchise agreement. The Commission concluded that the review period is unnecessary, provided that the franchise seller does not make any unilateral modifications to the basic form of the franchise agreement previously furnished to the prospective franchisee at the time of furnishing its disclosure document. Unilateral modifications of material contract terms by the franchise seller without notice to the prospective franchisee are likely to mislead a prospect who has been relying on a previous draft as setting forth the parties' agreement.

Indeed, a franchise seller could commit fraud at the time of executing a franchise agreement by substituting material contract provisions, without notice to the prospective franchisee, that differ materially from those in the original standard contract attached to the disclosure document. To prevent such deception, we adopt a new prohibition barring franchise sellers from substituting provisions or pages in the agreement without first bringing such changes to the prospective franchisee's attention at least seven days before execution of the agreement.

8. Section 436.9(h): Disclaimers and waivers

Section 436.9(h) prohibits franchise sellers from disclaiming or requiring ''a prospective franchisee to waive reliance on any representation made in the disclosure document or in its exhibits or amendments.'' This prohibition is intended to prevent fraud by preserving the completeness and accuracy of information contained in disclosure documents.

The Franchise NPR proposal to prohibit the use of disclaimers and waivers prompted comment on three issues: (1) the need for the prohibition; (2) the scope of the prohibition; and (3) the effect of the prohibition on parties' ability to negotiate contract terms. The following section discusses each of these issues in detail.

a. Section 436.9(h) is necessary to prevent fraud by preserving the truthfulness of information contained in a disclosure document

During the Rule amendment proceeding, several franchisees and their representatives observed that franchisors routinely seek to disclaim liability for statements made in their disclosure documents through the use of contract integration clauses in their franchise agreements. By signing a franchise agreement containing such a clause, franchisees effectively waive any rights they may have to rely on information contained in the disclosure document.[902] The use of such clauses, therefore, may lead to deception by enabling franchisors to make incomplete, inaccurate, or even false statements in their disclosure documents, while prospects effectively waive reliance on any such statements by signing the franchise agreement.

To remedy this problem, several franchisee advocates and state regulators urged the Commission to prohibit the use of contract integration clauses as a means of disclaiming statements made in a disclosure document.[903] The IL AG, for example, asserted that such a prohibition would be a valuable addition to the Rule, noting that franchisees signing a franchise agreement may have no idea that they are waiving reliance on the disclosure document.[904] Similarly, the AFA stated:

> The integrity of a franchisor's disclosure document is critical to prospective franchisees. The prevalent use of integration clauses to disclaim liability for required disclosures undermines the very purpose of the Rule, which is to prevent fraud and misrepresentation in the pre-sale process by ensuring prospective franchisees have complete and truthful information from which to make sound investment decisions.[905]

A few commenters urged the Commission to expand on the prohibition that was proposed in the Franchise NPR. Howard Bundy, for example, urged prohibiting franchisors from disclaiming liability for any authorized statements, including those made in their written marketing material.[906] Seth Stadfeld advocated a ban on integration clauses in franchise agreements altogether. He asserted that such clauses are ''the single greatest tool used by franchisors to evade responsibility for misrepresentations and omissions of material facts that take place in a franchise marketing program.''[907]

Franchisors, on the other hand, either opposed the prohibition on disclaimers or urged limitation on the prohibition's scope. Several franchisors strongly asserted that integration clauses are necessary for two purposes. First, as J&G

[899] For example, a franchisor may have filed for bankruptcy after having furnished disclosures to a prospective franchisee. A bankruptcy filing, as discussed above, is clearly material because it calls into question the franchisor's continued financial viability and, thus, ability to perform its obligations under the franchise agreement.

[900] This is consistent with the original Rule, which required franchisors to update their disclosures to ensure accuracy of its current disclosure document used with new prospects, but did not require re-disclosure to prospective franchisees who have already received a basic disclosure document. 16 CFR 436.1(a)(22) (setting forth two update requirements: (1) the annual update after the close of the franchisor's fiscal year; and (2) quarterly updates if there is a material change).

[901] Franchise sellers other than the franchisor can satisfy their obligation to provide updated disclosures by promptly forwarding a prospective franchisee's request to the franchisor, provided that the franchisor has promised to fulfill any such requests promptly.

[902] For example, Peter Lagarias, a franchisee advocate, asserted:

''In virtually every lawsuit I have filed for franchisees alleging fraud, franchise disclosure, or unfair or deceptive practices (under California law since the FTC rule does not provide a private right of action), counsel for the franchisor defendants have defended the action on lack of justified reliance. Franchisors and their counsel have systemically written the agreements to strip franchisees of all fraud claims and rights the minute the agreement is signed by sophisticated integration, no representation, and no reliance clauses. . . . The Commission should provide that reliance on the disclosure document and other representations made in the sale of a franchise is *per se* justified.''

Lagarias, ANPR 125, at 4. *See also*, *e.g.*, Manuszak, ANPR 13; Bell, ANPR 30; Sibent, ANPR 41 (and 19 identical ANPR comments); AFA, ANPR 62, at 3; Bundy, ANPR 119, at 2; Selden, ANPR 133, Appendix B, at 2; Zarco & Pardo, ANPR 134, at 3.

[903] *E.g.*, AFA, at 4; Bundy, 11-12; Haff, at 3; Karp, at 7; Lagarias, at 1-3.

[904] IL AG, NPR 3, at 6; IL AG, NPR Rebuttal 38, at 3.

[905] AFA, NPR 14, at 6.

[906] Bundy, NPR 18, at 14. *See also* Haff, at 3; Singler, at 3; IL AG, NPR 3, at 6.

[907] Stadfeld, NPR 23, at 9-10. In the alternative, Mr. Stadfeld suggested that the cover sheet contain an explicit warning that anything stated by the franchisor that is not in the contract should not be relied upon in any way. *Id.*, at 10.

explained, franchisors have to be able to rely on the final franchise agreement as the manifestation of the intent of the parties. Second, franchisors must be able to disclaim liability for unauthorized statements made by a rogue salesman, such as unauthorized earnings claims.[908]

PMR&W asserted that the prohibition would effectively ban the use of integration clauses. The firm, however, suggested that the Commission could limit the prohibition by applying it only ''if an integration clause or other contract provision specifically disclaims representations made in the disclosure document. Alternatively, or perhaps additionally, require a representation by the franchisor at the end of Item 17 that the information contained in the disclosure document is unaffected by any integration clause.''[909]

CA Bar observed that the disclaimer prohibition is likely to increase the use of legalese in disclosure documents. It opined that, if the prohibition is adopted, franchisors are likely to import legalese from their franchise agreements to the disclosure document in order to avoid any conflicting language. On the other hand, ''[i]f the franchisor is able to include (and rely upon) an integration clause, it decreases that potential for problems arising from unintentional inconsistency.''[910]

Finally, a few franchisors suggested that the disclaimer prohibition is unnecessary. According to John Baer, for example, the Commission could always take action if a franchisor's disclosure document contains false information.[911] In the same vein, J&G asserted that the basis for the prohibition is that integration clauses may deny a franchisee a remedy when franchisees litigate against franchisors. The firm noted, however, that only the FTC is authorized to bring a claim for violation of the Franchise Rule; the Commission's ability to address false representations in a disclosure document will survive any integration clause between the franchisor and franchisee.[912]

After carefully reviewing the record, the Commission is persuaded that a limited disclaimer prohibition, rather than a total ban, is warranted. As an initial matter, the Commission is convinced that integration clauses and waivers serve valid purposes, including ensuring that a prospective franchisee relies solely on information authorized by the franchisor or within the franchisor's control in making an investment decision. For example, a franchisor reasonably may seek to disclaim responsibility for unauthorized claims made by former or existing franchisees, or unattributed statements found in the trade press. Therefore, at the very least, integration clauses and waivers protect a franchisor from unauthorized statements or representations made by non-agent, third parties.[913]

At the same time, we are persuaded that franchise sellers should not be able to use integration clauses or waivers to insulate themselves from false or deceptive statements made in a franchisor's disclosure document. This is particularly true of those sections of the disclosure document pertaining to matters other than the terms of the franchise agreement that cannot be negotiated, such as the franchisor's prior business experience, litigation history, financial performance representations, and financial statements. The Commission has long recognized that the integrity of a franchisor's disclosures is critical to prospective franchisees who rely on such information in making their investment decision. For that reason, disclosure documents must be complete, accurate, legible, and current. Further, as discussed above, the original[914] and final amended Rules also prohibit franchisors from making statements that contradict those in their disclosure documents. The use of integration clauses or waivers[915] to disclaim statements in the disclosure document that the franchisor authorizes would undermine the Rule's very purpose by signaling to prospective franchisees that they cannot trust or rely upon the disclosure document.[916]

It is true that the Commission can bring law enforcement actions against false or deceptive disclosures, regardless of any contract integration clause or waiver. This encourages complete and accurate disclosure. Nevertheless, we believe that franchisees should not have to rely on Commission action post-sale to resolve conflict between a disclosure document and franchise agreement. Rather, we believe that section 436.9(h) will prevent pre-sale deception by encouraging franchisors to review their disclosures for accuracy prior to use, thereby avoiding post-sale conflicts and litigation.

Further, courts have limited the circumstances where integration clauses have the most potential for harm. Where there is fraud in the inducement, courts are likely to void the contract, regardless of any integration clause or waiver.[917]

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[908] J&G, NPR 32, at 4-5. *See also* Marriott, NPR 35, at 8; GPM, NPR Rebuttal 40, at 10-11.

[909] PMR&W, NPR 4, at 17.

[910] CA Bar, at 10.

[911] Baer, NPR 11, at 16-17.

[912] J&G, NPR 32, at 4-5. *See also* Marriott, NPR 35, at 7-8.

[913] The Staff Report stated that integration clauses may be warranted to enable franchisors to disclaim liability for statements made by a ''rogue salesman.'' Staff Report, at 258. This statement generated significant comment by franchisee representatives asserting that franchisors should always be liable for statements made by their sales force. *E.g.*, AFA, at 4 (''The franchisor must accept responsibility for the person who it authorized and directed to sell franchises to prospective franchisees.''); Bundy, at 12 (''No one can reasonably argue that the franchisor should be able to disclaim statements made by its employees or agents within the scope of their agency.''); Gee, at 2 (''Sales staff puff, exaggerate, and outright misrepresent the terms of the agreement. . . . Appropriate protection . . . for such abuses is essential.''); Haff, at 3 (''That salesperson is often the franchisee's only connection to the franchisor.''); Lagaria, at 2 (''A franchisor should remain liable for misconduct in the sales process, particularly by its own employees and agents.''); Pu, at 2 (''The FTC should not permit franchisors to disclaim responsibility for the statements of rogue salespeople.''). While we agree that franchisors in most instances are responsible for statements made by their sales force, there may be exceptions that can be only be determined based upon the particular facts on a case-by-case basis, in light of agency law and Section 5 of the FTC Act.

[914] *See* 16 CFR 436.1(f).

[915] Waivers of rights afforded by Commission trade regulation rules are disfavored. For example, section 455.3(b) of the Used Car Rule, 16 CFR 455.3(b), requires used car sellers to incorporate the Buyers Guide into their sales contracts. This ensures that used car sellers cannot technically comply with the Rule by affixing the Buyers Guide to a car window, and then turn around and require consumers to waive the very rights granted them under the Rule. Similar anti-waiver provisions can be found in the Credit Practices Rule, 16 CFR 444.2 (barring certain waivers in credit transactions), Cooling-Off Period Rule, 16 CFR 429.1(d) (barring inclusion in any door-to-door contract of any confession of judgment or ''any waiver of any rights to which the buyer is entitled under this section''), and Ophthalmic Practices Rule, 16 CFR 456.2(d) (barring efforts to have a patient waive or disclaim the liability or responsibility of the ophthalmologist or optometrist for the accuracy of the eye examination).

[916] Prospective franchisees often rely on the disclosures in making their investment decision, especially when such disclosures appear to have the backing of the Federal Trade Commission. *Cf. FTC v. Minuteman Press, Int'l*, No. 93-CV-2494 (DRH) (E.D.N.Y. 1998) (holding that a reasonable consumer could ''legitimately conclude that he or she was being furnished important specific earnings information . . . notwithstanding . . . general disclaimers in the UFOC'').

[917] *E.g., Cummings v. HPG Int'l, Inc.*, 244 F.3d 16, 21 (1st Cir. 2001) (a party cannot induce a contract by fraudulent misrepresentations and then use contractual devices to escape liability); *Betz Labs. v. Hines*, 647 F.2d 402 (3d Cir. 1989) (integration clause is part of the contract and if fraud taints the relationship between the parties, the integration clause itself is struck down); *Tibo Software, Inc. v. Gordon Food Serv., Inc.*, 51 U.C.C. Rep. Serv. 2d, 2003 U.S. Dist. LEXIS 12020 (W.D. Mich. 2003) (An explicit integration clause bars parol evidence with the exception of fraud or other grounds sufficient to set aside a contract); *Jones Distrib. Co. v. White Consol. Indus.*, 943 F. Supp. 1445, 1470-71 (N.D. Iowa 1996) (fine-print, boiler-plate integration provision is not legally enforceable when there has been fraud that has induced the making of the contract); *Ron Greenspan Volkswagen v. Ford Motor Land Dev. Corp.*, 38 Cal. Rptr. 2d 783, 790 (Ct. App. 1995) (merger clause will not insulate a seller from liability for misrepresentations, even if the clause

Finally, integration clauses or waivers are not likely to protect franchisors from private suits based upon fraudulent statements made in a disclosure document, even without Commission intervention.[918]

The Commission recognizes that an integration clause or waiver may be one way for a franchisor to narrow its disclosures efficiently in unique circumstances. For example, an ice cream store franchisor may make an Item 19 financial performance representation pertaining to units based in Florida. If the franchisor sells units in southern states, the Florida-based representation would be reasonable. However, if the franchisor were to sell a unit in Alaska, the franchisor might wish to use a contract integration clause to ensure that the financial performance representation is inapplicable to the particular sale in Alaska.[919]

Nevertheless, franchisors could protect themselves from liability without resort to integration clauses or waivers. For example, the ice cream store franchisor noted above, at the very least, could provide the prospective Alaskan franchisee with a disclosure document that deletes the Item 19 representation. In the alternative, the statement of bases and assumptions attached to the disclosure document could make clear that the financial performance representation pertains to Florida or other southern states only. Nothing in section 436.9(h) would prevent a franchisor from having a prospective franchisee sign a clear and conspicuous acknowledgment that the Florida-based performance representation does not apply to states such as Alaska.

Finally, we recognize the possibility that some franchisors may be tempted to import into their disclosure documents legalese from their franchise agreements, in an effort to avoid having conflicting provisions. Such a possibility, however, is addressed by the Rule's requirement that disclosure documents be prepared in plain English.[920] On balance, however, we are persuaded that the benefit of promoting the reliability and integrity of substantive disclosures outweighs any possible loss of clarity in how the disclosures are presented.

b. Scope of section 436.9(h)

As noted above, section 436.9(h) is designed to address a specific problem brought to our attention during the Rule amendment proceeding: franchisors' use of integration clauses to disclaim authorized statements made in disclosure documents or in their exhibits or attachments. By prohibiting this practice, the disclaimer prohibition preserves the integrity of the material information disclosed in a franchisor's disclosure document, thus preventing deception. By its terms, section 436.9(h) does not reach statements made in a franchisor's advertising materials.

A few commenters urged the Commission to adopt a broader prohibition that would prevent franchisors from disclaiming *any* authorized statement—whether in a disclosure document or promotional materials.[921] However, the Commission is persuaded that a broader prohibition would go beyond what is necessary to address the underlying issue identified in the record—the need to prevent deceptive disclosure documents. Further, franchise advertisements, like other industry advertisements, are already subject to Commission substantiation and anti-deception requirements under Section 5 of the FTC Act. Moreover, any franchisor who makes statements in promotional literature that are inconsistent with the disclosure document and franchise agreement would violate the section 436.9(a) ban on the making of contradictory statements.[922] Accordingly, a broader disclaimer prohibition is unwarranted to achieve the goal of preserving the integrity of franchisors' disclosures.

c. Effect of section 436.9(h) on parties' ability to negotiate contracts

Section 436.9(h) states that the disclaimer prohibition ''is not intended to prevent a prospective franchisee from voluntarily waiving specific contract terms and conditions set forth in his or her disclosure document during the course of franchise sales negotiations.'' This proviso is necessary because, in its absence, a franchisor might conclude that it is prohibited from agreeing to any terms or conditions not spelled out in the standard agreement attached as an exhibit to its disclosure document.[923] Clearly, franchise sellers and prospective franchisees should be free to negotiate the terms of the franchise agreement, as in all other commercial transactions. The Commission has no interest in preventing the parties from seeking the best deal possible, as long as the prospective franchisee understands in advance of the sale how the terms and conditions differ from the standard ones set forth in the disclosure document and has the opportunity to review the actual franchise agreement prior to the sale.

In response to the Staff Report, Howard Bundy voiced concern that the section 436.9(h) contract negotiation proviso is too broad and could subsume the Rule.[924] He feared that a franchisor could initiate negotiations and permit a person to become a franchisee only if he or she agrees to waive essential terms. Mr. Bundy urged the Commission to limit the proviso ''to negotiations initiated by the prospective franchisee and that result in changes that are no less favorable to the franchisee than the standard terms.''[925]

The Commission recognizes that an integration clause may facilitate negotiations by releasing the parties from restraints imposed by the contractual terms previously disclosed in the disclosure document. The use of an integration or waiver clause, however, is unnecessary to permit contract negotiations. As previously discussed, the final amended Rule addresses how franchisors and prospective franchisees may negotiate contracts without violating the Rule. Specifically, section 436.2(b) provides that no mandatory contract review period is necessary where changes are made at the request of the prospective franchisee. This recognizes that where the prospective franchisee is fully informed about the contractual terms

specifically disclaims such misrepresentations); *Nobles v. Citizens Mortgage Corp.*, 479 So.2d 822 (Fla. Dist. Ct. App. 1985) (under Florida law, a merger or integration clause will not bar evidence of fraud in the inducement).

[918] For example, in *Alphagraphics Franchising, Inc., v. Whaler Graphics, Inc.*, 840 F. Supp. 708 (D. Ariz. 1993), the court held that there was fraud in the inducement regarding an arbitration forum selection clause, despite the presence of an integration clause in the franchise contract. ''It is well-settled that a party cannot free himself from fraud by incorporating [an integration clause] in a contract.'' *Id.*, at 711 (citations omitted).

[919] *See* J&G, NPR 32, at 5.

[920] Section 436.6(b).

[921] Haff, at 3; Singler, at 3. Mr. Haff, for example, asserted that it is unconscionable for the FTC to permit a franchisor to disclaim its own materials through a franchise agreement integration clause. Haff, at 3.

[922] For example, a franchisor would be liable for a Rule violation if its promotional literature made financial performance claims, while its Item 19 said that no such claims are authorized, or its promotional literature stated that exclusive territories are available, while its disclosure document offered no such benefit.

[923] Two franchisor representatives specifically urged the Commission to clarify the Rule to ensure that the parties are free to negotiate contract terms. *See* Baer, ANPR 25, at 4-5; Duvall & Mandel, ANPR 114, at 22. They feared that if the franchisor negotiates with a prospective franchisee for different terms than what appears in the disclosure document, (*e.g.*, a different initial franchise fee or royalty payment), the franchisor will effectively violate the Rule because the franchisor will not have furnished the prospective franchisee with a disclosure document spelling out the specific agreed-upon terms and conditions in advance of the sale.

[924] Bundy, at 11.

[925] *Id.*, at 12.

that will govern the relationship before signing the contract, no harm can result. Where changes to the contract are initiated by the franchisor, however, section 436.9(g) prohibits the franchisor from failing to point out the changes, and section 436.2(b) provides for a limited contract review period. These Rule provisions are sufficient to prevent fraud in the negotiation process, while preserving the integrity of the franchisor's disclosures.

9. Section 436.9 (i): Refunds

Section 436.9(i) prohibits franchisors from failing to make refunds as promised in their disclosure document or in a franchise or other agreement. The failure to honor refund promises is an unfair practice in violation of Section 5.[926] It often results in substantial injury to franchisees that they cannot reasonably avoid.[927] Moreover, the record is devoid of any evidence suggesting that this harm is outweighed by any countervailing benefits.

Section 436.9(i) retains, but slightly revises, the original Rule's prohibition against failing to make promised refunds. As set forth at 16 CFR 436.1(h), the original Rule prohibited franchisors and brokers from failing ''to return any funds or deposits in accordance with any conditions disclosed pursuant to paragraph (a)(7) of this section.'' This provision was limited to instances where the franchisor or broker makes an express refund promise in the disclosure document itself. It is possible, however, that a franchise seller may not make any specific promise in the disclosure document itself, but may do so either in the franchise agreement, or in a separate contract or letter of understanding. The harm resulting from the failure to honor a promised refund is the same, regardless of where that promise is written. Accordingly, section 436.9(i) makes clear that the failure to honor any written refund promise will constitute a Rule violation.[928]

H. Sections 436.10 and 436.11: Other Laws and Rules, and Severability

The last sections of the final amended Rule address three additional issues: (1) the final amended Rule's effect on other Commission laws and rules; (2) preemption of state franchise laws that may be inconsistent with the Rule; and (3) ''severability.'' Each of these issues is addressed below.

1. Section 436.10(a): Relationship to other laws and rules

The first part of section 436.10(a) provides that the Commission does not approve or express any opinion on the legality of any matter a franchisor may be required to disclose by the Rule. At the same time, it makes clear that the Commission intends to enforce all applicable statutes and rules.[929] This is slightly broader than the same provision in the proposed Rule, which was limited to ''trade regulation rules.''[930]

This provision clarifies the relationship between Franchise Rule disclosure and other statutes and rules enforced by the Commission. As stated in the original SBP, some of the Rule's provisions may require franchisors to disclose practices that may raise legal issues, such as antitrust issues.[931] By requiring disclosure, the Commission does not approve of practices that might violate other Commission laws. In short, pre-sale disclosure does not create a safe harbor for franchisors engaging in otherwise unlawful conduct.[932]

During the Rule amendment proceeding, the NFC focused on the sentence that the ''Commission also intends to enforce all applicable statutes and trade regulation rules.'' The NFC contended that, under more recent case law, disclosure in some instances may shield a practice that otherwise might be a law violation. According to the NFC, a franchisor's disclosure of certain product or sourcing restrictions, for example, may relieve the franchisor from antitrust ''tying'' liabilities.[933]

The NFC's concerns are misplaced. Section 436.10 restates the general policy that disclosure alone does not shield a franchisor from otherwise illegal conduct. Section 436.10(a) does nothing more than state that the Commission will continue to enforce the laws it administers in accordance with its legal authority. If a disclosure makes conduct legal, as the NFC asserted, then the Commission obviously would have no reason to believe the franchisor has committed a law violation.

The second part of section 436.10(a) provides that ''franchisors may have additional obligations to impart material information to prospective franchisees outside of the disclosure document under Section 5 of the Federal Trade Commission Act.''[934] During the Rule

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[926] *See FTC v. Hillary's Servs., Inc.*, No. 94-CV-2312 (E.D. Pa. 1994); *FTC v. Richard L. Levinger*, No. 94-0925-PHXRCB (D. Ariz. 1994); *FTC v. McKleans, Inc.*, Bus. Franchise Guide (CCH) ¶ 9853 (D. Conn. 1989) (franchisors violated the Franchise Rule by, among other things, failing to provide promised refunds). *See also FTC v. William A. Skaife*, Bus. Franchise Guide (CCH) [1989-1990 Transfer Binder] ¶ 9555 (C.D. Cal. 1990); *FTC v. Nat'l Bus. Consultants, Inc.*, Bus. Franchise Guide (CCH) ¶ 9385 (E.D. La. 1989); *FTC v. Am. Legal Distrib., Inc.*, No. 1:88-CV-519-MHS (N.D. Ga. 1988); *United States v. Tuff-Tire Am., Inc.*, Bus. Franchise Guide (CCH) [1985-1986 Transfer Binder] ¶ 8353 (M.D. Fla. 1985); *United States v. Fed. Energy Sys., Inc.*, Bus. Franchise Guide (CCH) [1983-85 Transfer Binder] ¶ 8180 (C.D. Cal. 1984) (franchisors misrepresented refund policy in violation of Section 5); *FTC v. Nat'l Audit Defense Network, Inc.*, No. CV-S-02-0131 LRH-PAL (D. Nev. 2002); *FTC v. Travel Bahamas Tours, Inc.*, No. 97-6181-CIV-Ferguson (S.D. Fla. 1997) (companies misrepresented refund policy in violation of Section 5 of the FTC Act). *Cf. Philips Elecs. N. Am. Corp.*, FTC No. 022-3095 (2002); *Tim R. Wofford*, FTC No. 012 3191 (2002) (the failure to honor rebate offers as promised violates Section 5 of the FTC Act).

[927] *See* original SBP, 43 FR at 59696 (''Numerous consumers complained about the difficulty they experienced when they attempted to obtain refunds from their franchisors.'').

[928] One commenter, Dady & Garner, suggested that franchisees should always receive a refund (excluding actual costs) if they never actually open or operate an outlet. Dady & Garner, ANPR 127, at 4. We believe the substantive terms and conditions of refunds are a matter of contract between the parties, provided the terms and conditions of any refund policy are spelled out in the disclosure document or franchise agreement. No other comments were submitted in connection with the Franchise NPR's proposed retention of the refund prohibition.

[929] This is slightly broader than the same provision in the original Rule set forth at 16 CFR 436.3, which is limited to enforcement of statutes: ''A provision for disclosure should not be construed as . . . an indication of the Commission's intention not to enforce any applicable statute.'' The revised language of final amended Rule is also clearer, eliminating the use of double negatives.

[930] Franchise NPR, 64 FR at 57346.

[931] Original SBP, 43 FR at 59719.

[932] Howard Bundy urged the Commission to add a separate prohibition against a franchisor representing to any person that the Commission has reviewed or approved the form or content of any disclosure document. Bundy, NPR 18, at 15. While we agree with Mr. Bundy, in principle, we are not persuaded that a new prohibition is warranted. The final amended Rule already mandates that franchisors state expressly on their disclosure document cover page that the Commission has not reviewed or approved of the disclosures. This should be sufficient to correct any misrepresentation to the contrary. Moreover, any misrepresentation about Commission approval of a disclosure document is already actionable as a violation of Section 5 of the FTC Act.

[933] NFC, NPR 12, at 24.

[934] For example, under the original Rule, no disclosure of state or local licensing provisions was required. Nonetheless, in *United States v. Lifecall Sys., Inc.*, No. 90-3666 (D.N.J. 1990), the Commission alleged that the defendants violated Section 5 by misrepresenting that purchasers of their emergency alert system franchises would not have to register with state or local authorities. *See also FTC v. Car Checkers of Am., Inc.*, No. 93-623 (mlp) (D.N.J. 1993) (alleging that defendants violated Section 5 by failing to disclose state insurance licensing requirements); *FTC v. Claude Blanc*, Bus. Franchise Guide (CCH) ¶ 10032 (alleging that defendants violated Section 5 by misrepresenting availability of medical insurance). *Cf. FTC v. Carribean Clear, Inc.*, Bus. Franchise Guide (CCH) ¶ 10029 (D.S.C. 1992) (permanent injunction included prohibition against future misrepresentations of the effectiveness and safety of defendants' swimming pool water purifier). Similarly, a practice may violate the Rule and Section 5 simultaneously. For example, in numerous Franchise Rule cases the Commission has alleged that the defendants violated Section 5 by using shills (fictitious references), even though that conduct also violated the Rule's mandate to

amendment proceeding, a few franchisors voiced concern that this provision does not give any guidance to franchisors about what specific information needs to be disclosed. For example, Piper Rudnick stated that ''no matter how thorough or detailed the franchise offering circular may be, this sentence places all franchisors at risk of violating the Revised Rule by not *also* making whatever disclosure may be required by this open-ended and ambiguous disclosure obligation.''[935]

No franchisor need worry that it may violate the Rule for failing to include material information not specifically required or permitted by the Rule or state law. As for every other person over which the Commission has jurisdiction, franchisors must not engage in unfair or deceptive acts or practices. For example, Section 5 would prohibit a used car seller from misrepresenting a rebate program or from misrepresenting whether a used car had previous damage, even though the seller may otherwise comply with the Used Car Rule's warranty disclosures.

2. Section 436.10(b): Preemption

Section 436.10(b) retains the original Rule's preemption statement found at footnote 2:[936]

> The FTC does not intend to preempt the franchise practice laws of any state or local government, except to the extent of any inconsistency with this Rule. A law is not inconsistent with this Rule if it affords prospective franchisees equal or greater protection, such as registration of disclosure documents or more extensive disclosures.

16 CFR Part 436, note 2.[937]

During the Rule amendment proceeding, several franchisors urged the Commission to preempt the field of pre-sale disclosure to ensure a single, national, disclosure standard.[938] The preemptive effect of the final amended Rule, however, is not a subject of Commission discretion. Rather, the preemptive effect of any federal law is fundamentally a question of Congressional intent.[939]

First, Congress can define explicitly the extent to which federal law preempts state law.[940] If Congress has explicitly addressed the issue of preemption in a statute, then the statutory language governs and no further analysis is required.[941] Even in the absence of explicit statutory language, state law is preempted where it regulates conduct in a field that Congress intended the federal government to occupy exclusively. Congressional intent to occupy a field may be inferred from a ''scheme of federal regulation . . . so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it,'' or where an act of Congress ''touch[es] a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.''[942] In addition, Congress may choose to grant sufficiently broad regulatory authority to a federal agency as to permit the agency itself, by regulation, to provide expressly for the preemption of state law.[943]

Finally, state law is preempted to the extent that it actually conflicts with federal law. Thus, federal law will preempt state law where it is impossible for a private party to comply with both state and federal requirements.[944] In addition, preemption occurs where state law ''stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.''[945]

The Federal Trade Commission Act does not include any clause directly preempting state law or authorizing the Commission to do so. Furthermore, the legislative history of the Act and of the 1975 amendments to the Act establishing the Commission's rulemaking authority indicate that Congress did not intend the Act to occupy the field of consumer protection regulation.[946] Any preemptive effect of the Franchise Rule, therefore, is limited to instances where it is impossible for a private party to comply with both state and the Commission regulations, or where application of state regulations would frustrate the purposes of the Franchise Rule.[947] In this regard, the Commission generally has declared the preemptive effect of Commission rules to be limited to the extent of an inconsistency only.[948] Accordingly, the amended Franchise Rule would not affect state laws providing greater consumer protection.[949]

We further note that preemption of state franchise disclosure laws would be inconsistent with the current policy on federalism, as announced in Executive Order 13132 on August 4, 1999.[950]

disclose completely and accurately information about existing franchisees. *See* 16 CFR 436.1(a)(16).

[935] Piper Rudnick, at 4. *See also* Kaufmann, Attachment 1, at 9-10; H&H, NPR 9, at 8.

[936] Elevating the preemption discussion from a footnote to a Rule section is consistent with other Commission trade regulations rules. *See*, *e.g.*, Appliance Labeling Rule, 16 CFR Part 305.17; Cooling-Off Rule, 16 CFR 429.2; Mail Order Rule, 16 CFR 435.3(b)(2); R-Value Rule, 16 CFR 460.23.

[937] As noted previously, starting on July 1, 2007, franchisors have the option of complying with either part 436 of the final amended Rule, the UFOC Guidelines, or the original Franchise Rule. Beginning on July 1, 2008, however, franchisors may use part 436 of the final amended Rule only. Permission to use the UFOC Guidelines will be withdrawn on that date because those Guidelines will no longer afford prospective franchisees equal or greater protection as part 436. This would not preclude consideration of any new or revised UFOC Guidelines promulgated by the states in the future.

[938] *E.g.*, IFA, at 4; Kaufmann, at 9-10; Spandorf, at 10; PMR&W, NPR 4, at 7-8; Baer, NPR 11, at 2; Snap-On, NPR 16, at 2; GPM, NPR Rebuttal 40, at 8. *But see* IL AG, NPR Rebuttal 38, at 1-2 (''federalism has served the public well'').

[939] *English v. Gen. Elec. Co.*, 496 U.S. 72, 78 (1990); *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 299 (1988).

[940] *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 95-98 (1983).

[941] *Cipollone v. Liggett Group*, 505 U.S. 504, 517 (1992).

[942] *English*, 496 U.S. at 79; *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). Where the field in question has been traditionally occupied by the states, congressional intent to supersede state laws much be ''clear and manifest.'' *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977) (quoting *Rice*, 331 U.S. at 230).

[943] *City of New York v. FCC*, 486 U.S. 57, 62-68 (1988) (upholding FCC regulations preemping state and local standards for the quality of cable television signals).

[944] *English*, 496 U.S. at 79; *Fla. Lime & Avocado Growers, Inc., v. Paul*, 373 U.S. 132, 141 (1963).

[945] *English*, 496 U.S. at 79; *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98-99 (1992); *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). These standards apply to federal regulations as well as federal statutes. *E.g.*, *Fid. Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153 (1982).

[946] *E.g.*, *Am. Fin. Servs. Ass'n v. FTC*, 767 F.2d 957, 989 (1985). *See also* Paul R. Verkuil, *Preemption of State Law by the Federal Trade Commission*, 1976 Duke L.J. 225.

[947] Preemption would occur where there is an ''actual conflict between the two schemes of regulation [such] that both cannot stand in the same area.'' *Fla. Lime & Avocado Growers*, 373 U.S. at 141. *See also*, *Am. Fin. Servs.*, 767 F.2d 957 (Credit Practices Rule); *Harry and Bryant Co. v. FTC*, 726 F.2d 993 (4th Cir. 1984) (Funeral Rule); *Am. Optometric Assoc. v. FTC*, 626 F.2d 896 (D.C. Cir. 1980) (Opthalmic Practices Rule).

[948] *E.g.*, Mail or Telephone Order Merchandise Rule, 16 CFR 435.3; R-Value Rule, 16 CFR 460.23.

[949] When promulgating the original Rule, the Commission authorized franchisors to use the UFOC Guidelines to comply with the original Rule's disclosure requirements on the grounds that the UFOC Guidelines, taken in their entirety, provide equal or greater consumer protection as the original Rule. *See* Interpretive Guides, 44 FR at 49970-71. The Commission ratified this position following subsequent amendments to the UFOC requirements by the NASAA, most recently in 1993, 58 FR 69224 (Dec. 30, 1993). Examples of state and local laws not preempted by the original or amended Rule include registration of franchisors and franchise salespersons, escrow or bonding requirements, substantive regulation of the franchisor-franchisee relationship (e.g., termination practices, contract provisions, and financing arrangements), and disclosure laws requiring more extensive disclosures than those provided by the amended Rule.

[950] Although the Executive Order is not binding on independent agencies, such as the Federal Trade

Continued

Among other things, the Executive Order provides that federal agencies should carefully assess the necessity of limiting the policymaking discretion of the states and such actions should be taken ''only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance.'' It also encourages agencies, in appropriate circumstances, to defer to the states to establish standards. As noted above, there is no statutory basis for preempting the states in the franchise pre-sale disclosure arena, nor do we find any compelling reason to limit the states' discretion in this field. Rather, by adopting the UFOC Guidelines in large measure, which the commenters agreed is superior to the current Franchise Rule, the states have taken a leadership role in this field. Under the circumstances, we must reject any suggestion that the Commission expand the Franchise Rule's preemptive effect. There simply is no legal or policy basis for such an expansion.

3. Section 436.11: Severability

Finally, as proposed in the Franchise NPR,[951] section 436.11 contains a standard severability provision, stating that if any provision of this regulation is stayed or held invalid, the remainder will stay in force.[952] This provision is comparable to the severability provisions in other Commission trade regulation rules.[953] This provision generated no comments in response to both the Franchise NPR and Staff Report. Accordingly, the amended Rule adopts the severability provision proposed in the Franchise NPR.

IV. SECTION-BY-SECTION ANALYSIS OF PART 437

As noted above, part 437 of the final amended Rule continues to cover the offer and sale of business opportunities, such as vending machine and rack display promotions.[954] Except for the three changes discussed immediately below, part 437 is identical to the original Rule, imposing no new substantive disclosure requirements or prohibitions.

A. New definition for ''business opportunity''

Section 437.2(a) of the final amended Rule defines the term ''business opportunity'' consistent with the original Rule's business opportunity definitional elements. In so doing, it eliminates references to franchising, which are now addressed in part 437 of the final amended Rule. First, the term ''franchise'' in the original Rule definitions has been eliminated and substituted with the term ''business opportunity.'' Second, the franchise definitional elements of the original Rule's ''franchise'' definition have been eliminated. Accordingly, the definitional elements of the term ''business opportunity'' are now identical to those set forth in the original Rule:

(a) The term *business opportunity* means any continuing commercial relationship created by any arrangement or arrangements whereby:

(1) A person (hereinafter ''business opportunity purchaser'') offers, sells, or distributes to any person other than a ''business opportunity seller'' (as hereinafter defined), goods, commodities, or services which are:

(i)(A) Supplied by another person (hereinafter ''business opportunity seller''); or

(B) Supplied by a third person (e.g., a supplier) with whom the business opportunity purchaser is directly or indirectly required to do business by another person (hereinafter ''business opportunity seller''); or

(C) Supplied by a third person (e.g., a supplier) with whom the business opportunity purchaser is directly or indirectly advised to do business by another person (hereinafter ''business opportunity seller'') where such third person is affiliated with the business opportunity seller; and

(ii) The business opportunity seller:

(A) Secures for the business opportunity purchaser retail outlets or accounts for said goods, commodities, or services; or

(B) Secures for the business opportunity purchaser locations or sites for vending machines, rack displays, or any other product sales displays used by the business opportunity purchaser in the offering, sale, or distribution of said goods, commodities, or services; or

(C) Provides to the business opportunity purchaser the services of a person able to secure the retail outlets, accounts, sites, or locations referred to in paragraphs (a)(ii)(A) and (B) of this section; and

(2) The business opportunity purchaser is required as a condition of obtaining or commencing the business opportunity operation to make a payment or a commitment to pay to the business opportunity seller, or to a person affiliated with the business opportunity seller.

B. Eliminating other references to franchising

Part 437 of the final amended Rule further eliminates all other references to franchising, by substituting for the terms ''franchisor,'' ''franchisee,'' and ''franchise'' used throughout part 437 the terms ''business opportunity seller,'' ''business opportunity purchaser,'' and ''business opportunity.'' This ensures that part 437 will cover only the offer and sale of business opportunities. For example, section 437.2(a)(3) retains, but modifies, the original Rule's exemption for fractional relationships to cover business opportunities only: the term ''fractional franchise'' is replaced by the term ''fractional business opportunity.''

C. Franchise exemption

Section 437.2(a)(3)(v) adds a new exemption to part 437 of the final amended Rule for those business arrangements that comply with the Franchise Rule, or are exempt from compliance with the Franchise Rule, as set forth in part 436. Accordingly, it is designed to eliminate potential overlap and duplicative compliance burdens between the franchise rule and the business opportunity rule, parts 436 and 437, respectively. Specifically, section 437.2(a)(3)(v) exempts from coverage of part 437 all business arrangements that comply with part 436, or that satisfy one or more exemptions to part 436. For example, businesses exempt from part 436 coverage pursuant to the fractional franchise exemption would not be subjected to coverage under part 437. This is an appropriate result because the same rationale underlying exemption of these types of businesses from part 436 would also dictate that they not be covered by part 437— i.e., in the case of a fractional franchise, the franchisor is not likely to deceive the prospective franchisee or to subject the prospective franchisee to significant investment risk. Therefore, imposing the requirements of either part 436 or part 437 would not be justified.

V. REGULATORY ANALYSIS AND REGULATORY FLEXIBILITY ACT REQUIREMENTS

Under section 22 of the FTC Act,[955] the Commission must issue a regulatory analysis for a proceeding to amend a rule only when it: (1) estimates that the

Commission, it nonetheless sets forth principles that the Commission might consider in determining the preemptive effect of its regulations.

[951] Franchise NPR, 64 FR at 57324.

[952] *See* 16 CFR 436.3.

[953] *E.g.*, Pay-Per-Call Rule, 16 CFR 308.8; Used Car Rule, 16 CFR 455.7

[954] *See* Interpretive Guides, at 49968. *See generally* Business Opportunity NPR, 71 FR at 19054-57.

[955] 15 U.S.C. 57b.

amendment will have an annual effect on the national economy of $100,000,000 or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers.

In general, the commenters supported the proposed franchise amendments because they reduce inconsistencies with state franchise disclosure laws, reduce compliance burdens on franchisors that are not likely to engage in abusive practices that the Rule was intended to prevent, and update the original Rule to address new technologies. Only one commenter addressed the economic impact of part 436, voicing concern generally that the original and amended Franchise Rule impose unnecessary costs.[956] No commenter, however, indicated that the amendments would have an annual impact of more than $100,000,000, cause substantial change in the cost of goods or services, or otherwise have a significant effect upon covered entities or consumers.[957]

At the same time, some commenters questioned whether particular rule amendments pertaining to franchising might be unnecessary, or offered alternatives. Section III of this document analyzes these comments in detail. After careful consideration of the comments, and the record as a whole, the Commission has determined that there are no facts in the record, or other reasons to believe, that the part 436 amendments will have significant effects on the national economy, on the cost of goods or services, or on covered parties or consumers. In any event, to the extent, if any, these final rule amendments will have such effects, the Commission has previously explained above the need for, and the objectives of, the final amendments; the regulatory alternatives that the Commission has considered; the projected benefits and adverse economic or other effects, if any, of the amendments; the reasons that the final amendments will attain their intended objectives in a manner consistent with applicable law; the reasons for the particular amendments that the agency has adopted; and the significant issues raised by public comments, including the Commission's assessment of and response to those comments on those issues.

The Regulatory Flexibility Act (''RFA''),[958] requires that the agency conduct an analysis of the anticipated economic impact of proposed rule amendments on small businesses. The purpose of a regulatory flexibility analysis is to ensure that the agency considers the impact on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. Section 605 of the RFA provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.[959]

The Commission believes that none of the amendments to the original Franchise Rule is likely to have a significant impact on small businesses. Most small businesses covered by the original Franchise Rule are likely to be business opportunity sellers, such as vending machine and rack display route sellers. These small businesses will continue to be covered by the same substantive provisions of the original Rule, through part 437. On the other hand, the numerous amendments to the original Franchise Rule that pertain to franchising—set out in part 436—will not apply to the offer or sale of business opportunities. In short, none of the amendments to the original Franchise Rule are likely to affect a substantial number of small businesses. Accordingly, the Commission has no reason to believe that the amendments will have a significant impact upon such entities.

Moreover, the Commission is adopting amendments that in large measure reduce inconsistencies with state law. In many instances, small businesses that sell franchises, especially those conducting business on a national basis, already comply with state disclosure laws in the form of the UFOC Guidelines. Accordingly, many of the amendments will impose no new compliance costs on either small or large businesses. Further, in some instances, the Commission has specifically narrowed a UFOC provision to reduce compliance costs, which will benefit small business franchisors in particular. For example, in considering the disclosure of computer systems, the Commission declined to adopt the states' sweeping disclosure of computer system requirements, in favor of a more limited disclosure. In addition, the Commission will permit electronic compliance with the Franchise Rule, which holds the promise of reducing costs for all franchisors, including small business franchisors.

In a few instances, the part 436 amendments will impose new disclosure requirements on all franchisors. These amendments are designed to provide prospective franchisees with more information about the quality of the franchise relationship. In these instances, the Commission has taken great care to keep compliance costs to a minimum. For example, with respect to the new franchisor-initiated litigation disclosure, franchisors need only report such litigation for a period of one year. This contrasts with the original Rule's seven-year reporting period (and the UFOC Guidelines 10-year reporting period) for prior litigation against the franchisor. Similarly, a franchisor may disclose franchisor-initiated litigation by grouping any suits under a single heading, as opposed to the original Rule and UFOC Guidelines approach for other litigation, which requires full case summaries.

Similarly, the Commission has narrowed the new disclosure of independent trademark-specific franchisee associations. Franchisors need not make this disclosure unless the association specifically asks to be included in the franchisor's disclosure document. Further, such requests must be renewed by the association on an annual basis. In addition, franchisors need not update this disclosure on a quarterly basis. The Commission believes that these, and other efforts to narrow amendments to the Rule discussed throughout this document, will result in the easing of compliance burdens for all franchisors, especially small business franchisors.

Accordingly, the Commission concludes that the amendments to the original Franchise Rule will not have a significant or disproportionate impact on the costs of small business, whether they sell franchises or business opportunities. Based on available information, therefore, the Commission certifies that the Franchise Rule amendments published in this document will not have significant economic impact on a substantial number of small businesses.

[956] *See generally* Winslow. However, this commenter did not quantify the additional cost burdens arising as a result of the Rule *amendments*—as opposed to those imposed by the original Rule or by state law—nor provide any data or statistics supporting his view, that would permit us to assess the economic impact of the Rule amendments.

[957] As previously noted, part 437 of the final amended rule (the business opportunity section) is substantively identical to the business opportunity coverage of the original Rule. Part 437 imposes no additional disclosures, recordkeeping requirements, or prohibitions on business opportunity sellers. Accordingly, the part 437 amendments impose no economic costs or compliance burdens on business opportunities covered by the original Franchise Rule.

[958] 5 U.S.C. 601- 612.

[959] 5 U.S.C. 605.

Nonetheless, to ensure that no such impact, if any, has been overlooked, the Commission has conducted the following final regulatory flexibility analysis, as summarized below.

A. Need For And Objective Of The Rule

As previously discussed, the Commission is issuing these rule amendments to achieve four goals: (1) to reduce inconsistencies with state franchise disclosure laws; (2) to respond to changes in the marketing of franchises and new technological developments, in particular electronic communications; (3) to reduce compliance costs where the record and the Commission's law enforcement experience shows that the abuses the Rule was intended to address are not likely to occur; and (4) to address the need for franchisors to disclose material information about the quality of the franchise relationship, the absence of which the record shows is a prevalent problem.

B. Significant Issues Raised By Public Comment, Summary Of The Agency's Comment, Summary Of The Agency's Assessment Of These Issues, And Changes, If Any, Made In Response To Such Comments

The Commission has reviewed the comments received during the Rule amendment proceeding and has made changes to the original Rule, as appropriate. Section III of this document contains a detailed discussion of the comments and the Commission's responses. Among other things, the Commission, based upon the record, has narrowed the scope of part 436—the franchise section—by eliminating coverage of business opportunities, many of which are small businesses. In addition, part 436 will apply only to the sale of franchises to be located in the United States.

Further, part 436 of the final amended Rule reduces many inconsistencies with state franchise laws that use the UFOC Guidelines format. Accordingly, many of the rule amendments will impose no new compliance costs on small businesses, especially those that conduct, or plan to conduct, business on a national basis. Further, in some instances, the Commission has specifically narrowed a UFOC provision to reduce compliance costs, which will benefit small businesses in particular. For example, based upon the comments, the Commission declined to adopt the states' sweeping disclosure of computer system requirements, in favor of a more limited disclosure. Most important, part 436 of the final amended Rule permits franchisors to furnish disclosure documents electronically, which holds the promise of reducing costs for all franchisors, including small business franchisors.

Where part 436 of the final amended Rule imposes new disclosure requirements, the Commission has carefully considered approaches that will reduce compliance burdens, especially on small businesses. For example, with respect to the new franchisor-initiated litigation disclosure, franchisors need only report such litigation for a period of one year. This contrasts with the original Rule's seven-year reporting period (and the UFOC Guidelines 10-year reporting period) for prior litigation against the franchisor. Similarly, a franchisor may disclose franchisor-initiated litigation by grouping any suits under a single heading, as opposed to the original Rule and UFOC Guidelines approach for other litigation, which requires full case summaries. Similarly, the Commission has narrowed the new disclosure of independent trademark-specific franchisee associations. Franchisors need not make this disclosure unless the association specifically asks to be included in the franchisor's disclosure document. Further, such requests must be renewed by the association on an annual basis. In addition, franchisors need not update this disclosure on a quarterly basis. The Commission believes that these, and other efforts to narrow amendments to the original Franchise Rule discussed throughout this document, will result in the easing of compliance burdens for all franchisors, especially small business franchisors.

C. Description And Estimate Of Number Of Small Entities Subject To The Final Rule Or Explanation Why No Estimate Is Available

The Commission cannot readily estimate the number of small entities subject to the final amended Rule. Franchising is a method of distribution, not an industry, nor an economic sector. Accordingly, businesses in a wide array of industries engage in the distribution of products or services through franchising, and the number of franchisors in any one economic sector is constantly changing.

Moreover, the SBA's standards for determining size—based on either number of employees or annual receipts—are inapplicable to franchising.[960] For example, the most relevant SBA standards pertaining to franchising are arguably those for the retail sales industry. The most common ''small business'' threshold (measured in receipts) for the retail trade industry is $6 million.[961] However, these standards apply to *franchisees* engaging in retail sales activities, not to the franchisors that sell the underlying franchised units.[962]

Nonetheless, in the Franchise NPR the Commission estimated that there are 2,500 business format and product franchisors and 2,500 business opportunities covered by the original Rule.[963] The Commission estimated that as many as 70% of those 5,000 franchisors are small entities, including some start-up franchise systems and most business opportunities.[964] The Franchise NPR specifically asked for comment on these estimates. No comments were submitted. Accordingly, our best estimate is that 3,500 franchisors covered by the original Rule were small businesses, 2,500 of which were business opportunities.

Once business opportunity ventures are no longer covered by part 436 of the final amended Rule, the number of

[960] The SBA size thresholds set forth what constitutes a small entity in a particular line of business, regardless of whether the entity is a franchisor, licensee, contractor, parent corporation, affiliate, agent, or other entity. For the same reason, it is difficult to estimate the number of small entities that will be subject to the business opportunity requirements set forth at part 437.

[961] *See generally* 13 CFR Part 121. According to the SBA standards, the $6 million receipts threshold applies to retailers as diverse as automotive parts and tire stores; floor coverings and window treatment stores; camera and photography stores; hardware and garden suppliers; many food stores; health care product stores; many clothing stores; sporting good stores; florists; and pet supply stores. The $6 million threshold also is applicable to hotels; restaurants; automotive repair centers; car washes; and laundry services. While the $6 million threshold is typical of a wide cross-section of small businesses, some of which may be franchises, it sheds no light on the number of franchisors that are small businesses.

[962] Industry data are also difficult to come by. In the 1990's, the International Franchise Association produced a series of reports called *The Profile of Franchising* that sought to quantify and describe franchise systems in the United States. While these reports shed light on numerous aspects of franchising—such as the number of franchise systems in various economic sectors, how long companies were in business before beginning to franchise, and how many franchisees are in the system—the reports did not purport to examine the number of staff employed by the franchisors nor franchisors' annual receipts, factors used in a regulatory flexibility analysis. More recently, in 2004, the International Franchise Association produced a study called *Economic Impact of Franchised Businesses*. This study examined the economic impact that franchised units have in the marketplace, for example, the number of individuals employed by franchised units. This study, like the *Profiles of Franchising*, is not useful in determining the number of franchisors that are small businesses and subject to the final amended Rule.

[963] Franchise NPR, 64 FR at 57325. *See also* 70 FR 51817, 51818-20 (Aug. 31, 2005).

[964] Franchise NPR, 64 FR at 57325.

''small businesses'' subject to the Rule amendments will be greatly reduced. Of the remaining 2,500 franchisors covered by part 436 of the final amended Rule, many are mature, well-established franchise systems, including many publicly traded companies. In the absence of additional information on the size of franchisors, we will estimate for purposes of this analysis that 1,000 franchisors (3,500 covered by the original Rule minus the exclusion of 2,500 business opportunities) will qualify as small businesses subject to the part 436 amendments. At the same time, each of the 2,500 business opportunities covered by the original Rule—most likely small entities—will remain covered by the identical disclosure requirements, as set forth in part 437.

D. Description Of The Projected Reporting, Recordkeeping, And Other Compliance Requirements Of The Rule, Including An Estimate Of The Classes Of Small Entities That Will Be Subject To The Rule And The Type Of Professional Skills That Will Be Necessary To Comply

As discussed in the Paperwork Reduction Act analysis of this notice (Section VI), the amendments will impose compliance requirements (e.g., disclosure) and minor recordkeeping requirements on franchisors. This may affect some small business franchisors. No additional recordkeeping or disclosure requirements are imposed on business opportunities that remain covered under part 437. The incremental cost of the part 436 amendments on franchisors is difficult to estimate. As suggested by the lack of comment on the subject, the Commission expects that the added costs of the amendments will be small. Finally, compliance with the amended Rule will require, in many instances, the professional assistance of an attorney to prepare disclosure documents.[965] However, franchisors (and business opportunity sellers) typically need such professional assistance in order to comply with state franchise and business opportunity disclosure laws, in particular the preparation of required financial statements. Accordingly, no new or additional professional skills are required as a result of amendments to the original Rule.

[965] In preparing disclosure documents for franchisor clients, attorneys may also arrange for the assistance of accountants, especially to prepare audited financial statements.

E. Steps The Agency Has Taken To Minimize Any Significant Economic Impact On Small Entities, Consistent With The Stated Objectives Of The Applicable Statutes, Including The Factual, Policy, And Legal Reasons For Selecting The Alternative(s) Finally Adopted, And Why Each Of The Significant Alternatives, If Any, Was Rejected

As discussed throughout this document, the Commission has considered all alternatives that would reduce compliance costs on all franchisors, including small business franchisors, while achieving the intended objectives of the Rule. For example, part 436 of the final amended Rule narrows the scope of the original Rule by eliminating coverage of business opportunities, many of which are small businesses. Part 436 of the final amended Rule, while reducing compliance with state pre-sale disclosure laws, minimizes compliance costs where possible. For example, part 436 of the final amended Rule narrows the disclosure of computer system requirements. Where a part 436 rule amendment expands the original Rule, it does so in a fashion designed to minimize compliance burdens. This is most evident regarding the new disclosures pertaining to franchisor-initiated litigation and independent, trademark-specific franchisee associations, as discussed above. Further, in many instances part 436 of the final amended Rule permits franchisors the flexibility to comply with Rule provisions in a manner that makes the most sense for their particular business. For example, franchisors can determine the best medium in which to furnish their disclosures, as well as to receive receipts from prospective franchisees.

Moreover, part 436 of the final amended Rule permits disclosure and recordkeeping electronically. This offers the promise of greatly reducing compliance costs, especially for small businesses. All franchisors, including small businesses, may furnish disclosures using the approach that is most economical for their business, whether that means furnishing a paper document, an electronic disclosure document made available to prospective franchisees through a password-protected website, or through email or CD-ROM.

At the same time, the Commission has rejected numerous suggestions to revise the original Rule that would result in significantly increased costs for all franchisors, in particular small business franchisors. For example, several commenters urged the Commission to mandate the disclosure of financial performance data. Other commenters urged the Commission to expand greatly the reporting of franchise turnover rates. Further, commenters suggested that the Commission incorporate into the disclosure document various risk factors or consumer education notices to prospective franchisees. As discussed above in Section III, the Commission finds that the benefits of these suggested amendments would not outweigh the compliance costs.

Finally, the Commission has determined to give franchisors ample time to come into compliance with the final amended Rule. To that end, franchisors can start using the final amended Rule on July 1, 2007, if they so choose. At the very latest, all franchisors must come into compliance with the final amended Rule by July 1, 2008. This approach will benefit large and more seasoned franchisors that wish to take advantage of the improvements incorporated in part 436 of the final amended Rule. At the same time, it permits small business franchisors, in particular, ample opportunity to consider the best and most cost-effective means to comply with part 436 of the final amended Rule.

VI. PAPERWORK REDUCTION ACT

In accordance with the Paperwork Reduction Act, as amended, 44 U.S.C. 3501-3520, the Office of Management and Budget (''OMB'') has approved the information collection requirements contained in the amended Rule through October 31, 2008, and has assigned OMB control number 3084-0107.

No comments were received in response to the Franchise NPR addressing the Commission's paperwork burden estimates. Nonetheless, the Commission staff revised its approach to calculating the burden when seeking to extend the clearance for the Rule in 2002.[966] Specifically, taking into account that new entries are more likely to require additional time to prepare disclosures than their more seasoned counterparts, the Commission staff distinguished between existing entities covered by the Rule and the likely number of new entries when calculating compliance burdens.[967] This burden analysis approach was retained when Commission staff sought an extension of the clearance for the Rule in 2005.[968] As with the Franchise NPR, no paperwork

[966] *See* 67 FR 21243 (Apr. 30, 2002); 67 FR 45734 (July 10, 2002) (''2002 Notices'').

[967] 67 FR at 21245; 67 FR at 45736.

[968] *See* 70 FR 28937, 28940 (May 19, 2005); 70 FR 51817, 51819 (Aug. 31, 2005) (''2005 Notices'').

related comments were received in response to the Commission's 2002 and 2005 Notices.[969]

As set forth in the 2005 Notices, based on a review of trade publications and information from state regulatory authorities, staff believes that, on average, from year to year, there are approximately 5,000 American franchise systems, consisting of about 2,500 business format franchises and 2,500 business opportunity sellers, with perhaps about 10% of that total (500) reflecting an equal amount of new and departing business entrants.[970]

A. Part 436

Staff has calculated burdens based on the above estimates. Some franchisors, however, for various reasons, are not covered by the Rule in certain situations (e.g., when a franchisee buys bona fide inventory but pays no franchisor fees). Moreover, 15 states have franchise disclosure laws similar to the Rule. These states use a disclosure document format known as the Uniform Franchise Offering Circular (''UFOC''). In order to ease compliance burdens on the franchisor, the Commission has authorized use of the UFOC in lieu of its own disclosure format to satisfy the Rule's disclosure requirements. Staff estimates that about 95 percent of all franchisors use the UFOC format. As noted throughout this document, revised part 436 tracks the UFOC Guidelines in large measure. Accordingly, the burden hours stated below reflects staff's estimate of the incremental burden that part 436 may impose beyond information requirements imposed by states and/or followed by franchisors who use the UFOC.

Estimated annual hours burden for part 436: 19,500 hours.

As set forth in the 2005 Notices, staff estimates that, during the first year of clearance, the 250 or so new franchisors will require 32 hours to prepare their disclosure document (two more hours than under the original Rule) and the remaining 2,250 established franchisors will require six hours to update their existing disclosure document (three more hours than under the original Rule). After the first year, however, the time required for established franchisors should be the same as under the original Rule, as the new disclosure format becomes familiar. Accordingly, during the remaining two years of the clearance, staff estimates it will take three hours for established franchisors to update their existing disclosure document (same as the original Rule). Thus, the average annual hours burden for established franchisors during the three-year clearance period will be approximately 4 hours ((6 hours during first year of clearance + 3 hours during second year of clearance + 3 hours during third year of clearance) ÷ 3 years).

As set forth in the 2005 Notices, under the original Rule, covered franchisors may need to maintain additional documentation for the sale of franchises in non-registration states, which could take up to an additional hour of recordkeeping per year. This yields a cumulative total of 2,500 hours per year for covered franchisors (1 hour x 2,500 franchisors).

Part 436 of the amended Rule would also increase franchisors' recordkeeping obligations. Specifically, a franchisor would be required to retain copies of receipts for disclosure documents, as well as materially different versions of its disclosure documents. Such recordkeeping requirements, however, are consistent with, or less burdensome, than those imposed by the states.

Thus, staff estimates the average hours burden for new and established franchisors during the three-year clearance period will be 19,500 ((32 hours of annual disclosure burden x 250 new franchisors) + (4 hours of average annual disclosure burden x 2,250 established franchisors) + (1 hour of annual recordkeeping burden x 2,500 franchisors)).

Estimated annual labor cost burden for part 436: $4,282,500.

One commenter, Lance Winslow, stated in response to the Staff Report that the average total cost to prepare a franchise disclosure document is $25,000-35,000.[971] The Commission agrees that many franchisors typically spend $25,000-35,000 on disclosure documents. Much of these costs, however, are not imposed by part 436, but by state law. For example, a large portion of the costs that franchisors typically pay for disclosures is the result of audited financial requirements and state registration requirements, costs that would continue to exist whether or not the Commission adopted the amended Rule. As stated above, staff's burden estimates reflect the incremental burden that part 436 may impose beyond the information requirements imposed by states.

As set forth in the 2005 Notices, staff estimates that an attorney will prepare the disclosure document at $250 per hour. Accordingly, staff estimates that 250 new franchisors will annually each incur $8,000 in labor costs (32 hours x $250 per hour) and, during the first year of the clearance, established franchisors will each incur $1,500 in labor costs (6 hours x $250). During the remaining two years of clearance, staff estimates established franchisors will annually each incur $750 in labor costs (3 hours x $250 per hour). Thus, the average annual labor cost estimate for established franchisors during the three-year clearance period will be approximately $1,000 (($1,500 in labor costs during first year of clearance + $750 in labor costs during second year of clearance + $750 in labor costs during third year of clearance) ÷ 3 years).

Further, staff anticipates that recordkeeping under part 436 will be performed by clerical staff at approximately $13 per hour. Thus, at 2,500 hours of recordkeeping burden per year for all covered franchisors will amount to a total annual cost of $32,500 (2,500 hours x $13 per hour).

Thus, the total estimated labor costs under part 436 is $4,282,500 (($8,000 attorney costs x 250 new franchisors) + ($1,000 attorney costs x 2,250 established franchisors) + ($13 clerical costs x 2,500 franchisors)).

Estimated non-labor costs for part 436: $8,000,000.

In response to the Staff Report, Mr. Winslow stated that the costs of printing documents for his franchise system exceed $24,000 without postage.[972] Mr. Winslow further indicated that the number of disclosure documents sent out each year will increase under the amended Rule.[973] Finally, Mr. Winslow stated that franchisors will incur significant costs if they send disclosure documents electronically, including bandwidth fees and fees associated with hiring a contractor to create a searchable website.[974]

As an initial matter, in developing cost estimates, Commission staff consulted with practitioners who prepare disclosure documents for a cross-section of franchise systems. Accordingly, the Commission believes that its cost estimates are representative of the costs incurred by franchise systems generally. In addition, Mr. Winslow fails to provide a basis for his

[969] One Staff Report commenter voiced concern that the Franchise Rule imposed unnecessary burdens. *See generally* Winslow. Mr. Winslow's concerns are addressed below.

[970] Unless otherwise noted, ''franchisors'' as used in this document solely pertains to business format franchisors.

[971] Winslow, at 23-35.

[972] Winslow at 28.

[973] Winslow at 31, 93.

[974] Winslow at 28.

assertion that the demand for disclosure documents will increase as a result of the amended Rule. Finally, many franchisors establish and maintain websites for ordinary business purposes, including advertising their goods or services and to facilitate communication with the public. Accordingly, any costs franchisors would incur specifically as a result of electronic disclosure under part 436 appear to be low.

As set forth in the 2005 Notices, staff estimates that the non-labor burden incurred by franchisors under part 436 will differ based on the length of the disclosure document and the number of disclosure documents produced. Staff estimates that 2,000 franchisors (80% of total franchisors covered by the Rule) will print 100 disclosure documents at $35 each. Thus, staff estimates that 80% of covered franchisors will each incur $3,500 in printing and mailing costs ($35 for printing and mailing x 100 disclosure documents). Staff estimates that the remaining 20% of franchisors (500) will send 50% of the 100 documents electronically, with a cost of $5 per electronic disclosure. Thus, staff estimates that 20% of covered franchisors will each incur $2,000 in distribution costs (($250 for electronic disclosure [$5 for electronic disclosure x 50 disclosure documents] + $1,750 for printing and mailing [$35 for printing and mailing x 50 disclosure documents])).

Thus, the cumulative annual hours burden for part 436 of the amended Rule is approximately 19,500 hours ((32 hours of annual disclosure burden x 250 new franchisors) + (4 hours of average annual disclosure burden x 2,250 established franchisors) + (1 hour of annual recordkeeping burden x 2,500 total business format franchisors)). The cumulative annual labor costs for part 436 of the amended Rule is approximately $4,282,500 (($8,000 attorney costs x 250 new franchisors) + ($1,000 attorney costs x 2,250 established franchisors) + ($13 clerical costs x 2,500 total business format franchisors)). Finally, the cumulative annual non-labor costs for part 436 of the amended Rule is approximately $8,000,000 (($3,500 printing and mailing costs x 2,000 franchisors) + (($250 electronic distribution costs + $1,750 printing and mailing costs) x 500 franchisors)).

B. Part 437

As noted throughout this document, business opportunities covered by the original Franchise Rule will remain covered, without any substantive change, under part 437 of the amended Rule. Part 437 of the amended Rule imposes no additional disclosures, recordkeeping, or prohibitions.[975]

Estimated annual hours burden for part 437: 16,750 hours.

The burden estimates for compliance with part 437 will vary depending on the business opportunity sellers' prior experience with the Franchise Rule. As set forth in the 2005 Notices, staff estimates that 250 or so new business opportunity sellers will enter the market each year, requiring approximately 30 hours each to develop a Rule-compliant disclosure document. Thus, staff estimates that the cumulative annual disclosure burden for new business opportunity sellers will be approximately 7,500 hours (250 new business opportunity sellers x 30 hours). Staff further estimates that the remaining 2250 established business opportunity sellers will require no more than approximately 3 hours each to update the disclosure document. Accordingly, staff estimates that the cumulative annual disclosure burden for established business opportunity sellers will be approximately 6,750 hours (2250 established business opportunity sellers x 3 hours).

Business opportunity sellers may need to maintain additional documentation for the sale of business opportunities in some states, which could take up to an additional hour of recordkeeping per year. Accordingly, staff estimates that business opportunity sellers will cumulatively incur approximately 2,500 hours of record keeping burden each year (2,500 business opportunity sellers x 1 hour).

Thus, the total burden for business opportunity sellers is approximately 16,750 hours ((7,500 hours of disclosure burden for new business opportunity sellers + 6,750 hours of disclosure burden for established business opportunity sellers + 2,500 of recordkeeping burden for all business opportunity sellers)).

Estimated annual labor cost burden for part 437: $3,595,000.

Labor costs are determined by applying applicable wage rates to associated burden hours. Staff presumes an attorney will prepare or update the disclosure document at $250 per hour. Accordingly, staff estimates that business opportunity sellers incur approximately $3,562,500 in labor costs due to compliance with the Rule's disclosure requirements ((250 new business opportunity sellers x $250 per hour x 30 hours per business opportunity) + (2,250 established business opportunity sellers x $250 per hour x 3 hours per business opportunity)).

Staff anticipates that recordkeeping would be performed by clerical staff at approximately $13 per hour. At 2,500 hours per year for all affected business opportunities, this would amount to a total cost of $32,500 (2,500 hours for recordkeeping x $13 per hour). Thus, the combined labor costs for recordkeeping and disclosure for business opportunity sellers is approximately $3,595,000 ($3,562,500 for disclosures + $32,500 for recordkeeping).

Estimated non-labor cost for part 437: $3,887,500.

Business opportunity sellers must also incur costs to print and distribute the disclosure document. These costs vary based upon the length of the disclosures and the number of copies produced to meet the expected demand. Staff estimates that 2,500 business opportunity sellers print and mail 100 documents per year at a cost of $15 per document, for a total cost of $3,750,000 (2,500 business opportunity sellers x 100 documents per year x $15 per document).

Business opportunity sellers must also complete and disseminate an FTC-required cover sheet that identifies the business opportunity seller, the date the document is issued, a table of contents, and a notice that tracks the language specifically provided in part 437 of the Rule. Although some of the language in the cover sheet is supplied by the government for the purpose of disclosure to the public, and is thus excluded from the definition of ''collection of information'' under the PRA, *see* 5 CFR 1320.3(c)(2), there are residual costs to print and mail these cover sheets, including within them the presentation of related information beyond the supplied text. Staff estimates that 2,500 business opportunity sellers

[975] In April 2006, the Commission published the Business Opportunity NPR, 71 FR 19054 (Apr. 12, 2006). Among other things, the proposed Business Opportunity Rule would amend part 437 substantially, reducing the number of disclosures pertaining to business opportunities. At the same time, the proposed Business Opportunity Rule would expand part 437 to include a broader array of business opportunities than covered by the original Franchise Rule. In response to the business opportunity NPR, the Commission received over 17,000 comments, many opposing the inclusion of multilevel marketing companies under the proposed rule. Several comments specifically questioned the paperwork burdens that might be imposed by the part 437 amendments. *E.g.*, DSA, Business Opportunity NPR. Commission staff is currently analyzing the comments. For now, however, only those businesses opportunities covered by the original Franchise Rule—such as vending machine and rack display opportunities—remain covered under part 437.

complete and disseminate 100 cover sheets per year at a cost of approximately $0.55 per cover sheet, or a total cost of approximately $137,500 (2,500 business opportunity sellers x 100 cover sheets per year x $0.55 per cover sheet).

Accordingly, the cumulative non-labor cost incurred by business opportunity sellers each year due to compliance with part 437 will be approximately $3,887,500 ($3,750,000 for printing and mailing documents + $137,500 for completing and mailing cover sheets).

Thus, the cumulative annual hours burden for part 437 of the amended Rule is approximately 16,750 hours ((30 hours of average annual disclosure burden x 250 new business opportunity sellers) + (3 hours of annual disclosure burden x 2,250 established business opportunity sellers) + (1 hour of annual recordkeeping burden x 2,500 total business opportunity sellers)). The cumulative annual labor costs for part 437 of the amended Rule is approximately $3,595,000 (($7,500 attorney costs x 250 new business opportunity sellers) + ($750 attorney costs x 2,250 established business opportunity sellers) + ($13 clerical costs x 2,500 total business opportunity sellers)). Finally, the cumulative annual non-labor costs for part 437 of the amended Rule is approximately $3,887,500 (($1,500 printing and mailing costs x 2,500 business opportunity sellers) + ($55 cover sheet costs x 2500 business opportunity sellers)).

List of Subjects in 16 CFR Part 436 and 437

Advertising, Business and industry, Franchising, Trade practices.

VII. FINAL RULE LANGUAGE

■ For the reasons set out in this document, the Commission revises 16 CFR Part 436 as follows:

PART 436—DISCLOSURE REQUIREMENTS AND PROHIBITIONS CONCERNING FRANCHISING

Subpart A—Definitions

Sec.
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Subpart B—Franchisor's Obligations

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Subpart C—Contents of a Disclosure Document

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436.6 Instructions for preparing disclosure documents.
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Subpart E—Exemptions

436.8 Exemptions.

Subpart F—Prohibitions

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Subpart G—Other Provisions

436.10 Other laws and rules.
436.11 Severability.

Appendix A to Part 436—Sample Item 10 Table—Summary of Financing Offered
Appendix B to Part 436—Sample Item 20(1) Table—Systemwide Outlet Summary
Appendix C to Part 436—Sample Item 20(2) Table —Transfers of Franchised Outlets
Appendix D to Part 436—Sample Item 20(3) Table—Status of Franchise Outlets
Appendix E to Part 436—Sample Item 20(4) Table—Status of Company-Owned Outlets
Appendix F to Part 436—Sample Item 20(5) Table—Projected New Franchised Outlets

Authority: 15 U.S.C. 41-58.

Subpart A—Definitions

§ 436.1 Definitions.

Unless stated otherwise, the following definitions apply throughout part 436:

(a) *Action* includes complaints, cross claims, counterclaims, and third-party complaints in a judicial action or proceeding, and their equivalents in an administrative action or arbitration.

(b) *Affiliate* means an entity controlled by, controlling, or under common control with, another entity.

(c) *Confidentiality clause* means any contract, order, or settlement provision that directly or indirectly restricts a current or former franchisee from discussing his or her personal experience as a franchisee in the franchisor's system with any prospective franchisee. It does not include clauses that protect franchisor's trademarks or other proprietary information.

(d) *Disclose*, *state*, *describe*, and *list* each mean to present all material facts accurately, clearly, concisely, and legibly in plain English.

(e) *Financial performance representation* means any representation, including any oral, written, or visual representation, to a prospective franchisee, including a representation in the general media, that states, expressly or by implication, a specific level or range of actual or potential sales, income, gross profits, or net profits. The term includes a chart, table, or mathematical calculation that shows possible results based on a combination of variables.

(f) *Fiscal year* refers to the franchisor's fiscal year.

(g) *Fractional franchise* means a franchise relationship that satisfies the following criteria when the relationship is created:

(1) The franchisee, any of the franchisee's current directors or officers, or any current directors or officers of a parent or affiliate, has more than two years of experience in the same type of business; and

(2) The parties have a reasonable basis to anticipate that the sales arising from the relationship will not exceed 20% of the franchisee's total dollar volume in sales during the first year of operation.

(h) *Franchise* means any continuing commercial relationship or arrangement, whatever it may be called, in which the terms of the offer or contract specify, or the franchise seller promises or represents, orally or in writing, that:

(1) The franchisee will obtain the right to operate a business that is identified or associated with the franchisor's trademark, or to offer, sell, or distribute goods, services, or commodities that are identified or associated with the franchisor's trademark;

(2) The franchisor will exert or has authority to exert a significant degree of control over the franchisee's method of operation, or provide significant assistance in the franchisee's method of operation; and

(3) As a condition of obtaining or commencing operation of the franchise, the franchisee makes a required payment or commits to make a required payment to the franchisor or its affiliate.

(i) *Franchisee* means any person who is granted a franchise.

(j) *Franchise seller* means a person that offers for sale, sells, or arranges for the sale of a franchise. It includes the franchisor and the franchisor's employees, representatives, agents, subfranchisors, and third-party brokers who are involved in franchise sales activities. It does not include existing franchisees who sell only their own outlet and who are otherwise not engaged in franchise sales on behalf of the franchisor.

(k) *Franchisor* means any person who grants a franchise and participates in the franchise relationship. Unless otherwise stated, it includes subfranchisors. For purposes of this definition, a ''subfranchisor'' means a person who functions as a franchisor by engaging in both pre-sale activities and post-sale performance.

(l) *Leased department* means an arrangement whereby a retailer licenses or otherwise permits a seller to conduct

business from the retailer's location where the seller purchases no goods, services, or commodities directly or indirectly from the retailer, a person the retailer requires the seller to do business with, or a retailer-affiliate if the retailer advises the seller to do business with the affiliate.

(m) *Parent* means an entity that controls another entity directly, or indirectly through one or more subsidiaries.

(n) *Person* means any individual, group, association, limited or general partnership, corporation, or any other entity.

(o) *Plain English* means the organization of information and language usage understandable by a person unfamiliar with the franchise business. It incorporates short sentences; definite, concrete, everyday language; active voice; and tabular presentation of information, where possible. It avoids legal jargon, highly technical business terms, and multiple negatives.

(p) *Predecessor* means a person from whom the franchisor acquired, directly or indirectly, the major portion of the franchisor's assets.

(q) *Principal business address* means the street address of a person's home office in the United States. A principal business address cannot be a post office box or private mail drop.

(r) *Prospective franchisee* means any person (including any agent, representative, or employee) who approaches or is approached by a franchise seller to discuss the possible establishment of a franchise relationship.

(s) *Required payment* means all consideration that the franchisee must pay to the franchisor or an affiliate, either by contract or by practical necessity, as a condition of obtaining or commencing operation of the franchise. A required payment does not include payments for the purchase of reasonable amounts of inventory at bona fide wholesale prices for resale or lease.

(t) *Sale of a franchise* includes an agreement whereby a person obtains a franchise from a franchise seller for value by purchase, license, or otherwise. It does not include extending or renewing an existing franchise agreement where there has been no interruption in the franchisee's operation of the business, unless the new agreement contains terms and conditions that differ materially from the original agreement. It also does not include the transfer of a franchise by an existing franchisee where the franchisor has had no significant involvement with the prospective transferee. A franchisor's approval or disapproval of a transfer alone is not deemed to be significant involvement.

(u) *Signature* means a person's affirmative step to authenticate his or her identity. It includes a person's handwritten signature, as well as a person's use of security codes, passwords, electronic signatures, and similar devices to authenticate his or her identity.

(v) *Trademark* includes trademarks, service marks, names, logos, and other commercial symbols.

(w) *Written* or *in writing* means any document or information in printed form or in any form capable of being preserved in tangible form and read. It includes: type-set, word processed, or handwritten document; information on computer disk or CD-ROM; information sent via email; or information posted on the Internet. It does not include mere oral statements.

Subpart B—Franchisors' Obligations

§ 436.2 Obligation to furnish documents.

In connection with the offer or sale of a franchise to be located in the United States of America or its territories, unless the transaction is exempted under Subpart E of this part, it is an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act:

(a) For any franchisor to fail to furnish a prospective franchisee with a copy of the franchisor's current disclosure document, as described in Subparts C and D of this part, at least 14 calendar-days before the prospective franchisee signs a binding agreement with, or makes any payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

(b) For any franchisor to alter unilaterally and materially the terms and conditions of the basic franchise agreement or any related agreements attached to the disclosure document without furnishing the prospective franchisee with a copy of each revised agreement at least seven calendar-days before the prospective franchisee signs the revised agreement. Changes to an agreement that arise out of negotiations initiated by the prospective franchisee do not trigger this seven calendar-day period.

(c) For purposes of paragraphs (a) and (b) of this section, the franchisor has furnished the documents by the required date if:

(1) A copy of the document was hand-delivered, faxed, emailed, or otherwise delivered to the prospective franchisee by the required date;

(2) Directions for accessing the document on the Internet were provided to the prospective franchisee by the required date; or

(3) A paper or tangible electronic copy (for example, computer disk or CD-ROM) was sent to the address specified by the prospective franchisee by first-class United States mail at least three calendar days before the required date.

Subpart C—Contents of a Disclosure Document

§ 436.3 Cover page.

Begin the disclosure document with a cover page, in the order and form as follows:

(a) The title ''**FRANCHISE DISCLOSURE DOCUMENT**'' in capital letters and bold type.

(b) The franchisor's name, type of business organization, principal business address, telephone number, and, if applicable, email address and primary home page address.

(c) A sample of the primary business trademark that the franchisee will use in its business.

(d) A brief description of the franchised business.

(e) The following statements:

(1) The total investment necessary to begin operation of a [franchise system name] franchise is [the total amount of Item 7 (§ 436.5(g))]. This includes [the total amount in Item 5 (§ 436.5(e))] that must be paid to the franchisor or affiliate.

(2) This disclosure document summarizes certain provisions of your franchise agreement and other information in plain English. Read this disclosure document and all accompanying agreements carefully. You must receive this disclosure document at least 14 calendar-days before you sign a binding agreement with, or make any payment to, the franchisor or an affiliate in connection with the proposed franchise sale. [The following sentence in bold type] **Note, however, that no governmental agency has verified the information contained in this document.**

(3) The terms of your contract will govern your franchise relationship. Don't rely on the disclosure document alone to understand your contract. Read all of your contract carefully. Show your contract and this disclosure document to an advisor, like a lawyer or an accountant.

(4) Buying a franchise is a complex investment. The information in this disclosure document can help you make up your mind. More information on franchising, such as ''*A Consumer's Guide to Buying a Franchise*,'' which

can help you understand how to use this disclosure document, is available from the Federal Trade Commission. You can contact the FTC at 1-877-FTC-HELP or by writing to the FTC at 600 Pennsylvania Avenue, NW., Washington, D.C. 20580. You can also visit the FTC's home page at www.ftc.gov for additional information. Call your state agency or visit your public library for other sources of information on franchising.

(5) There may also be laws on franchising in your state. Ask your state agencies about them.

(6) [The issuance date].

(f) A franchisor may include the following statement between the statements set out at paragraphs (e)(2) and (3) of this section: ''You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact [name or office] at [address] and [telephone number].''

(g) Franchisors may include additional disclosures on the cover page, on a separate cover page, or addendum to comply with state pre-sale disclosure laws.

§ 436.4 Table of contents.

Include the following table of contents. State the page where each disclosure Item begins. List all exhibits by letter, as shown in the following example.

Table of Contents

1. The Franchisor and any Parents, Predecessors, and Affiliates
2. Business Experience
3. Litigation
4. Bankruptcy
5. Initial Fees
6. Other Fees
7. Estimated Initial Investment
8. Restrictions on Sources of Products and Services

9. Franchisee's Obligations
10. Financing
11. Franchisor's Assistance, Advertising, Computer Systems, and Training
12. Territory
13. Trademarks
14. Patents, Copyrights, and Proprietary Information

15. Obligation to Participate in the Actual Operation of the Franchise Business
16. Restrictions on What the Franchisee May Sell
17. Renewal, Termination, Transfer, and Dispute Resolution
18. Public Figures
19. Financial Performance Representations
20. Outlets and Franchisee Information
21. Financial Statements
22. Contracts
23. Receipts

Exhibits

A. Franchise Agreement

§ 436.5 Disclosure items.

(a) *Item 1*: *The Franchisor, and any Parents, Predecessors, and Affiliates.*

Disclose:

(1) The name and principal business address of the franchisor; any parents; and any affiliates that offer franchises in any line of business or provide products or services to the franchisees of the franchisor.

(2) The name and principal business address of any predecessors during the 10-year period immediately before the close of the franchisor's most recent fiscal year.

(3) The name that the franchisor uses and any names it intends to use to conduct business.

(4) The identity and principal business address of the franchisor's agent for service of process.

(5) The type of business organization used by the franchisor (for example, corporation, partnership) and the state in which it was organized.

(6) The following information about the franchisor's business and the franchises offered:

(i) Whether the franchisor operates businesses of the type being franchised.

(ii) The franchisor's other business activities.

(iii) The business the franchisee will conduct.

(iv) The general market for the product or service the franchisee will offer. In describing the general market, consider factors such as whether the market is developed or developing, whether the goods will be sold primarily to a certain group, and whether sales are seasonal.

(v) In general terms, any laws or regulations specific to the industry in which the franchise business operates.

(vi) A general description of the competition.

(7) The prior business experience of the franchisor; any predecessors listed in § 436.5(a)(2) of this part; and any affiliates that offer franchises in any line of business or provide products or services to the franchisees of the franchisor, including:

(i) The length of time each has conducted the type of business the franchisee will operate.

(ii) The length of time each has offered franchises providing the type of business the franchisee will operate.

(iii) Whether each has offered franchises in other lines of business. If so, include:

(A) A description of each other line of business.

(B) The number of franchises sold in each other line of business.

(C) The length of time each has offered franchises in each other line of business.

(b) *Item 2*: *Business Experience.* Disclose by name and position the franchisor's directors, trustees, general partners, principal officers, and any other individuals who will have management responsibility relating to the sale or operation of franchises offered by this document. For each person listed in this section, state his or her principal positions and employers during the past five years, including each position's starting date, ending date, and location.

(c) *Item 3*: *Litigation.* (1) Disclose whether the franchisor; a predecessor; a parent or affiliate who induces franchise sales by promising to back the franchisor financially or otherwise guarantees the franchisor's performance; an affiliate who offers franchises under the franchisor's principal trademark; and any person identified in § 436.5(b) of this part:

(i) Has pending against that person:

(A) An administrative, criminal, or material civil action alleging a violation of a franchise, antitrust, or securities law, or alleging fraud, unfair or deceptive practices, or comparable allegations.

(B) Civil actions, other than ordinary routine litigation incidental to the business, which are material in the context of the number of franchisees and the size, nature, or financial condition of the franchise system or its business operations.

(ii) Was a party to any material civil action involving the franchise relationship in the last fiscal year. For purposes of this section, ''franchise relationship'' means contractual obligations between the franchisor and franchisee directly relating to the operation of the franchised business (such as royalty payment and training obligations). It does not include actions involving suppliers or other third parties, or indemnification for tort liability.

(iii) Has in the 10-year period immediately before the disclosure document's issuance date:

(A) Been convicted of or pleaded nolo contendere to a felony charge.

(B) Been held liable in a civil action involving an alleged violation of a franchise, antitrust, or securities law, or involving allegations of fraud, unfair or deceptive practices, or comparable allegations. ''Held liable'' means that, as a result of claims or counterclaims, the person must pay money or other consideration, must reduce an indebtedness by the amount of an

award, cannot enforce its rights, or must take action adverse to its interests.

(2) Disclose whether the franchisor; a predecessor; a parent or affiliate who guarantees the franchisor's performance; an affiliate who has offered or sold franchises in any line of business within the last 10 years; or any other person identified in § 436.5(b) of this part is subject to a currently effective injunctive or restrictive order or decree resulting from a pending or concluded action brought by a public agency and relating to the franchise or to a Federal, State, or Canadian franchise, securities, antitrust, trade regulation, or trade practice law.

(3) For each action identified in paragraphs (c)(1) and (2) of this section, state the title, case number or citation, the initial filing date, the names of the parties, the forum, and the relationship of the opposing party to the franchisor (for example, competitor, supplier, lessor, franchisee, former franchisee, or class of franchisees). Except as provided in paragraph (c)(4) of this section, summarize the legal and factual nature of each claim in the action, the relief sought or obtained, and any conclusions of law or fact.[1] In addition, state:

(i) For pending actions, the status of the action.

(ii) For prior actions, the date when the judgment was entered and any damages or settlement terms.[2]

(iii) For injunctive or restrictive orders, the nature, terms, and conditions of the order or decree.

(iv) For convictions or pleas, the crime or violation, the date of conviction, and the sentence or penalty imposed.

(4) For any other franchisor-initiated suit identified in paragraph (c)(1)(ii) of this section, the franchisor may comply with the requirements of paragraphs (c)(3)(i) through (iv) of this section by listing individual suits under one common heading that will serve as the case summary (for example, ''royalty collection suits'').

(d) *Item 4*: *Bankruptcy*. (1) Disclose whether the franchisor; any parent; predecessor; affiliate; officer, or general partner of the franchisor, or any other individual who will have management responsibility relating to the sale or operation of franchises offered by this document, has, during the 10-year period immediately before the date of this disclosure document:

(i) Filed as debtor (or had filed against it) a petition under the United States Bankruptcy Code (''Bankruptcy Code'').

(ii) Obtained a discharge of its debts under the Bankruptcy Code.

(iii) Been a principal officer of a company or a general partner in a partnership that either filed as a debtor (or had filed against it) a petition under the Bankruptcy Code, or that obtained a discharge of its debts under the Bankruptcy Code while, or within one year after, the officer or general partner held the position in the company.

(2) For each bankruptcy, state:

(i) The current name, address, and principal place of business of the debtor.

(ii) Whether the debtor is the franchisor. If not, state the relationship of the debtor to the franchisor (for example, affiliate, officer).

(iii) The date of the original filing and the material facts, including the bankruptcy court, and the case name and number. If applicable, state the debtor's discharge date, including discharges under Chapter 7 and confirmation of any plans of reorganization under Chapters 11 and 13 of the Bankruptcy Code.

(3) Disclose cases, actions, and other proceedings under the laws of foreign nations relating to bankruptcy.

(e) *Item 5*: *Initial Fees.* Disclose the initial fees and any conditions under which these fees are refundable. If the initial fees are not uniform, disclose the range or formula used to calculate the initial fees paid in the fiscal year before the issuance date and the factors that determined the amount. For this section, ''initial fees'' means all fees and payments, or commitments to pay, for services or goods received from the franchisor or any affiliate before the franchisee's business opens, whether payable in lump sum or installments. Disclose installment payment terms in this section or in § 436.5(j) of this part.

(f) *Item 6*: *Other Fees*. Disclose, in the following tabular form, all other fees that the franchisee must pay to the franchisor or its affiliates, or that the franchisor or its affiliates impose or collect in whole or in part for a third party. State the title ''**OTHER FEES**'' in capital letters using bold type. Include any formula used to compute the fees.[3]

ITEM 6 TABLE

OTHER FEES

Column 1 Type of fee	Column 2 Amount	Column 3 Due Date	Column 4 Remarks

(1) In column 1, list the type of fee (for example, royalties, and fees for lease negotiations, construction, remodeling, additional training or assistance, advertising, advertising cooperatives, purchasing cooperatives, audits, accounting, inventory, transfers, and renewals).

(2) In column 2, state the amount of the fee.

(3) In column 3, state the due date for each fee.

(4) In column 4, include remarks, definitions, or caveats that elaborate on the information in the table. If remarks are long, franchisors may use footnotes instead of the remarks column. If applicable, include the following information in the remarks column or in a footnote:

(i) Whether the fees are payable only to the franchisor.

(ii) Whether the fees are imposed and collected by the franchisor.

(iii) Whether the fees are non-refundable or describe the circumstances when the fees are refundable.

(iv) Whether the fees are uniformly imposed.

(v) The voting power of franchisor-owned outlets on any fees imposed by

[1] Franchisors may include a summary opinion of counsel concerning any action if counsel consent to use the summary opinion and the full opinion is attached to the disclosure document.

[2] If a settlement agreement must be disclosed in this Item, all material settlement terms must be disclosed, whether or not the agreement is confidential. However, franchisors need not disclose the terms of confidential settlements entered into before commencing franchise sales. Further, any franchisor who has historically used only the Franchise Rule format, or who is new to franchising, need not disclose confidential settlements entered prior to the effective date of this Rule.

[3] If fees may increase, disclose the formula that determines the increase or the maximum amount of the increase. For example, a percentage of gross sales is acceptable if the franchisor defines the term ''gross sales.''

cooperatives. If franchisor-owned outlets have controlling voting power, disclose the maximum and minimum fees that may be imposed.

(g) *Item 7*: *Estimated Initial Investment*. Disclose, in the following tabular form, the franchisee's estimated initial investment. State the title ''**YOUR ESTIMATED INITIAL INVESTMENT**'' in capital letters using bold type. Franchisors may include additional expenditure tables to show expenditure variations caused by differences such as in site location and premises size.

ITEM 7 TABLE:

YOUR ESTIMATED INITIAL INVESTMENT

Column 1 Type of expenditure	Column 2 Amount	Column 3 Method of payment	Column 4 When due	Column 4 To whom payment is to be made
Total.				

(1) In column 1:

(i) List each type of expense, beginning with pre-opening expenses. Include the following expenses, if applicable. Use footnotes to include remarks, definitions, or caveats that elaborate on the information in the Table.

(A) The initial franchise fee.

(B) Training expenses.

(C) Real property, whether purchased or leased.

(D) Equipment, fixtures, other fixed assets, construction, remodeling, leasehold improvements, and decorating costs, whether purchased or leased.

(E) Inventory to begin operating.

(F) Security deposits, utility deposits, business licenses, and other prepaid expenses.

(ii) List separately and by name any other specific required payments (for example, additional training, travel, or advertising expenses) that the franchisee must make to begin operations.

(iii) Include a category titled ''Additional funds— [initial period]'' for any other required expenses the franchisee will incur before operations begin and during the initial period of operations. State the initial period. A reasonable initial period is at least three months or a reasonable period for the industry. Describe in general terms the factors, basis, and experience that the franchisor considered or relied upon in formulating the amount required for additional funds.

(2) In column 2, state the amount of the payment. If the amount is unknown, use a low-high range based on the franchisor's current experience. If real property costs cannot be estimated in a low-high range, describe the approximate size of the property and building and the probable location of the building (for example, strip shopping center, mall, downtown, rural, or highway).

(3) In column 3, state the method of payment.

(4) In column 4, state the due date.

(5) In column 5, state to whom payment will be made.

(6) Total the initial investment, incorporating ranges of fees, if used.

(7) In a footnote, state:

(i) Whether each payment is non-refundable, or describe the circumstances when each payment is refundable.

(ii) If the franchisor or an affiliate finances part of the initial investment, the amount that it will finance, the required down payment, the annual interest rate, rate factors, and the estimated loan repayments. Franchisors may refer to § 436.5(j) of this part for additional details.

(h) *Item 8*: *Restrictions on Sources of Products and Services*. Disclose the franchisee's obligations to purchase or lease goods, services, supplies, fixtures, equipment, inventory, computer hardware and software, real estate, or comparable items related to establishing or operating the franchised business either from the franchisor, its designee, or suppliers approved by the franchisor, or under the franchisor's specifications. Include obligations to purchase imposed by the franchisor's written agreement or by the franchisor's practice.[4] For each applicable obligation, state:

(1) The good or service required to be purchased or leased.

(2) Whether the franchisor or its affiliates are approved suppliers or the only approved suppliers of that good or service.

(3) Any supplier in which an officer of the franchisor owns an interest.

(4) How the franchisor grants and revokes approval of alternative suppliers, including:

(i) Whether the franchisor's criteria for approving suppliers are available to franchisees.

(ii) Whether the franchisor permits franchisees to contract with alternative suppliers who meet the franchisor's criteria.

(iii) Any fees and procedures to secure approval to purchase from alternative suppliers.

(iv) The time period in which the franchisee will be notified of approval or disapproval.

(v) How approvals are revoked.

(5) Whether the franchisor issues specifications and standards to franchisees, subfranchisees, or approved suppliers. If so, describe how the franchisor issues and modifies specifications.

(6) Whether the franchisor or its affiliates will or may derive revenue or other material consideration from required purchases or leases by franchisees. If so, describe the precise basis by which the franchisor or its affiliates will or may derive that consideration by stating:

(i) The franchisor's total revenue.[5]

(ii) The franchisor's revenues from all required purchases and leases of products and services.

(iii) The percentage of the franchisor's total revenues that are from required purchases or leases.

(iv) If the franchisor's affiliates also sell or lease products or services to franchisees, the affiliates' revenues from those sales or leases.

(7) The estimated proportion of these required purchases and leases by the franchisee to all purchases and leases by the franchisee of goods and services in establishing and operating the franchised businesses.

[4] Franchisors may include the reason for the requirement. Franchisors need not disclose in this Item the purchase or lease of goods or services provided as part of the franchise without a separate charge (such as initial training, if the cost is included in the franchise fee). Describe such fees in Item 5 of this section. Do not disclose fees already described in § 436.5(f) of this part.

[5] Take figures from the franchisor's most recent annual audited financial statement required in § 436.5(u) of this part. If audited statements are not yet required, or if the entity deriving the income is an affiliate, disclose the sources of information used in computing revenues.

(8) If a designated supplier will make payments to the franchisor from franchisee purchases, disclose the basis for the payment (for example, specify a percentage or a flat amount). For purposes of this disclosure, a ''payment'' includes the sale of similar goods or services to the franchisor at a lower price than to franchisees.

(9) The existence of purchasing or distribution cooperatives.

(10) Whether the franchisor negotiates purchase arrangements with suppliers, including price terms, for the benefit of franchisees.

(11) Whether the franchisor provides material benefits (for example, renewal or granting additional franchises) to a franchisee based on a franchisee's purchase of particular products or services or use of particular suppliers.

(i) *Item 9*: *Franchisee's Obligations.* Disclose, in the following tabular form, a list of the franchisee's principal obligations. State the title ''**FRANCHISEE'S OBLIGATIONS**'' in capital letters using bold type. Cross-reference each listed obligation with any applicable section of the franchise or other agreement and with the relevant disclosure document provision. If a particular obligation is not applicable, state ''Not Applicable.'' Include additional obligations, as warranted.

ITEM 9 TABLE:

FRANCHISEE'S OBLIGATIONS

[In bold] **This table lists your principal obligations under the franchise and other agreements. It will help you find more detailed information about your obligations in these agreements and in other items of this disclosure document.**

Obligation	Section in agreement	Disclosure document item
a. Site selection and acquisition/lease		
b. Pre-opening purchase/leases		
c. Site development and other pre-opening requirements		
d. Initial and ongoing training		
e. Opening		
f. Fees		
g. Compliance with standards and policies/operating manual		
h. Trademarks and proprietary information		
i. Restrictions on products/services offered		
j. Warranty and customer service requirements		
k. Territorial development and sales quotas		
l. Ongoing product/service purchases		
m. Maintenance, appearance, and remodeling requirements		
n. Insurance		
o. Advertising		
p. Indemnification		
q. Owner's participation/management/staffing		
r. Records and reports		
s. Inspections and audits		
t. Transfer		
u. Renewal		
v. Post-termination obligations		
w. Non-competition covenants		
x. Dispute resolution		
y. Other (describe)		

(j) *Item 10*: *Financing.* (1) Disclose the terms of each financing arrangement, including leases and installment contracts, that the franchisor, its agent, or affiliates offer directly or indirectly to the franchisee.[6] The franchisor may summarize the terms of each financing arrangement in tabular form, using footnotes to provide additional information. For a sample Item 10 table, see Appendix A of this part. For each financing arrangement, state:

(i) What the financing covers (for example, the initial franchise fee, site acquisition, construction or remodeling, initial or replacement equipment or fixtures, opening or ongoing inventory or supplies, or other continuing expenses).[7]

(ii) The identity of each lender providing financing and their relationship to the franchisor (for example, affiliate).

(iii) The amount of financing offered or, if the amount depends on an actual cost that may vary, the percentage of the cost that will be financed.

(iv) The rate of interest, plus finance charges, expressed on an annual basis. If the rate of interest, plus finance charges, expressed on an annual basis, may differ depending on when the financing is issued, state what that rate was on a specified recent date.

(v) The number of payments or the period of repayment.

(vi) The nature of any security interest required by the lender.

(vii) Whether a person other than the franchisee must personally guarantee the debt.

(viii) Whether the debt can be prepaid and the nature of any prepayment penalty.

(ix) The franchisee's potential liabilities upon default, including any:

(A) Accelerated obligation to pay the entire amount due;

(B) Obligations to pay court costs and attorney's fees incurred in collecting the debt;

(C) Termination of the franchise; and

(D) Liabilities from cross defaults such as those resulting directly from non-payment, or indirectly from the loss of business property.

(x) Other material financing terms.

(2) Disclose whether the loan agreement requires franchisees to waive defenses or other legal rights (for example, confession of judgment), or bars franchisees from asserting a defense against the lender, the lender's assignee or the franchisor. If so, describe the relevant provisions.

(3) Disclose whether the franchisor's practice or intent is to sell, assign, or discount to a third party all or part of the financing arrangement. If so, state:

(i) The assignment terms, including whether the franchisor will remain primarily obligated to provide the financed goods or services; and

(ii) That the franchisee may lose all its defenses against the lender as a result of the sale or assignment.

(4) Disclose whether the franchisor or an affiliate receives any consideration for placing financing with the lender. If such payments exist:

(i) Disclose the amount or the method of determining the payment; and

(ii) Identify the source of the payment and the relationship of the source to the franchisor or its affiliates.

(k) *Item 11: Franchisor's Assistance, Advertising, Computer Systems, and Training.* Disclose the franchisor's principal assistance and related obligations of both the franchisor and franchisee as follows. For each obligation, cite the section number of the franchise agreement imposing the obligation. Begin by stating the following sentence in bold type: ''**Except as listed below, [the franchisor] is not required to provide you with any assistance.**''

(1) Disclose the franchisor's pre-opening obligations to the franchisee, including any assistance in:

(i) Locating a site and negotiating the purchase or lease of the site. If such assistance is provided, state:

(A) Whether the franchisor generally owns the premises and leases it to the franchisee.

(B) Whether the franchisor selects the site or approves an area in which the franchisee selects a site. If so, state further whether and how the franchisor must approve a franchisee-selected site.

(C) The factors that the franchisor considers in selecting or approving sites (for example, general location and neighborhood, traffic patterns, parking, size, physical characteristics of existing buildings, and lease terms).

(D) The time limit for the franchisor to locate or approve or disapprove the site and the consequences if the franchisor and franchisee cannot agree on a site.

(ii) Conforming the premises to local ordinances and building codes and obtaining any required permits.

(iii) Constructing, remodeling, or decorating the premises.

(iv) Hiring and training employees.

(v) Providing for necessary equipment, signs, fixtures, opening inventory, and supplies. If any such assistance is provided, state:

(A) Whether the franchisor provides these items directly or only provides the names of approved suppliers.

(B) Whether the franchisor provides written specifications for these items.

(C) Whether the franchisor delivers or installs these items.

(2) Disclose the typical length of time between the earlier of the signing of the franchise agreement or the first payment of consideration for the franchise and the opening of the franchisee's business. Describe the factors that may affect the time period, such as ability to obtain a lease, financing or building permits, zoning and local ordinances, weather conditions, shortages, or delayed installation of equipment, fixtures, and signs.

(3) Disclose the franchisor's obligations to the franchisee during the operation of the franchise, including any assistance in:

(i) Developing products or services the franchisee will offer to its customers.

(ii) Hiring and training employees.

(iii) Improving and developing the franchised business.

(iv) Establishing prices.

(v) Establishing and using administrative, bookkeeping, accounting, and inventory control procedures.

(vi) Resolving operating problems encountered by the franchisee.

(4) Describe the advertising program for the franchise system, including the following:

(i)The franchisor's obligation to conduct advertising, including:

(A) The media the franchisor may use.

(B) Whether media coverage is local, regional, or national.

(C) The source of the advertising (for example, an in-house advertising department or a national or regional advertising agency).

(D) Whether the franchisor must spend any amount on advertising in the area or territory where the franchisee is located.

(ii) The circumstances when the franchisor will permit franchisees to use their own advertising material.

(iii) Whether there is an advertising council composed of franchisees that advises the franchisor on advertising policies. If so, disclose:

(A) How members of the council are selected.

(B) Whether the council serves in an advisory capacity only or has operational or decision-making power.

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[6] Indirect offers of financing include a written arrangement between a franchisor or its affiliate and a lender, for the lender to offer financing to a franchisee; an arrangement in which a franchisor or its affiliate receives a benefit from a lender in exchange for financing a franchise purchase; and a franchisor's guarantee of a note, lease, or other obligation of the franchisee.

[7] Include sample copies of the financing documents as an exhibit to § 436.5(v) of this part. Cite the section and name of the document containing the financing terms and conditions.

(C) Whether the franchisor has the power to form, change, or dissolve the advertising council.

(iv) Whether the franchisee must participate in a local or regional advertising cooperative. If so, state:

(A) How the area or membership of the cooperative is defined.

(B) How much the franchisee must contribute to the fund and whether other franchisees must contribute a different amount or at a different rate.

(C) Whether the franchisor-owned outlets must contribute to the fund and, if so, whether those contributions are on the same basis as those for franchisees.

(D) Who is responsible for administering the cooperative (for example, franchisor, franchisees, or advertising agency).

(E) Whether cooperatives must operate from written governing documents and whether the documents are available for the franchisee to review.

(F) Whether cooperatives must prepare annual or periodic financial statements and whether the statements are available for review by the franchisee.

(G) Whether the franchisor has the power to require cooperatives to be formed, changed, dissolved, or merged.

(v) Whether the franchisee must participate in any other advertising fund. If so, state:

(A) Who contributes to the fund.

(B) How much the franchisee must contribute to the fund and whether other franchisees must contribute a different amount or at a different rate.

(C) Whether the franchisor-owned outlets must contribute to the fund and, if so, whether it is on the same basis as franchisees.

(D) Who administers the fund.

(E) Whether the fund is audited and when it is audited.

(F) Whether financial statements of the fund are available for review by the franchisee.

(G) How the funds were used in the most recently concluded fiscal year, including the percentages spent on production, media placement, administrative expenses, and a description of any other use.

(vi) If not all advertising funds are spent in the fiscal year in which they accrue, how the franchisor uses the remaining amount, including whether franchisees receive a periodic accounting of how advertising fees are spent.

(vii) The percentage of advertising funds, if any, that the franchisor uses principally to solicit new franchise sales.

(5) Disclose whether the franchisor requires the franchisee to buy or use electronic cash registers or computer systems. If so, describe the systems generally in non-technical language, including the types of data to be generated or stored in these systems, and state the following:

(i) The cost of purchasing or leasing the systems.

(ii) Any obligation of the franchisor, any affiliate, or third party to provide ongoing maintenance, repairs, upgrades, or updates.

(iii) Any obligations of the franchisee to upgrade or update any system during the term of the franchise, and, if so, any contractual limitations on the frequency and cost of the obligation.

(iv) The annual cost of any optional or required maintenance, updating, upgrading, or support contracts.

(v) Whether the franchisor will have independent access to the information that will be generated or stored in any electronic cash register or computer system. If so, describe the information that the franchisor may access and whether there are any contractual limitations on the franchisor's right to access the information.

(6) Disclose the table of contents of the franchisor's operating manual provided to franchisees as of the franchisor's last fiscal year-end or a more recent date. State the number of pages devoted to each subject and the total number of pages in the manual as of this date. This disclosure may be omitted if the franchisor offers the prospective franchisee the opportunity to view the manual before buying the franchise.

(7) Disclose the franchisor's training program as of the franchisor's last fiscal year-end or a more recent date.

(i) Describe the training program in the following tabular form. Title the table ''**TRAINING PROGRAM**'' in capital letters and bold type.

ITEM 11 TABLE

TRAINING PROGRAM

Column 1 Subject	Column 2 Hours of Classroom Training	Column 3 Hours of On-The-Job Training	Column 4 Location

(A) In column 1, state the subjects taught.

(B) In column 2, state the hours of classroom training for each subject.

(C) In column 3, state the hours of on-the-job training for each subject.

(D) In column 4, state the location of the training for each subject.

(ii) State further:

(A) How often training classes are held and the nature of the location or facility where training is held (for example, company, home, office, franchisor-owned store).

(B) The nature of instructional materials and the instructor's experience, including the instructor's length of experience in the field and with the franchisor. State only experience relevant to the subject taught and the franchisor's operations.

(C) Any charges franchisees must pay for training and who must pay travel and living expenses of the training program enrollees.

(D) Who may and who must attend training. State whether the franchisee or other persons must complete the program to the franchisor's satisfaction. If successful completion is required, state how long after signing the agreement or before opening the business the training must be completed. If training is not mandatory, state the percentage of new franchisees that enrolled in the training program during the preceding 12 months.

(E) Whether additional training programs or refresher courses are required.

(l) *Item 12*: *Territory*.

Disclose:

(1) Whether the franchise is for a specific location or a location to be approved by the franchisor.

(2) Any minimum territory granted to the franchisee (for example, a specific radius, a distance sufficient to encompass a specified population, or another specific designation).

(3) The conditions under which the franchisor will approve the relocation of the franchised business or the franchisee's establishment of additional franchised outlets.

(4) Franchisee options, rights of first refusal, or similar rights to acquire additional franchises.

(5) Whether the franchisor grants an exclusive territory.

(i) If the franchisor does not grant an exclusive territory, state: ''You will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control.''

(ii) If the franchisor grants an exclusive territory, disclose:

(A) Whether continuation of territorial exclusivity depends on achieving a certain sales volume, market penetration, or other contingency, and the circumstances when the franchisee's territory may be altered. Describe any sales or other conditions. State the franchisor's rights if the franchisee fails to meet the requirements.

(B) Any other circumstances that permit the franchisor to modify the franchisee's territorial rights (for example, a population increase in the territory giving the franchisor the right to grant an additional franchise in the area) and the effect of such modifications on the franchisee's rights.

(6) For all territories (exclusive and non-exclusive):

(i) Any restrictions on the franchisor from soliciting or accepting orders from consumers inside the franchisee's territory, including:

(A) Whether the franchisor or an affiliate has used or reserves the right to use other channels of distribution, such as the Internet, catalog sales, telemarketing, or other direct marketing sales, to make sales within the franchisee's territory using the franchisor's principal trademarks.

(B) Whether the franchisor or an affiliate has used or reserves the right to use other channels of distribution, such as the Internet, catalog sales, telemarketing, or other direct marketing, to make sales within the franchisee's territory of products or services under trademarks different from the ones the franchisee will use under the franchise agreement.

(C) Any compensation that the franchisor must pay for soliciting or accepting orders from inside the franchisee's territory.

(ii) Any restrictions on the franchisee from soliciting or accepting orders from consumers outside of his or her territory, including whether the franchisee has the right to use other channels of distribution, such as the Internet, catalog sales, telemarketing, or other direct marketing, to make sales outside of his or her territory.

(iii) If the franchisor or an affiliate operates, franchises, or has plans to operate or franchise a business under a different trademark and that business sells or will sell goods or services similar to those the franchisee will offer, describe:

(A) The similar goods and services.

(B) The different trademark.

(C) Whether outlets will be franchisor owned or operated.

(D) Whether the franchisor or its franchisees who use the different trademark will solicit or accept orders within the franchisee's territory.

(E) The timetable for the plan.

(F) How the franchisor will resolve conflicts between the franchisor and franchisees and between the franchisees of each system regarding territory, customers, and franchisor support.

(G) The principal business address of the franchisor's similar operating business. If it is the same as the franchisor's principal business address stated in § 436.5(a) of this part, disclose whether the franchisor maintains (or plans to maintain) physically separate offices and training facilities for the similar competing business.

(m) *Item 13*: *Trademarks.* (1) Disclose each principal trademark to be licensed to the franchisee. For this Item, ''principal trademark'' means the primary trademarks, service marks, names, logos, and commercial symbols the franchisee will use to identify the franchised business. It may not include every trademark the franchisor owns.

(2) Disclose whether each principal trademark is registered with the United States Patent and Trademark Office. If so, state:

(i) The date and identification number of each trademark registration.

(ii) Whether the franchisor has filed all required affidavits.

(iii) Whether any registration has been renewed.

(iv) Whether the principal trademarks are registered on the Principal or Supplemental Register of the United States Patent and Trademark Office.

(3) If the principal trademark is not registered with the United States Patent and Trademark Office, state whether the franchisor has filed any trademark application, including any ''intent to use'' application or an application based on actual use. If so, state the date and identification number of the application.

(4) If the trademark is not registered on the Principal Register of the United States Patent and Trademark Office, state: ''We do not have a federal registration for our principal trademark. Therefore, our trademark does not have many legal benefits and rights as a federally registered trademark. If our right to use the trademark is challenged, you may have to change to an alternative trademark, which may increase your expenses.''

(5) Disclose any currently effective material determinations of the United States Patent and Trademark Office, the Trademark Trial and Appeal Board, or any state trademark administrator or court; and any pending infringement, opposition, or cancellation proceeding. Include infringement, opposition, or cancellation proceedings in which the franchisor unsuccessfully sought to prevent registration of a trademark in order to protect a trademark licensed by the franchisor. Describe how the determination affects the ownership, use, or licensing of the trademark.

(6) Disclose any pending material federal or state court litigation regarding the franchisor's use or ownership rights in a trademark. For each pending action, disclose:[8]

(i) The forum and case number.

(ii) The nature of claims made opposing the franchisor's use of the trademark or by the franchisor opposing another person's use of the trademark.

(iii) Any effective court or administrative agency ruling in the matter.

(7) Disclose any currently effective agreements that significantly limit the franchisor's rights to use or license the use of trademarks listed in this section in a manner material to the franchise. For each agreement, disclose:

(i) The manner and extent of the limitation or grant.

(ii) The extent to which the agreement may affect the franchisee.

(iii) The agreement's duration.

(iv) The parties to the agreement.

(v) The circumstances when the agreement may be canceled or modified.

(vi) All other material terms.

(8) Disclose:

(i) Whether the franchisor must protect the franchisee's right to use the principal trademarks listed in this section, and must protect the franchisee against claims of infringement or unfair competition arising out of the franchisee's use of the trademarks.

(ii) The franchisee's obligation to notify the franchisor of the use of, or claims of rights to, a trademark identical to or confusingly similar to a trademark licensed to the franchisee.

(iii) Whether the franchise agreement requires the franchisor to take

[8] The franchisor may include an attorney's opinion relative to the merits of litigation or of an action if the attorney issuing the opinion consents to its use. The text of the disclosure may include a summary of the opinion if the full opinion is attached and the attorney issuing the opinion consents to the use of the summary.

affirmative action when notified of these uses or claims.

(iv) Whether the franchisor or franchisee has the right to control any administrative proceedings or litigation involving a trademark licensed by the franchisor to the franchisee.

(v) Whether the franchise agreement requires the franchisor to participate in the franchisee's defense and/or indemnify the franchisee for expenses or damages if the franchisee is a party to an administrative or judicial proceeding involving a trademark licensed by the franchisor to the franchisee, or if the proceeding is resolved unfavorably to the franchisee.

(vi) The franchisee's rights under the franchise agreement if the franchisor requires the franchisee to modify or discontinue using a trademark.

(9) Disclose whether the franchisor knows of either superior prior rights or infringing uses that could materially affect the franchisee's use of the principal trademarks in the state where the franchised business will be located. For each use of a principal trademark that the franchisor believes is an infringement that could materially affect the franchisee's use of a trademark, disclose:

(i) The nature of the infringement.

(ii) The locations where the infringement is occurring.

(iii) The length of time of the infringement (to the extent known).

(iv) Any action taken or anticipated by the franchisor.

(n) *Item 14*: *Patents, Copyrights, and Proprietary Information.* (1) Disclose whether the franchisor owns rights in, or licenses to, patents or copyrights that are material to the franchise. Also, disclose whether the franchisor has any pending patent applications that are material to the franchise. If so, state:

(i) The nature of the patent, patent application, or copyright and its relationship to the franchise.

(ii) For each patent:

(A) The duration of the patent.

(B) The type of patent (for example, mechanical, process, or design).

(C) The patent number, issuance date, and title.

(iii) For each patent application:

(A) The type of patent application (for example, mechanical, process, or design).

(B) The serial number, filing date, and title.

(iv) For each copyright:

(A) The duration of the copyright.

(B) The registration number and date.

(C) Whether the franchisor can and intends to renew the copyright.

(2) Describe any current material determination of the United States Patent and Trademark Office, the United States Copyright Office, or a court regarding the patent or copyright. Include the forum and matter number. Describe how the determination affects the franchised business.

(3) State the forum, case number, claims asserted, issues involved, and effective determinations for any material proceeding pending in the United States Patent and Trademark Office or any court.[9]

(4) If an agreement limits the use of the patent, patent application, or copyright, state the parties to and duration of the agreement, the extent to which the agreement may affect the franchisee, and other material terms of the agreement.

(5) Disclose the franchisor's obligation to protect the patent, patent application, or copyright; and to defend the franchisee against claims arising from the franchisee's use of patented or copyrighted items, including:

(i) Whether the franchisor's obligation is contingent upon the franchisee notifying the franchisor of any infringement claims or whether the franchisee's notification is discretionary.

(ii) Whether the franchise agreement requires the franchisor to take affirmative action when notified of infringement.

(iii) Who has the right to control any litigation.

(iv) Whether the franchisor must participate in the defense of a franchisee or indemnify the franchisee for expenses or damages in a proceeding involving a patent, patent application, or copyright licensed to the franchisee.

(v) Whether the franchisor's obligation is contingent upon the franchisee modifying or discontinuing the use of the subject matter covered by the patent or copyright.

(vi) The franchisee's rights under the franchise agreement if the franchisor requires the franchisee to modify or discontinue using the subject matter covered by the patent or copyright.

(6) If the franchisor knows of any patent or copyright infringement that could materially affect the franchisee, disclose:

(i) The nature of the infringement.

(ii) The locations where the infringement is occurring.

(iii) The length of time of the infringement (to the extent known).

(iv) Any action taken or anticipated by the franchisor.

(7) If the franchisor claims proprietary rights in other confidential information or trade secrets, describe in general terms the proprietary information communicated to the franchisee and the terms for use by the franchisee. The franchisor need only describe the general nature of the proprietary information, such as whether a formula or recipe is considered to be a trade secret.

(o) *Item 15*: *Obligation to Participate in the Actual Operation of the Franchise Business.* (1) Disclose the franchisee's obligation to participate personally in the direct operation of the franchisee's business and whether the franchisor recommends participation. Include obligations arising from any written agreement or from the franchisor's practice.

(2) If personal ''on-premises'' supervision is not required, disclose the following:

(i) If the franchisee is an individual, whether the franchisor recommends on-premises supervision by the franchisee.

(ii) Limits on whom the franchisee can hire as an on-premises supervisor.

(iii) Whether an on-premises supervisor must successfully complete the franchisor's training program.

(iv) If the franchisee is a business entity, the amount of equity interest, if any, that the on-premises supervisor must have in the franchisee's business.

(3) Disclose any restrictions that the franchisee must place on its manager (for example, maintain trade secrets, covenants not to compete).

(p) *Item 16*: *Restrictions on What the Franchisee May Sell.* Disclose any franchisor-imposed restrictions or conditions on the goods or services that the franchisee may sell or that limit access to customers, including:

(1) Any obligation on the franchisee to sell only goods or services approved by the franchisor.

(2) Any obligation on the franchisee to sell all goods or services authorized by the franchisor.

(3) Whether the franchisor has the right to change the types of authorized goods or services and whether there are limits on the franchisor's right to make changes.

(q) *Item 17*: *Renewal, Termination, Transfer, and Dispute Resolution.* Disclose, in the following tabular form, a table that cross-references each enumerated franchise relationship item with the applicable provision in the franchise or related agreement. Title the table ''**THE FRANCHISE RELATIONSHIP**'' in capital letters and bold type.

(1) Describe briefly each contractual provision. If a particular item is not applicable, state ''Not Applicable.''

(2) If the agreement is silent about one of the listed provisions, but the

[9] If counsel consents, the franchisor may include a counsel's opinion or a summary of the opinion if the full opinion is attached.

franchisor unilaterally offers to provide certain benefits or protections to franchisees as a matter of policy, use a footnote to describe the policy and state whether the policy is subject to change.

(3) In the summary column for Item 17(c), state what the term ''renewal'' means for your franchise system, including, if applicable, a statement that franchisees may be asked to sign a contract with materially different terms and conditions than their original contract.

ITEM 17 TABLE:

THE FRANCHISE RELATIONSHIP

[In bold] **This table lists certain important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this disclosure document.**

Provision	Section in franchise or other agreement	Summary
a. Length of the franchise term		
b. Renewal or extension of the term		
c. Requirements for franchisee to renew or extend		
d. Termination by franchisee		
e. Termination by franchisor without cause		
f. Termination by franchisor with cause		
g. ''Cause'' defined—curable defaults		
h. ''Cause'' defined—non-curable defaults		
i. Franchisee's obligations on termination/non-renewal		
j. Assignment of contract by franchisor		
k. ''Transfer'' by franchisee—defined		
l. Franchisor approval of transfer by franchisee		
m. Conditions for franchisor approval of transfer		
n. Franchisor's right of first refusal to acquire franchisee's business		
o. Franchisor's option to purchase franchisee's business		
p. Death or disability of franchisee		
q. Non-competition covenants during the term of the franchise		
r. Non-competition covenants after the franchise is terminated or expires		
s. Modification of the agreement		
t. Integration/merger clause		
u. Dispute resolution by arbitration or mediation		
v. Choice of forum		
w. Choice of law		

(r) *Item 18*: *Public Figures*.

Disclose:

(1) Any compensation or other benefit given or promised to a public figure arising from either the use of the public figure in the franchise name or symbol, or the public figure's endorsement or recommendation of the franchise to prospective franchisees.

(2) The extent to which the public figure is involved in the management or control of the franchisor. Describe the public figure's position and duties in the franchisor's business structure.

(3) The public figure's total investment in the franchisor, including the amount the public figure contributed in services performed or to be performed. State the type of investment (for example, common stock, promissory note).

(4) For purposes of this section, a public figure means a person whose name or physical appearance is generally known to the public in the geographic area where the franchise will be located.

(s) *Item 19*: *Financial Performance Representations*.

(1) Begin by stating the following:

> The FTC's Franchise Rule permits a franchisor to provide information about the actual or potential financial performance of its franchised and/or franchisor-owned outlets, if there is a reasonable basis for the information, and if the information is included in the

disclosure document. Financial performance information that differs from that included in Item 19 may be given only if: (1) a franchisor provides the actual records of an existing outlet you are considering buying; or (2) a franchisor supplements the information provided in this Item 19, for example, by providing information about possible performance at a particular location or under particular circumstances.

(2) If a franchisor does not provide any financial performance representation in Item 19, also state:

> We do not make any representations about a franchisee's future financial performance or the past financial performance of company-owned or franchised outlets. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor's management by contacting [name, address, and telephone number], the Federal Trade Commission, and the appropriate state regulatory agencies.

(3) If the franchisor makes any financial performance representation to prospective franchisees, the franchisor must have a reasonable basis and written substantiation for the representation at the time the representation is made and must state the representation in the Item 19 disclosure. The franchisor must also disclose the following:

(i) Whether the representation is an historic financial performance representation about the franchise system's existing outlets, or a subset of those outlets, or is a forecast of the prospective franchisee's future financial performance.

(ii) If the representation relates to past performance of the franchise system's existing outlets, the material bases for the representation, including:

(A) Whether the representation relates to the performance of all of the franchise system's existing outlets or only to a subset of outlets that share a particular set of characteristics (for example, geographic location, type of location (such as free standing vs. shopping center), degree of competition, length of time the outlets have operated, services or goods sold, services supplied by the franchisor, and whether the outlets are franchised or franchisor-owned or operated).

(B) The dates when the reported level of financial performance was achieved.

(C) The total number of outlets that existed in the relevant period and, if different, the number of outlets that had the described characteristics.

(D) The number of outlets with the described characteristics whose actual financial performance data were used in arriving at the representation.

(E) Of those outlets whose data were used in arriving at the representation, the number and percent that actually attained or surpassed the stated results.

(F) Characteristics of the included outlets, such as those characteristics noted in paragraph (3)(ii)(A) of this section, that may differ materially from those of the outlet that may be offered to a prospective franchisee.

(iii) If the representation is a forecast of future financial performance, state the material bases and assumptions on which the projection is based. The material assumptions underlying a forecast include significant factors upon which a franchisee's future results are expected to depend. These factors include, for example, economic or market conditions that are basic to a franchisee's operation, and encompass matters affecting, among other things, a franchisee's sales, the cost of goods or services sold, and operating expenses.

(iv) A clear and conspicuous admonition that a new franchisee's individual financial results may differ from the result stated in the financial performance representation.

(v) A statement that written substantiation for the financial performance representation will be made available to the prospective franchisee upon reasonable request.

(4) If a franchisor wishes to disclose only the actual operating results for a specific outlet being offered for sale, it need not comply with this section, provided the information is given only to potential purchasers of that outlet.

(5) If a franchisor furnishes financial performance information according to this section, the franchisor may deliver to a prospective franchisee a supplemental financial performance representation about a particular location or variation, apart from the disclosure document. The supplemental representation must:

(i) Be in writing.

(ii) Explain the departure from the financial performance representation in the disclosure document.

(iii) Be prepared in accordance with the requirements of paragraph (s)(3)(i)-(iv) of this section.

(iv) Be furnished to the prospective franchisee.

(t) *Item 20*: *Outlets and Franchisee Information*. (1) Disclose, in the following tabular form, the total number of franchised and company-owned outlets for each of the franchisor's last three fiscal years. For purposes of this section, ''outlet'' includes outlets of a type substantially similar to that offered to the prospective franchisee. A sample Item 20(1) Table is attached as Appendix B to this part.

ITEM 20 TABLE NO. 1

Systemwide Outlet Summary
For years [ ] to [ ]

Column 1 Outlet Type	Column 2 Year	Column 3 Outlets at the Start of the Year	Column 4 Outlets at the End of the Year	Column 5 Net Change
Franchised	2004			
	2005			
	2006			
Company-Owned	2004			
	2005			
	2006			

ITEM 20 TABLE NO. 1—Continued

Systemwide Outlet Summary
For years [ ] to [ ]

Column 1 Outlet Type	Column 2 Year	Column 3 Outlets at the Start of the Year	Column 4 Outlets at the End of the Year	Column 5 Net Change
Total Outlets	2004			
	2005			
	2006			

(i) In column 1, include three outlet categories titled ''franchised,'' ''company-owned, and ''total outlets.''

(ii) In column 2, state the last three fiscal years.

(iii) In column 3, state the total number of each type of outlet operating at the beginning of each fiscal year.

(iv) In column 4, state the total number of each type of outlet operating at the end of each fiscal year.

(v) In column 5, state the net change, and indicate whether the change is positive or negative, for each type of outlet during each fiscal year.

(2) Disclose, in the following tabular form, the number of franchised and company-owned outlets and changes in the number and ownership of outlets located in each state during each of the last three fiscal years. Except as noted, each change in ownership shall be reported only once in the following tables. If multiple events occurred in the process of transferring ownership of an outlet, report the event that occurred last in time. If a single outlet changed ownership two or more times during the same fiscal year, use footnotes to describe the types of changes involved and the order in which the changes occurred.

(i) Disclose, in the following tabular form, the total number of franchised outlets transferred in each state during each of the franchisor's last three fiscal years. For purposes of this section, ''transfer'' means the acquisition of a controlling interest in a franchised outlet, during its term, by a person other than the franchisor or an affiliate. A sample Item 20(2) Table is attached as Appendix C to this part.

ITEM 20 TABLE NO. 2

Transfers of Outlets from Franchisees to New Owners (other than the Franchisor)
For years [ ] to [ ]

Column 1 State	Column 2 Year	Column 3 Number of Transfers
	2004	
	2005	
	2006	
	2004	
	2005	
	2006	
Total	2004	
	2005	
	2006	

(A) In column 1, list each state with one or more franchised outlets.

(B) In column 2, state the last three fiscal years.

(C) In column 3, state the total number of completed transfers in each state during each fiscal year.

(ii) Disclose, in the following tabular form, the status of franchisee-owned outlets located in each state for each of the franchisor's last three fiscal years. A sample Item 20(3) Table is attached as Appendix D to this part.

ITEM 20 TABLE NO. 3

Status of Franchised Outlets
For years [ ] to [ ]

Column 1 State	Column 2 Year	Column 3 Outlets at Start of Year	Column 4 Outlets Opened	Column 5 Terminations	Column 6 Non-Renew-als	Column 7 Reacquired by Franchisor	Column 8 Ceased Oper-ations-Other Reasons	Column 9 Outlets at End of the Year
	2004							
	2005							
	2006							
	2004							
	2005							
	2006							
Totals	2004							
	2005							
	2006							

(A) In column 1, list each state with one or more franchised outlets.

(B) In column 2, state the last three fiscal years.

(C) In column 3, state the total number of franchised outlets in each state at the start of each fiscal year.

(D) In column 4, state the total number of franchised outlets opened in each state during each fiscal year. Include both new outlets and existing company-owned outlets that a franchisee purchased from the franchisor. (Also report the number of existing company-owned outlets that are sold to a franchisee in Column 7 of Table 4).

(E) In column 5, state the total number of franchised outlets that were terminated in each state during each fiscal year. For purposes of this section, ''termination'' means the franchisor's termination of a franchise agreement prior to the end of its term and without providing any consideration to the franchisee (whether by payment or forgiveness or assumption of debt).

(F) In column 6, state the total number of non-renewals in each state during each fiscal year. For purposes of this section, ''non-renewal'' occurs when the franchise agreement for a franchised outlet is not renewed at the end of its term.

(G) In column 7, state the total number of franchised outlets reacquired by the franchisor in each state during each fiscal year. For purposes of this section, a ''reacquisition'' means the franchisor's acquisition for consideration (whether by payment or forgiveness or assumption of debt) of a franchised outlet during its term. (Also report franchised outlets reacquired by the franchisor in column 5 of Table 4).

(H) In column 8, state the total number of outlets in each state not operating as one of the franchisor's outlets at the end of each fiscal year for reasons other than termination, non-renewal, or reacquisition by the franchisor.

(I) In column 9, state the total number of franchised outlets in each state at the end of the fiscal year.

(iii) Disclose, in the following tabular form, the status of company-owned outlets located in each state for each of the franchisor's last three fiscal years. A sample Item 20(4) Table is attached as Appendix E to this part.

ITEM 20 TABLE NO. 4

Status of Company-Owned Outlets
For years [ ] to [ ]

Column 1 State	Column 2 Year	Column 3 Outlets at Start of Year	Column 4 Outlets Opened	Column 5 Outlets Reacquired From Franchisee	Column 6 Outlets Closed	Column 7 Outlets Sold to Franchisee	Column 8 Outlets at End of the Year
	2004						
	2005						
	2006						
	2004						
	2005						
	2006						
Totals	2004						

ITEM 20 TABLE NO. 4—Continued

Status of Company-Owned Outlets
For years [ ] to [ ]

Column 1 State	Column 2 Year	Column 3 Outlets at Start of Year	Column 4 Outlets Opened	Column 5 Outlets Reacquired From Franchisee	Column 6 Outlets Closed	Column 7 Outlets Sold to Franchisee	Column 8 Outlets at End of the Year
	2005						
	2006						

(A) In column 1, list each state with one or more company-owned outlets.

(B) In column 2, state the last three fiscal years.

(C) In column 3, state the total number of company-owned outlets in each state at the start of the fiscal year.

(D) In column 4, state the total number of company-owned outlets opened in each state during each fiscal year.

(E) In column 5, state the total number of franchised outlets reacquired from franchisees in each state during each fiscal year.

(F) In column 6, state the total number of company-owned outlets closed in each state during each fiscal year. Include both actual closures and instances when an outlet ceases to operate under the franchisor's trademark.

(G) In column 7, state the total number of company-owned outlets sold to franchisees in each state during each fiscal year.

(H) In column 8, state the total number of company-owned outlets operating in each state at the end of each fiscal year.

(3) Disclose, in the following tabular form, projected new franchised and company-owned outlets. A sample Item 20(5) Table is attached as Appendix F to this part.

ITEM 20 TABLE NO. 5

Projected Openings As Of [Last Day of Last Fiscal Year]

Column 1 State	Column 2 Franchise Agreements Signed But Outlet Not Opened	Column 3 Projected New Franchised Outlet In The Next Fiscal Year	Column 4 Projected New Company-Owned Outlet In the Next Fiscal Year
Total			

(i) In column 1, list each state where one or more franchised or company-owned outlets are located or are projected to be located.

(ii) In column 2, state the total number of franchise agreements that had been signed for new outlets to be located in each state as of the end of the previous fiscal year where the outlet had not yet opened.

(iii) In column 3, state the total number of new franchised outlets in each state projected to be opened during the next fiscal year.

(iv) In column 4, state the total number of new company-owned outlets in each state that are projected to be opened during the next fiscal year.

(4) Disclose the names of all current franchisees and the address and telephone number of each of their outlets. Alternatively, disclose this information for all franchised outlets in the state, but if these franchised outlets total fewer than 100, disclose this information for franchised outlets from contiguous states and then the next closest states until at least 100 franchised outlets are listed.

(5) Disclose the name, city and state, and current business telephone number, or if unknown, the last known home telephone number of every franchisee who had an outlet terminated, canceled, not renewed, or otherwise voluntarily or involuntarily ceased to do business under the franchise agreement during the most recently completed fiscal year or who has not communicated with the franchisor within 10 weeks of the disclosure document issuance date.[10] State in immediate conjunction with this information: ''If you buy this franchise, your contact information may be disclosed to other buyers when you leave the franchise system.''

(6) If a franchisor is selling a previously-owned franchised outlet now under its control, disclose the following additional information for that outlet for the last five fiscal years. This information may be attached as an addendum to a disclosure document, or, if disclosure has already been made, then in a supplement to the previously furnished disclosure document.

(i) The name, city and state, current business telephone number, or if unknown, last known home telephone number of each previous owner of the outlet;

(ii) The time period when each previous owner controlled the outlet;

(iii) The reason for each previous change in ownership (for example, termination, non-renewal, voluntary transfer, ceased operations); and

(iv) The time period(s) when the franchisor retained control of the outlet (for example, after termination, non-renewal, or reacquisition).

(7) Disclose whether franchisees signed confidentiality clauses during the last three fiscal years. If so, state the following: ''In some instances, current and former franchisees sign provisions restricting their ability to speak openly about their experience with [name of franchise system]. You may wish to

[10] Franchisors may substitute alternative contact information at the request of the former franchisee, such as a home address, post office address, or a personal or business email address.

speak with current and former franchisees, but be aware that not all such franchisees will be able to communicate with you.'' Franchisors may also disclose the number and percentage of current and former franchisees who during each of the last three fiscal years signed agreements that include confidentiality clauses and may disclose the circumstances under which such clauses were signed.

(8) Disclose, to the extent known, the name, address, telephone number, email address, and Web address (to the extent known) of each trademark-specific franchisee organization associated with the franchise system being offered, if such organization:

(i) Has been created, sponsored, or endorsed by the franchisor. If so, state the relationship between the organization and the franchisor (for example, the organization was created by the franchisor, sponsored by the franchisor, or endorsed by the franchisor).

(ii) Is incorporated or otherwise organized under state law and asks the franchisor to be included in the franchisor's disclosure document during the next fiscal year. Such organizations must renew their request on an annual basis by submitting a request no later than 60 days after the close of the franchisor's fiscal year. The franchisor has no obligation to verify the organization's continued existence at the end of each fiscal year. Franchisors may also include the following statement: ''The following independent franchisee organizations have asked to be included in this disclosure document.''

(u) *Item 21*: *Financial Statements*. (1) Include the following financial statements prepared according to United States generally accepted accounting principles, as revised by any future United States government mandated accounting principles, or as permitted by the Securities and Exchange Commission. Except as provided in paragraph (u)(2) of this section, these financial statements must be audited by an independent certified public accountant using generally accepted United States auditing standards. Present the required financial statements in a tabular form that compares at least two fiscal years.

(i) The franchisor's balance sheet for the previous two fiscal year-ends before the disclosure document issuance date.

(ii) Statements of operations, stockholders equity, and cash flows for each of the franchisor's previous three fiscal years.

(iii) Instead of the financial disclosures required by paragraphs (u)(1)(i) and (ii) of this section, the franchisor may include financial statements of any of its affiliates if the affiliate's financial statements satisfy paragraphs (u)(1)(i) and (ii) of this section and the affiliate absolutely and unconditionally guarantees to assume the duties and obligations of the franchisor under the franchise agreement. The affiliate's guarantee must cover all of the franchisor's obligations to the franchisee, but need not extend to third parties. If this alternative is used, attach a copy of the guarantee to the disclosure document.

(iv) When a franchisor owns a direct or beneficial controlling financial interest in a subsidiary, its financial statements should reflect the financial condition of the franchisor and its subsidiary.

(v) Include separate financial statements for the franchisor and any subfranchisor, as well as for any parent that commits to perform post-sale obligations for the franchisor or guarantees the franchisor's obligations. Attach a copy of any guarantee to the disclosure document.

(2) A start-up franchise system that does not yet have audited financial statements may phase-in the use of audited financial statements by providing, at a minimum, the following statements at the indicated times:

(i) The franchisor' first partial or full fiscal year selling franchises.	An unaudited opening balance sheet.
(ii) The franchisor' second fiscal year selling franchises.	Audited balance sheet opinion as of the end of the first partial or full fiscal year selling franchises.
(iii) The franchisor' third and subsequent fiscal years selling franchises.	All required financial statements for the previous fiscal year, plus any previously disclosed audited statements that still must be disclosed according to paragraphs (u)(1)(i) and (ii) of this section.

(iv) Start-up franchisors may phase-in the disclosure of audited financial statements, provided the franchisor:

(A) Prepares audited financial statements as soon as practicable.

(B) Prepares unaudited statements in a format that conforms as closely as possible to audited statements.

(C) Includes one or more years of unaudited financial statements or clearly and conspicuously discloses in this section that the franchisor has not been in business for three years or more, and cannot include all financial statements required in paragraphs (u)(1)(i) and (ii) of this section.

(v) *Item 22*: *Contracts*. Attach a copy of all proposed agreements regarding the franchise offering, including the franchise agreement and any lease, options, and purchase agreements.

(w) *Item 23*: *Receipts*. Include two copies of the following detachable acknowledgment of receipt in the following form as the last pages of the disclosure document:

(1) State the following:

Receipt

This disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If [name of franchisor] offers you a franchise, it must provide this disclosure document to you 14 calendar-days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

If [name of franchisor] does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, D.C. 20580 and [state agency].

(2) Disclose the name, principal business address, and telephone number of each franchise seller offering the franchise.

(3) State the issuance date.

(4) If not disclosed in paragraph (a) of this section, state the name and address of the franchisor's registered agent authorized to receive service of process.

(5) State the following:

I received a disclosure document dated _____ that included the following Exhibits:

(6) List the title(s) of all attached Exhibits.

(7) Provide space for the prospective franchisee's signature and date.

(8) Franchisors may include any specific instructions for returning the receipt (for example, street address, email address, facsimile telephone number).

Subpart D—Instructions

§ 436.6 Instructions for preparing disclosure documents.

(a) It is an unfair or deceptive act or practice in violation of Section 5 of the FTC Act for any franchisor to fail to include the information and follow the instructions for preparing disclosure documents set forth in Subpart C (basic disclosure requirements) and Subpart D (updating requirements) of part 436. The Commission will enforce this provision according to the standards of liability under Sections 5, 13(b), and 19 of the FTC Act.

(b) Disclose all required information clearly, legibly, and concisely in a single document using plain English. The disclosures must be in a form that permits each prospective franchisee to store, download, print, or otherwise maintain the document for future reference.

(c) Respond fully to each disclosure Item. If a disclosure Item is not applicable, respond negatively, including a reference to the type of information required to be disclosed by the Item. Precede each disclosure Item with the appropriate heading.

(d) Do not include any materials or information other than those required or permitted by part 436 or by state law not preempted by part 436. For the sole purpose of enhancing the prospective franchisee's ability to maneuver through an electronic version of a disclosure document, the franchisor may include scroll bars, internal links, and search features. All other features (*e.g.*, multimedia tools such as audio, video, animation, pop-up screens, or links to external information) are prohibited.

(e) Franchisors may prepare multi-state disclosure documents by including non-preempted, state-specific information in the text of the disclosure document or in Exhibits attached to the disclosure document.

(f) Subfranchisors shall disclose the required information about the franchisor, and, to the extent applicable, the same information concerning the subfranchisor.

(g) Before furnishing a disclosure document, the franchisor shall advise the prospective franchisee of the formats in which the disclosure document is made available, any prerequisites for obtaining the disclosure document in a particular format, and any conditions necessary for reviewing the disclosure document in a particular format.

(h) Franchisors shall retain, and make available to the Commission upon request, a sample copy of each materially different version of their disclosure documents for three years after the close of the fiscal year when it was last used.

(i) For each completed franchise sale, franchisors shall retain a copy of the signed receipt for at least three years.

§ 436.7 Instructions for updating disclosures.

(a) All information in the disclosure document shall be current as of the close of the franchisor's most recent fiscal year. After the close of the fiscal year, the franchisor shall, within 120 days, prepare a revised disclosure document, after which a franchise seller may distribute only the revised document and no other disclosure document.

(b) The franchisor shall, within a reasonable time after the close of each quarter of the fiscal year, prepare revisions to be attached to the disclosure document to reflect any material change to the disclosures included, or required to be included, in the disclosure document. Each prospective franchisee shall receive the disclosure document and the quarterly revisions for the most recent period available at the time of disclosure.

(c) If applicable, the annual update shall include the franchisor's first quarterly update, either by incorporating the quarterly update information into the disclosure document itself, or through an addendum.

(d) When furnishing a disclosure document, the franchise seller shall notify the prospective franchisee of any material changes that the seller knows or should have known occurred in the information contained in any financial performance representation made in Item 19 (section 436.5(s)).

(e) Information that must be audited pursuant to § 436.5(u) of this part need not be audited for quarterly revisions; provided, however, that the franchisor states in immediate conjunction with the information that such information was not audited.

Subpart E—Exemptions

§ 436.8 Exemptions.

(a) The provisions of part 436 shall not apply if the franchisor can establish any of the following:

(1) The total of the required payments, or commitments to make a required payment, to the franchisor or an affiliate that are made any time from before to within six months after commencing operation of the franchisee's business is less than $500.

(2) The franchise relationship is a fractional franchise.

(3) The franchise relationship is a leased department.

(4) The franchise relationship is covered by the Petroleum Marketing Practices Act, 15 U.S.C. 2801.

(5)(i) The franchisee's initial investment, excluding any financing received from the franchisor or an affiliate and excluding the cost of unimproved land, totals at least $1 million and the prospective franchisee signs an acknowledgment verifying the grounds for the exemption. The acknowledgment shall state: ''The franchise sale is for more than $1 million—excluding the cost of unimproved land and any financing received from the franchisor or an affiliate— and thus is exempted from the Federal Trade Commission's Franchise Rule disclosure requirements, pursuant to 16 CFR 436.8(a)(5)(i)'';[11] or

(ii) The franchisee (or its parent or any affiliates) is an entity that has been in business for at least five years and has a net worth of at least $5 million.

(6) One or more purchasers of at least a 50% ownership interest in the franchise: within 60 days of the sale, has been, for at least two years, an officer, director, general partner, individual with management responsibility for the offer and sale of the franchisor's franchises or the administrator of the franchised network; or within 60 days of the sale, has been, for at least two years, an owner of at least a 25% interest in the franchisor.

(7) There is no written document that describes any material term or aspect of the relationship or arrangement.

(b) For purposes of the exemptions set forth in this section, the Commission shall adjust the size of the monetary thresholds every fourth year based upon the Consumer Price Index. For purposes of this section, ''Consumer Price Index'' means the Consumer Price Index for all urban consumers published by the Department of Labor.

Subpart F—Prohibitions

§ 436.9 Additional prohibitions.

It is an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act for any franchise seller covered by part 436 to:

(a) Make any claim or representation, orally, visually, or in writing, that contradicts the information required to be disclosed by this part.

(b) Misrepresent that any person:

(1) Purchased a franchise from the franchisor or operated a franchise of the type offered by the franchisor.

[11] The large franchise exemption applies only if at least one individual prospective franchisee in an investor-group qualifies for the exemption by investing at the threshold level stated in this section.

(2) Can provide an independent and reliable report about the franchise or the experiences of any current or former franchisees.

(c) Disseminate any financial performance representations to prospective franchisees unless the franchisor has a reasonable basis and written substantiation for the representation at the time the representation is made, and the representation is included in Item 19 (§ 436.5(s)) of the franchisor's disclosure document. In conjunction with any such financial performance representation, the franchise seller shall also:

(1) Disclose the information required by §§ 436.5(s)(3)(ii)(B) and (E) of this part if the representation relates to the past performance of the franchisor's outlets.

(2) Include a clear and conspicuous admonition that a new franchisee's individual financial results may differ from the result stated in the financial performance representation.

(d) Fail to make available to prospective franchisees, and to the Commission upon reasonable request, written substantiation for any financial performance representations made in Item 19 (§ 436.5(s)).

(e) Fail to furnish a copy of the franchisor's disclosure document to a prospective franchisee earlier in the sales process than required under § 436.2 of this part, upon reasonable request.

(f) Fail to furnish a copy of the franchisor's most recent disclosure document and any quarterly updates to a prospective franchisee, upon reasonable request, before the prospective franchisee signs a franchise agreement.

(g) Present for signing a franchise agreement in which the terms and conditions differ materially from those presented as an attachment to the disclosure document, unless the franchise seller informed the prospective franchisee of the differences at least seven days before execution of the franchise agreement.

(h) Disclaim or require a prospective franchisee to waive reliance on any representation made in the disclosure document or in its exhibits or amendments. Provided, however, that this provision is not intended to prevent a prospective franchisee from voluntarily waiving specific contract terms and conditions set forth in his or her disclosure document during the course of franchise sale negotiations.

(i) Fail to return any funds or deposits in accordance with any conditions disclosed in the franchisor's disclosure document, franchise agreement, or any related document.

Subpart G—Other Provisions

§ 436.10 Other laws and rules.

(a) The Commission does not approve or express any opinion on the legality of any matter a franchisor may be required to disclose by part 436. Further, franchisors may have additional obligations to impart material information to prospective franchisees outside of the disclosure document under Section 5 of the Federal Trade Commission Act. The Commission intends to enforce all applicable statutes and rules.

(b) The FTC does not intend to preempt the franchise practices laws of any state or local government, except to the extent of any inconsistency with part 436. A law is not inconsistent with part 436 if it affords prospective franchisees equal or greater protection, such as registration of disclosure documents or more extensive disclosures.

§ 436.11 Severability.

If any provision of this part is stayed or held invalid, the remainder will stay in force.

Appendix A to Part 436—Sample Item 10 Table

SUMMARY OF FINANCING OFFERED

Item Financed	Source of Financing	Down Payment	Amount Financed	Term (Yrs)	Interest Rate	Monthly Payment	Prepay Penalty	Security Required	Liability Upon Default	Loss of Legal Right on Default
Initial Fee										
Land/Constr										
Leased Space										
Equip. Lease										
Equip. Purchase										
Opening Inventory										
Other Financing										

Appendix B to Part 436—Sample Item 20(1) Table

Systemwide Outlet Summary
For years 2004 to 2006

Column 1 Outlet Type	Column 2 Year	Column 3 Outlets at the Start of the Year	Column 4 Outlets at the End of the Year	Column 5 Net Change
Franchised	2004	859	1,062	+203

APPENDIX B TO PART 436—SAMPLE ITEM 20(1) TABLE—Continued

Systemwide Outlet Summary
For years 2004 to 2006

Column 1 Outlet Type	Column 2 Year	Column 3 Outlets at the Start of the Year	Column 4 Outlets at the End of the Year	Column 5 Net Change
	2005	1,062	1,296	+234
	2006	1,296	2,720	+1,424
Company Owned	2004	125	145	+20
	2005	145	76	-69
	2006	76	141	+65
Total Outlets	2004	984	1,207	+223
	2005	1,207	1,372	+165
	2006	1,372	2,861	+1,489

APPENDIX C TO PART 436—SAMPLE ITEM 20(2) TABLE

Transfers of Franchised Outlets from Franchisees to New Owners (other than the Franchisor)
For years 2004 to 2006

Column 1 State	Column 2 Year	Column 3 Number of Transfers
NC	2004	1
	2005	0
	2006	2
SC	2004	0
	2005	0
	2006	2
Total	2004	1
	2005	0
	2006	4

APPENDIX D TO PART 436—SAMPLE ITEM 20(3) TABLE

Status of Franchise Outlets
For years 2004 to 2006

Column 1 State	Column 2 Year	Column 3 Outlets at Start of Year	Column 4 Outlets Opened	Column 5 Termi-nations	Column 6 Non-Renew-als	Column 7 Reacquired by Franchisor	Column 8 Ceased Oper-ations-Other Reasons	Column 9 Outlets at End of the Year
AL	2004	10	2	1	0	0	1	10
	2005	11	5	0	1	0	0	15
	2006	15	4	1	0	1	2	15
AZ	2004	20	5	0	0	0	0	25
	2005	25	4	1	0	0	2	26
	2006	26	4	0	0	0	0	30
Totals	2004	30	7	1	0	0	1	35
	2005	36	9	1	1	0	2	41

APPENDIX D TO PART 436—SAMPLE ITEM 20(3) TABLE—Continued

Status of Franchise Outlets
For years 2004 to 2006

Column 1 State	Column 2 Year	Column 3 Outlets at Start of Year	Column 4 Outlets Opened	Column 5 Termi-nations	Column 6 Non-Renew-als	Column 7 Reacquired by Franchisor	Column 8 Ceased Oper-ations-Other Reasons	Column 9 Outlets at End of the Year
	2006	41	8	1	0	1	2	45

APPENDIX E TO PART 436—SAMPLE ITEM 20(4) TABLE

Status of Company-Owned Outlets
For years 2004 to 2006

Column 1 State	Column 2 Year	Column 3 Outlets at Start of Year	Column 4 Outlets Opened	Column 5 Outlets Reacquired From Franchisees	Column 6 Outlets Closed	Column 7 Outlets Sold to Franchisees	Column 8 Outlets at End of the Year
NY	2004	1	0	1	0	0	2
	2005	2	2	0	1	0	3
	2006	3	0	0	3	0	0
OR	2004	4	0	1	0	0	5
	2005	5	0	0	2	0	3
	2006	3	0	0	0	1	2
Totals	2004	5	0	2	0	0	7
	2005	7	2	0	3	0	6
	2006	6	0	0	3	1	2

APPENDIX F TO PART 436—SAMPLE ITEM 20(5) TABLE

Projected New Franchised Outlets
As of December 31, 2006

Column 1 State	Column 2 Franchise Agreements Signed But Outlet Not Opened	Column 3 Projected New Franchised Outlets in the Next Fiscal Year	Column 4 Projected New Company-Owned Outlets in the Current Fiscal Year
CO	2	3	1
NM	0	4	2
Total	2	7	3

■ Add a new part 437 as follows:

PART 437—DISCLOSURE REQUIREMENTS AND PROHIBITIONS CONCERNING BUSINESS OPPORTUNITIES

Sec.
437.1 The Rule.
437.2 Definitions.
437.3 Severability.

Authority: 15 U.S.C. 41-58.

§ 437.1 The Rule.

In connection with the advertising, offering, licensing, contracting, sale, or other promotion in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, of any business opportunity, or any relationship which is represented either orally or in writing to be a business opportunity, it is an unfair or deceptive act or practice within the meaning of Section 5 of that Act for any business opportunity seller or business opportunity broker:

(a) To fail to furnish any prospective business opportunity purchaser with the following information accurately, clearly, and concisely stated, in a legible, written document at the earlier of the ''time for making of disclosures'' or the first ''personal meeting'':

(1)(i) The official name and address and principal place of business of the business opportunity seller, and of the parent firm or holding company of the business opportunity seller, if any;

(ii) The name under which the business opportunity seller is doing or intends to do business; and

(iii) The trademarks, trade names, service marks, advertising or other commercial symbols (hereinafter collectively referred to as ''marks'') which identify the goods, commodities, or services to be offered, sold, or distributed by the prospective business opportunity purchaser, or under which

the prospective business opportunity purchaser will be operating.

(2) The business experience during the past 5 years, stated individually, of each of the business opportunity seller's current directors and executive officers (including, and hereinafter to include, the chief executive and chief operating officer, financial, business opportunity marketing, training and service officers). With regard to each person listed, those persons' principal occupations and employers must be included.

(3) The business experience of the business opportunity seller and the business opportunity seller's parent firm (if any), including the length of time each: (i) Has conducted a business of the type to be operated by the business opportunity purchaser; (ii) has offered or sold a business opportunity for such business; (iii) has conducted a business or offered or sold a business opportunity for a business (A) operating under a name using any mark set forth under paragraph (a)(1)(iii) of this section, or (B) involving the sale, offering, or distribution of goods, commodities, or services which are identified by any mark set forth under paragraph (a)(1)(iii) of this section; and (iv) has offered for sale or sold business opportunities in other lines of business, together with a description of such other lines of business.

(4) A statement disclosing who, if any, of the persons listed in paragraphs (a)(2) and (3) of this section:

(i) Has, at any time during the previous seven fiscal years, been convicted of a felony or pleaded nolo contendere to a felony charge if the felony involved fraud (including violation of any business opportunity law, or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade;

(ii) Has, at any time during the previous seven fiscal years, been held liable in a civil action resulting in a final judgment or has settled out of court any civil action or is a party to any civil action (A) involving allegations of fraud (including violation of any business opportunity law, or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade, or (B) which was brought by a present or former business opportunity purchaser or business opportunity purchasers and which involves or involved the business opportunity relationship; *Provided, however*, That only material individual civil actions need be so listed pursuant to this paragraph (4)(ii) of this section, including any group of civil actions which, irrespective of the materiality of any single such action, in the aggregate is material;

(iii) Is subject to any currently effective State or Federal agency or court injunctive or restrictive order, or is a party to a proceeding currently pending in which such order is sought, relating to or affecting business opportunity activities or the business opportunity seller-purchaser relationship, or involving fraud (including violation of any business opportunity law, or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade.

Such statement shall set forth the identity and location of the court or agency; the date of conviction, judgment, or decision; the penalty imposed; the damages assessed; the terms of settlement or the terms of the order; and the date, nature, and issuer of each such order or ruling. A business opportunity seller may include a summary opinion of counsel as to any pending litigation, but only if counsel's consent to the use of such opinion is included in the disclosure statement.

(5) A statement disclosing who, if any, of the persons listed in paragraphs (a)(2) and (3) of this section at any time during the previous 7 fiscal years has:

(i) Filed in bankruptcy;

(ii) Been adjudged bankrupt;

(iii) Been reorganized due to insolvency; or

(iv) Been a principal, director, executive officer, or partner of any other person that has so filed or was so adjudged or reorganized, during or within 1 year after the period that such person held such position in such other person. If so, the name and location of the person having so filed, or having been so adjudged or reorganized, the date thereof, and any other material facts relating thereto, shall be set forth.

(6) A factual description of the business opportunity offered to be sold by the business opportunity seller.

(7) A statement of the total funds which must be paid by the business opportunity purchaser to the business opportunity seller or to a person affiliated with the business opportunity seller, or which the business opportunity seller or such affiliated person imposes or collects in whole or in part on behalf of a third party, in order to obtain or commence the business opportunity operation, such as initial business opportunity fees, deposits, down payments, prepaid rent, and equipment and inventory purchases. If all or part of these fees or deposits are returnable under certain conditions, these conditions shall be set forth; and if not returnable, such fact shall be disclosed.

(8) A statement describing any recurring funds required to be paid, in connection with carrying on the business opportunity business, by the business opportunity purchaser to the business opportunity seller or to a person affiliated with the business opportunity seller, or which the business opportunity seller or such affiliated person imposes or collects in whole or in part on behalf of a third party, including, but not limited to, royalty, lease, advertising, training, and sign rental fees, and equipment or inventory purchases.

(9) A statement setting forth the name of each person (including the business opportunity seller) the business opportunity purchaser is directly or indirectly required or advised to do business with by the business opportunity seller, where such persons are affiliated with the business opportunity seller.

(10) A statement describing any real estate, services, supplies, products, inventories, signs, fixtures, or equipment relating to the establishment or the operation of the business opportunity business which the business opportunity purchaser is directly or indirectly required by the business opportunity seller to purchase, lease or rent; and if such purchases, leases or rentals must be made from specific persons (including the business opportunity seller), a list of the names and addresses of each such person. Such list may be made in a separate document delivered to the prospective business opportunity purchaser with the prospectus if the existence of such separate document is disclosed in the prospectus.

(11) A description of the basis for calculating, and, if such information is readily available, the actual amount of, any revenue or other consideration to be received by the business opportunity seller or persons affiliated with the business opportunity seller from suppliers to the prospective business opportunity purchaser in consideration for goods or services which the business opportunity seller requires or advises the business opportunity purchaser to obtain from such suppliers.

(12)(i) A statement of all the material terms and conditions of any financing arrangement offered directly or indirectly by the business opportunity seller, or any person affiliated with the business opportunity seller, to the prospective business opportunity purchaser; and

(ii) A description of the terms by which any payment is to be received by the business opportunity seller from (A) any person offering financing to a prospective business opportunity purchaser; and (B) any person arranging for financing for a prospective business opportunity purchaser.

(13) A statement describing the material facts of whether, by the terms of the business opportunity agreement or other device or practice, the business opportunity purchaser is:

(i) Limited in the goods or services he or she may offer for sale;

(ii) Limited in the customers to whom he or she may sell such goods or services;

(iii) Limited in the geographic area in which he or she may offer for sale or sell goods or services; or

(iv) Granted territorial protection by the business opportunity seller, by which, with respect to a territory or area, (A) the business opportunity seller will not establish another, or more than any fixed number of, business opportunities or company-owned outlets, either operating under, or selling, offering, or distributing goods, commodities or services, identified by any mark set forth under paragraph (a)(1)(iii) of this section; or (B) the business opportunity seller or its parent will not establish other business opportunities or company-owned outlets selling or leasing the same or similar products or services under a different trade name, trademark, service mark, advertising or other commercial symbol.

(14) A statement of the extent to which the business opportunity seller requires the business opportunity purchaser (or, if the business opportunity purchaser is a corporation, any person affiliated with the business opportunity purchaser) to participate personally in the direct operation of the business opportunity.

(15) A statement disclosing, with respect to the business opportunity agreement and any related agreements:

(i) The term (*i.e.*, duration of arrangement), if any, of such agreement, and whether such term is or may be affected by any agreement (including leases or subleases) other than the one from which such term arises;

(ii) The conditions under which the business opportunity purchaser may renew or extend;

(iii) The conditions under which the business opportunity seller may refuse to renew or extend;

(iv) The conditions under which the business opportunity purchaser may terminate;

(v) The conditions under which the business opportunity seller may terminate;

(vi) the obligations (including lease or sublease obligations) of the business opportunity purchaser after termination of the business opportunity by the business opportunity seller, and the obligations of the business opportunity purchaser (including lease or sublease obligations) after termination of the business opportunity by the business opportunity purchaser and after the expiration of the business opportunity;

(vii) The business opportunity purchaser's interest upon termination of the business opportunity, or upon refusal to renew or extend the business opportunity, whether by the business opportunity seller or by the business opportunity purchaser;

(viii) The conditions under which the business opportunity seller may repurchase, whether by right of first refusal or at the option of the business opportunity seller (and if the business opportunity seller has the option to repurchase the business opportunity, whether there will be an independent appraisal of the business opportunity, whether the repurchase price will be determined by a predetermined formula and whether there will be a recognition of goodwill or other intangibles associated therewith in the repurchase price to be given the business opportunity purchaser);

(ix) The conditions under which the business opportunity purchaser may sell or assign all or any interest in the ownership of the business opportunity, or of the assets of the business opportunity business;

(x) The conditions under which the business opportunity seller may sell or assign, in whole or in part, its interest under such agreements;

(xi) The conditions under which the business opportunity purchaser may modify;

(xii) The conditions under which the business opportunity seller may modify;

(xiii) The rights of the business opportunity purchaser's heirs or personal representative upon the death or incapacity of the business opportunity purchaser; and

(xiv) The provisions of any covenant not to compete.

(16) A statement disclosing, with respect to the business opportunity seller and as to the particular named business being offered:

(i) The total number of business opportunity purchasers operating at the end of the preceding fiscal year;

(ii) The total number of company-owned outlets operating at the end of the preceding fiscal year;

(iii) The names, addresses, and telephone numbers of (A) The 10 business opportunity outlets of the named business opportunity business nearest the prospective business opportunity purchaser's intended location; or (B) all business opportunity purchasers of the business opportunity seller; or (C) all business opportunity purchasers of the business opportunity seller in the State in which the prospective business opportunity purchaser lives or where the proposed business opportunity is to be located, *Provided, however*, That there are more than 10 such business opportunity purchasers. If the number of business opportunity purchasers to be disclosed pursuant to paragraph (a)(16)(iii)(B) or (C) of this section exceeds 50, such listing may be made in a separate document delivered to the prospective business opportunity purchaser with the prospectus if the existence of such separate document is disclosed in the prospectus;

(iv) The number of business opportunities voluntarily terminated or not renewed by business opportunity purchasers within, or at the conclusion of, the term of the business opportunity agreement, during the preceding fiscal year;

(v) The number of business opportunities reacquired by purchase by the business opportunity seller during the term of the business opportunity agreement, and upon the conclusion of the term of the business opportunity agreement, during the preceding fiscal year;

(vi) The number of business opportunities otherwise reacquired by the business opportunity seller during the term of the business opportunity agreement, and upon the conclusion of the term of the business opportunity agreement, during the preceding fiscal year;

(vii) The number of business opportunities for which the business opportunity seller refused renewal of the business opportunity agreement or other agreements relating to the business opportunity during the preceding fiscal year; and

(viii) The number of business opportunities that were canceled or terminated by the business opportunity seller during the term of the business opportunity agreement, and upon conclusion of the term of the business opportunity agreement, during the preceding fiscal year.

With respect to the disclosures required by paragraphs (a)(16) (v), (vi), (vii), and (viii) of this section, the disclosure statement shall also include a general categorization of the reasons

for such reacquisitions, refusals to renew or terminations, and the number falling within each such category, including but not limited to the following: failure to comply with quality control standards, failure to make sufficient sales, and other breaches of contract.

(17)(i) If site selection or approval thereof by the business opportunity seller is involved in the business opportunity relationship, a statement disclosing the range of time that has elapsed between signing of business opportunity agreements or other agreements relating to the business opportunity and site selection, for agreements entered into during the preceding fiscal year; and

(ii) If operating business opportunity outlets are to be provided by the business opportunity seller, a statement disclosing the range of time that has elapsed between the signing of business opportunity agreements or other agreements relating to the business opportunity and the commencement of the business opportunity purchaser's business, for agreements entered into during the preceding fiscal year.

With respect to the disclosures required by paragraphs (a)(17) (i) and (ii) of this section, a business opportunity seller may at its option also provide a distribution chart using meaningful classifications with respect to such ranges of time.

(18) If the business opportunity seller offers an initial training program or informs the prospective business opportunity purchaser that it intends to provide such person with initial training, a statement disclosing:

(i) The type and nature of such training;

(ii) The minimum amount, if any, of training that will be provided to a business opportunity purchaser; and

(iii) The cost, if any, to be borne by the business opportunity purchaser for the training to be provided, or for obtaining such training.

(19) If the name of a public figure is used in connection with a recommendation to purchase a business opportunity, or as a part of the name of the business opportunity operation, or if the public figure is stated to be involved with the management of the business opportunity seller, a statement disclosing:

(i) The nature and extent of the public figure's involvement and obligations to the business opportunity seller, including but not limited to the promotional assistance the public figure will provide to the business opportunity seller and to the business opportunity purchaser;

(ii) The total investment of the public figure in the business opportunity operation; and

(iii) The amount of any fee or fees the business opportunity purchaser will be obligated to pay for such involvement or assistance provided by the public figure.

(20)(i) A balance sheet (statement of financial position) for the business opportunity seller for the most recent fiscal year, and an income statement (statement of results of operations) and statement of changes in financial position for the franchisor for the most recent three fiscal years. Such statements are required to have been examined in accordance with generally accepted auditing standards by an independent certified or licensed public accountant.

Provided, however, That where a business opportunity seller is a subsidiary of another corporation which is permitted under generally accepted accounting principles to prepare financial statements on a consolidated or combined statement basis, the above information may be submitted for the parent if (A) the corresponding unaudited financial statements of the business opportunity seller are also provided, and (B) the parent absolutely and irrevocably has agreed to guarantee all obligations of the subsidiary;

(ii) Unaudited statements shall be used only to the extent that audited statements have not been made, and provided that such statements are accompanied by a clear and conspicuous disclosure that they are unaudited. Statements shall be prepared on an audited basis as soon as practicable, but, at a minimum, financial statements for the first full fiscal year following the date on which the business opportunity seller must first comply with this part shall contain a balance sheet opinion prepared by an independent certified or licensed public accountant, and financial statements for the following fiscal year shall be fully audited.

(21) All of the foregoing information in paragraphs (a) (1) through (20) of this section shall be contained in a single disclosure statement or prospectus, which shall not contain any materials or information other than that required by this part or by State law not preempted by this part. This does not preclude business opportunity sellers or brokers from giving other nondeceptive information orally, visually, or in separate literature so long as such information is not contradictory to the information in the disclosure statement required by paragraph (a) of this section. This disclosure statement shall carry a cover sheet distinctively and conspicuously showing the name of the business opportunity seller, the date of issuance of the disclosure statement, and the following notice imprinted thereon in upper and lower case boldface type of not less than 12 point size:

Information for Prospective Business Opportunity Purchasers Required by Federal Trade Commission

* * * * *

To protect you, we've required your business opportunity seller to give you this information. We haven't checked it, and don't know if it's correct. It should help you make up your mind. Study it carefully. While it includes some information about your contract, don't rely on it alone to understand your contract. Read all of your contract carefully. Buying a business opportunity is a complicated investment. Take your time to decide. If possible, show your contract and this information to an advisor, like a lawyer or an accountant. If you find anything you think may be wrong or anything important that's been left out, you should let us know about it. It may be against the law.

There may also be laws on business opportunities in your state. Ask your state agencies about them.

Federal Trade Commission,
Washington, D.C.

Provided, That the obligations to furnish such disclosure statement shall be deemed to have been met for both the business opportunity seller and the business opportunity broker if either such party furnishes the prospective business opportunity purchaser with such disclosure statement.

(22) All information contained in the disclosure statement shall be current as of the close of the business opportunity seller's most recent fiscal year. After the close of each fiscal year, the business opportunity seller shall be given a period not exceeding 90 days to prepare a revised disclosure statement and, following such 90 days, may distribute only the revised prospectus and no other. The business opportunity seller shall, within a reasonable time after the close of each quarter of the fiscal year, prepare revisions to be attached to the disclosure statement to reflect any material change in the business opportunity seller or relating to the business opportunity business of the business opportunity seller, about which the business opportunity seller or broker, or any agent, representative, or employee thereof, knows or should know. Each prospective business opportunity purchaser shall have in his or her possession at the ''time for making of disclosures,'' the disclosure statement and quarterly revision for the period most recent to the ''time for making of disclosures'' and available at

that time. Information which is required to be audited pursuant to paragraph (a)(20) of this section is not required to be audited for quarterly revisions. *Provided, however*, That the unaudited information is accompanied by a statement in immediate conjunction therewith that clearly and conspicuously discloses that such information has not been audited.

(23) A table of contents shall be included within the disclosure statement.

(24) The disclosure statement shall include a comment which either positively or negatively responds to each disclosure item required to be in the disclosure statement, by use of a statement which fully incorporates the information required by the item. Each disclosure item therein must be preceded by the appropriate heading, as set forth in Note 3 of this part.

(b) To make any oral, written, or visual representation to a prospective business opportunity purchaser which states a specific level of potential sales, income, gross or net profit for that prospective business opportunity purchaser, or which states other facts which suggest such a specific level, unless:

(1) At the time such representation is made, such representation is relevant to the geographic market in which the business opportunity is to be located;

(2) At the time such representation is made, a reasonable basis exists for such representation and the business opportunity seller has in its possession material which constitutes a reasonable basis for such representation, and such material is made available to any prospective business opportunity purchaser and to the Commission or its staff upon reasonable demand.

Provided, further, That in immediate conjunction with such representation, the business opportunity seller shall disclose in a clear and conspicuous manner that such material is available to the prospective business opportunity purchaser; and *Provided, however*, That no provision within paragraph (b) of this section shall be construed as requiring the disclosure to any prospective business opportunity purchaser of the identity of any specific business opportunity purchaser or of information reasonably likely to lead to the disclosure of such person's identity; and *Provided, further*, That no additional representation as to a prospective business opportunity purchaser's potential sales, income, or profits may be made later than the ''time for making of disclosures'';

(3) Such representation is set forth in detail along with the material bases and assumptions therefor in a single legible written document whose text accurately, clearly and concisely discloses such information, and none other than that provided for by this part or by State law not preempted by this part. Each prospective business opportunity purchaser to whom the representation is made shall be furnished with such document no later than the ''time for making of disclosure''; *Provided, however*, That if the representation is made at or prior to a ''personal meeting'' and such meeting occurs before the ''time for making of disclosures'', the document shall be furnished to the prospective business opportunity purchaser to whom the representation is made at that ''personal meeting'';

(4) The following statement is clearly and conspicuously disclosed in the document described by paragraph (b)(3) of this section in immediate conjunction with such representation and in not less than twelve point upper and lower-case boldface type:

CAUTION

These figures are only estimates of what we think you may earn. There is no assurance you'll do as well. If you rely upon our figures, you must accept the risk of not doing as well.

(5) The following information is clearly and conspicuously disclosed in the document described by paragraph (b)(3) of this section in immediate conjunction with such representation:

(i) The number and percentage of outlets of the named business opportunity business which are located in the geographic markets that form the basis for any such representation and which are known to the business opportunity seller or broker to have earned or made at least the same sales, income, or profits during a period of corresponding length in the immediate past as those potential sales, income, or profits represented; and

(ii) The beginning and ending dates for the corresponding time period referred to by paragraph (b)(5)(i) of this section, *Provided, however*, That any business opportunity seller without prior business opportunity experience as to the named business opportunity business so indicate such lack of experience in the document described in paragraph (b)(3) of this section.

Except, That representations of the sales, income or profits of existing business opportunity outlets need not comply with paragraph (b) of this section.

(c) To make any oral, written, or visual representation to a prospective business opportunity purchaser which states a specific level of sales, income, gross or net profits of existing outlets (whether business opportunity purchaser-owned or company-owned) of the named business opportunity business, or which states other facts which suggest such a specific level, unless:

(1) At the time such representation is made, such representation is relevant to the geographic market in which the business opportunity is to be located;

(2) At the time such representation is made, a reasonable basis exists for such representation and the business opportunity seller has in its possession material which constitutes a reasonable basis for such representation, and such material is made available to any prospective business opportunity purchaser and to the Commission or its staff upon reasonable demand, *Provided, however*, That in immediate conjunction with such representation, the business opportunity purchaser discloses in a clear and conspicuous manner that such material is available to the prospective franchisee; and *Provided, further*, That no provision within paragraph (c) of this section shall be construed as requiring the disclosure to any prospective business opportunity purchaser of the identity of any specific business opportunity purchaser or of information reasonably likely to lead to the disclosure of such person's identity; and *Provided, further*, That no additional representation as to the sales, income, or gross or net profits of existing outlets (whether business opportunity purchaser-owned or company-owned) of the named business opportunity business may be made later than the ''time for making of disclosures'';

(3) Such representation is set forth in detail along with the material bases and assumptions therefor in a single legible written document which accurately, clearly and concisely discloses such information, and none other than that provided for by this part or by State law not preempted by this part. Each prospective business opportunity purchaser to whom the representation is made shall be furnished with such document no later than the ''time for making of disclosures,'' *Provided, however*, That if the representation is made at or prior to a ''personal meeting'' and such meeting occurs before the ''time for making of disclosures,'' the document shall be furnished to the prospective business opportunity purchaser to whom the representation is made at that ''personal meeting'';

(4) The underlying data on which the representation is based have been

prepared in accordance with generally accepted accounting principles;

(5) The following statement is clearly and conspicuously disclosed in the document described by paragraph (c)(3) of this section in immediate conjunction with such representation, and in not less than twelve point upper and lower case boldface type:

CAUTION

Some outlets have [sold] [earned] this amount. There is no assurance you'll do as well. If you rely upon our figures, you must accept the risk of not doing as well.

(6) The following information is clearly and conspicuously disclosed in the document described by paragraph (c)(3) of this section in immediate conjunction with such representation:

(i) the number and percentage of outlets of the named business opportunity business which are located in the geographic markets that form the basis for any such representation and which are known to the business opportunity seller or broker to have earned or made at least the same sales, income, or profits during a period of corresponding length in the immediate past as those potential sales, income, or profits represented; and

(ii) The beginning and ending dates for the corresponding time period referred to by paragraph (c)(6)(i) of this section, *Provided, however*, That any business opportunity seller without prior business opportunity experience as to the named business opportunity business so indicate such lack of experience in the document described in paragraph (c)(3) of this section.

(d) To fail to provide the following information within the document(s) required by paragraphs (b)(3) and (c)(3) of this section whenever any representation is made to a prospective business opportunity purchaser regarding its potential sales, income, or profits, or the sales, income, gross or net profits of existing outlets (whether business opportunity purchaser-owned or company-owned) of the named business opportunity business:

(1) A cover sheet distinctively and conspicuously showing the name of the business opportunity seller, the date of issuance of the document and the following notice imprinted thereon in upper and lower case boldface type of not less than twelve point size:

Information for Prospective Business Opportunity Purchasers About Business Opportunity [Sales] [Income] [Profit] Required by the Federal Trade Commission.

To protect you, we're required the business opportunity seller to give you this information. We haven't checked it and don't know if it's correct. Study these facts and figures carefully. If possible, show them to someone who can advise you, like a lawyer or an accountant. Then take your time and think it over.

If you find anything you think may be wrong or anything important that's been left out, let us know about it. It may be against the law.

There may also be laws on business opportunities in your State. Ask your State agencies about them.

Federal Trade Commission,
Washington, D.C.

(2) A table of contents.

Provided, however, That each prospective business opportunity purchaser to whom the representation is made shall be notified at the ''time for making of disclosures'' of any material change (about which the business opportunity seller, broker, or any of the agents, representations, or employees thereof, knows or should know) in the information contained in the document(s) described by paragraphs (b)(3) and (c)(3) of this section.

(e) To make any oral, written, or visual representation for general dissemination (not otherwise covered by paragraph (b) or (c) of this section) which states a specific level of sales, income, gross or net profits, either actual or potential, of existing or prospective outlets (whether business opportunity purchaser-owned or company-owned) of the named business opportunity business or which states other facts which suggest such a specific level, unless:

(1) At the time such representation is made, a reasonable basis exists for such representation and the business opportunity seller has in its possession material which constitutes a reasonable basis for such representation and which is made available to the Commission or its staff upon reasonable demand;

(2) The underlying data on which each representation of sales, income or profit for existing outlets is based have been prepared in accordance with generally accepted accounting principles;

(3) In immediate conjunction with such representation, there shall be clearly and conspicuously disclosed the number and percentage of outlets of the named business opportunity business which the business opportunity seller or broker knows to have earned or made at least the same sales, income, or profits during a period of corresponding length in the immediate past as those sales, income, or profits represented, and the beginning and ending dates for said time period;

(4) In immediate conjunction with each such representation of potential sales, income or profits, the following statement shall be clearly and conspicuously disclosed:

CAUTION

These figures are only estimates; there is no assurance you'll do as well. If you rely upon our figures, you must accept the risk of not doing as well.

Provided, however, That if such representation is not based on actual experience of existing outlets of the named business opportunity business, that fact also should be disclosed;

(5) No later than the earlier of the first ''personal meeting'' or the ''time for making of disclosures,'' each prospective business opportunity purchaser shall be given a single, legible written document which accurately, clearly and concisely sets forth the following information and materials (and none other than that provided for by this part or by State law not preempted by this part):

(i) The representation, set forth in detail along with the material bases and assumptions therefor;

(ii) the number and percentage of outlets of the named business opportunity business which the business opportunity seller or broker knows to have earned or made at least the same sales, income or profits during a period of corresponding length in the immediate past as those sales, income, or profits represented, and the beginning and ending dates for said time period;

(iii) With respect to each such representation of sales, income, or profits of existing outlets, the following statement shall be clearly and conspicuously disclosed in immediate conjunction therewith, printed in not less than 12 point upper and lower case boldface type:

CAUTION

Some outlets have [sold] [earned] this amount. There is no assurance you'll do as well. If you rely upon our figures, you must accept the risk of not doing as well.

(iv) With respect to each such representation of potential sales, income, or profits, the following statement shall be clearly and conspicuously disclosed in immediate conjunction therewith, printed in not less than 12 point upper and lower case boldface type:

CAUTION

These figures are only estimates. There is no assurance you'll do as well. If you rely upon our figures, you must accept the risk of not doing as well.

(v) If applicable, a statement clearly and conspicuously disclosing that the business opportunity seller lacks prior

business opportunity experience as to the named business opportunity business;

(vi) If applicable, a statement clearly and conspicuously disclosing that the business opportunity seller has not been in business long enough to have actual business data;

(vii) A cover sheet, distinctively and conspicuously showing the name of the business opportunity seller, the date of issuance of the document, and the following notice printed thereon in not less than 12 point upper and lower case boldface type:

Information for Prospective Business Opportunity Purchasers About Business Opportunity [Sales] [Income] [Profit] Required by the Federal Trade Commission

To protect you, we've required the business opportunity seller to give you this information. We haven't checked it and don't know if it's correct. Study these facts and figures carefully. If possible, show them to someone who can advise you, like a lawyer or an accountant. If you find anything you think may be wrong or anything important that's been left out, let us know about it. It may be against the law. There may also be laws about business opportunities in your State. Ask your State agencies about them.

Federal Trade Commission,
Washington, D.C.

(viii) A table of contents;

(6) Each prospective business opportunity purchaser shall be notified at the ''time for making of disclosures'' of any material changes that have occurred in the information contained in this document.

(f) To make any claim or representation which is contradictory to the information required to be disclosed by this part.

(g) To fail to furnish the prospective business opportunity purchaser with a copy of the business opportunity seller's business opportunity agreement and related agreements with the document, and a copy of the completed business opportunity and related agreements intended to be executed by the parties at least 5 business days prior to the date the agreements are to be executed.

Provided, however, That the obligations defined in paragraphs (b) through (g) of this section shall be deemed to have been met for both the business opportunity seller and the broker if either such person furnishes the prospective business opportunity purchaser with the written disclosures required thereby.

(h) To fail to return any funds or deposits in accordance with any conditions disclosed pursuant to paragraph (a)(7) of this section.

§ 437.2 Definitions.

As used in this part, the following definitions shall apply:

(a) The term *business opportunity* means any continuing commercial relationship created by any arrangement or arrangements whereby:

(1) A person (hereinafter ''business opportunity purchaser'') offers, sells, or distributes to any person other than a ''business opportunity seller'' (as hereinafter defined), goods, commodities, or services which are:

(i)(A) Supplied by another person (hereinafter ''business opportunity seller''); or

(B) Supplied by a third person (e.g., a supplier) with whom the business opportunity purchaser is directly or indirectly required to do business by another person (hereinafter ''business opportunity seller''); or

(C) Supplied by a third person (e.g., a supplier) with whom the business opportunity purchaser is directly or indirectly advised to do business by another person (hereinafter ''business opportunity seller'') where such third person is affiliated with the business opportunity seller; and

(ii) The business opportunity seller:

(A) Secures for the business opportunity purchaser retail outlets or accounts for said goods, commodities, or services; or

(B) Secures for the business opportunity purchaser locations or sites for vending machines, rack displays, or any other product sales displays used by the business opportunity purchaser in the offering, sale, or distribution of said goods, commodities, or services; or

(C) Provides to the business opportunity purchaser the services of a person able to secure the retail outlets, accounts, sites or locations referred to in paragraphs (a)(ii)(A) and (B) of this section; and

(2) The business opportunity purchaser is required as a condition of obtaining or commencing the business opportunity operation to make a payment or a commitment to pay to the business opportunity seller, or to a person affiliated with the business opportunity seller.

(3) Exemptions. The provisions of this part shall not apply to a business opportunity:

(i) Which is a ''fractional business opportunity''; or

(ii) Where pursuant to a lease, license, or similar agreement, a person offers, sells, or distributes goods, commodities, or services on or about premises occupied by a retailer-grantor primarily for the retailer-grantor's own merchandising activities, which goods, commodities, or services are not purchased from the retailer-grantor or persons whom the lessee is directly or indirectly (A) required to do business with by the retailer-grantor or (B) advised to do business with by the retailer-grantor where such person is affiliated with the retailer-grantor; or

(iii) Where the total of the payments referred to in paragraph (a)(2) of this section made during a period from any time before to within 6 months after commencing operation of the business opportunity purchaser's business, is less than $500; or

(iv) Where there is no writing which evidences any material term or aspect of the relationship or arrangement; or

(v) Which complies with the franchise disclosure requirements set forth at part 436 or falls under one or more of the exemptions set forth at § 436.8 of part 436.

(4) Exclusions. The term ''business opportunity'' shall not be deemed to include any continuing commercial relationship created solely by:

(i) The relationship between an employer and an employee, or among general business partners; or

(ii) Membership in a bona fide ''cooperative association''; or

(iii) An agreement for the use of a trademark, service mark, trade name, seal, advertising, or other commercial symbol designating a person who offers on a general basis, for a fee or otherwise, a bona fide service for the evaluation, testing, or certification of goods, commodities, or services; or

(iv) An agreement between a licensor and a single licensee to license a trademark, trade name, service mark, advertising or other commercial symbol where such license is the only one of its general nature and type to be granted by the licensor with respect to that trademark, trade name, service mark, advertising, or other commercial symbol.

(4) Any relationship which is represented either orally or in writing to be a business opportunity (as defined in paragraph (a) of this section) is subject to the requirements of this part.

(b) The term *person* means any individual, group, association, limited or general partnership, corporation, or any other business entity.

(c) The term *business opportunity seller* means any person who participates in a business opportunity relationship as a business opportunity seller, as denoted in paragraph (a) of this section.

(d) The term *business opportunity purchaser* means any person (1) who participates in a business opportunity relationship as a business opportunity purchaser, as denoted in paragraph (a)

of this section, or (2) to whom an interest in a business opportunity is sold.

(e) The term *prospective business opportunity purchaser* includes any person, including any representative, agent, or employee of that person, who approaches or is approached by a business opportunity seller or broker, or any representative, agent, or employee thereof, for the purpose of discussing the establishment, or possible establishment, of a business opportunity relationship involving such a person.

(f) The term *business day* means any day other than Saturday, Sunday, or the following national holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving, and Christmas.

(g) The term *time for making of disclosures* means ten (10) business days prior to the earlier of (1) the execution by a prospective business opportunity purchaser of any business opportunity agreement or any other agreement imposing a binding legal obligation on such prospective business opportunity purchaser, about which the business opportunity seller, broker, or any agent, representative, or employee thereof, knows or should know, in connection with the sale or proposed sale of a business opportunity, or (2) the payment by a prospective business opportunity purchaser, about which the business opportunity seller, broker, or any agent, representative, or employee thereof, knows or should know, of any consideration in connection with the sale or proposed sale of a business opportunity.

(h) The term *fractional business opportunity* means any relationship, as denoted by paragraph (a) of this section, in which the person described therein as a business opportunity purchaser, or any of the current directors or executive officers thereof, has been in the type of business represented by the business opportunity relationship for more than 2 years and the parties anticipated, or should have anticipated, at the time the agreement establishing the business opportunity relationship was reached, that the sales arising from the relationship would represent no more than 20 percent of the sales in dollar volume of the business opportunity purchaser.

(i) The term *affiliated person* means a person (as defined in paragraph (b) of this section):

(1) Which directly or indirectly controls, is controlled by, or is under common control with, a business opportunity seller; or

(2) Which directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of a business opportunity seller; or

(3) Which has, in common with a business opportunity seller, one or more partners, officers, directors, trustees, branch managers, or other persons occupying similar status or performing similar functions.

(j) The term *business opportunity broker* means any person other than a business opportunity seller or a business opportunity purchaser who sells, offers for sale, or arranges for the sale of a business opportunity.

(k) The term *sale of a business opportunity* includes a contract or agreement whereby a person obtains a business opportunity or an interest in a business opportunity for value by purchase, license, or otherwise. This term shall not be deemed to include the renewal or extension of an existing business opportunity where there is no interruption in the operation of the business opportunity business by the business opportunity purchaser, unless the new contracts or agreements contain material changes from those in effect between the business opportunity seller and business opportunity purchaser prior thereto.

(l) A *cooperative association* is either (1) an association of producers of agricultural products authorized by section 1 of the Capper-Volstead Act, 7 U.S.C. 291; or (2) an organization operated on a cooperative basis by and for independent retailers which wholesales goods or furnishes services primarily to its member-retailers.

(m) The term *fiscal year* means the business opportunity seller's fiscal year.

(n) The term *material*, *material fact*, and *material change* shall include any fact, circumstance, or set of conditions that has a substantial likelihood of influencing a reasonable business opportunity purchaser in the making of a significant decision relating to a named business opportunity business or that has any significant financial impact on a business opportunity purchaser or prospective business opportunity purchaser.

(o) The term *personal meeting* means a face-to-face meeting between a business opportunity seller or broker (or any agent, representative, or employee thereof) and a prospective business opportunity purchaser which is held for the purposes of discussing the sale or possible sale of a business opportunity.

§ 437.3 Severability.

If any provision of this part or its application to any person, act, or practice is held invalid, the remainder of the part or the application of its provisions to any person, act, or practice shall not be affected thereby.

Note 1: The Commission expresses no opinion as to the legality of any practice mentioned in this part. A provision for disclosure should not be construed as condonation or approval with respect to the matter required to be disclosed, nor as an indication of the Commission's intention not to enforce any applicable statute.

Note 2: By taking action in this area, the Federal Trade Commission does not intend to annul, alter, affect, or exempt any person subject to the provisions of this part from complying with the laws or regulations of any State, municipality, or other local government with respect to business opportunity practices, except to the extent that those laws or regulations are inconsistent with any provision of this part, and then only to the extent of the inconsistency. For the purposes of this part, a law or regulation of any State, municipality, or other local government is not inconsistent with this part if the protection such law or regulation affords any prospective business opportunity purchaser is equal to or greater than that provided by this part. Examples of provisions that provide protection equal to or greater than that provided by this part include laws or regulations which require more complete record keeping by the business opportunity seller or the disclosure of more complete information to the business opportunity purchaser.

Note 3: [As per § 437.1(a)(24) of this part]:

DISCLOSURE STATEMENT

Pursuant to 16 CFR 437.1 et seq., a Trade Regulation Rule of the Federal Trade Commission regarding Disclosure Requirements and Prohibitions Concerning Business Opportunities, the following information is set forth on [name of business opportunity seller] for your examination:

1. Identifying information as to the business opportunity seller;
2. Business experience of the business opportunity seller's directors and executive officers.
3. Business experience of the business opportunity seller.
4. Litigation history.
5. Bankruptcy history.
6. Description of business opportunity.
7. Initial funds required to be paid by a business opportunity purchaser.
8. Recurring funds required to be paid by a business opportunity purchaser.
9. Affiliated persons the business opportunity purchaser is required or advised to do business with by the business opportunity seller.
10. Obligations to purchase.
11. Revenues received by the business opportunity seller in consideration of purchases by a business opportunity purchaser.
12. Financing arrangements.
13. Restriction on sales.

14. Person participation required of the business opportunity purchaser in the operation of the business opportunity.
15. Termination, cancellation, and renewal of the business opportunity.
16. Statistical information concerning the number of business opportunity purchasers (and company-owned outlets).
17. Site selection.
18. Training programs.
19. Public figure involvement in the business opportunity.
20. Financial information concerning the business opportunity seller.

By direction of the Commission.

Donald S. Clark,

Secretary.

Note: Attachment A is published for information purposes only and will not be codified in Title 16 of the Code of Federal Regulations.

ATTACHMENT A.

TABLE OF COMMENTERS

Rule Review Commenters

RR 1. Robert E. Mulloy, Jr. (''Mulloy'')
RR 2. Stanley M. Dub, Dworken & Bernstein (''Dub'')
RR 3. Marvin J. Migdol, Nationwide Franchise Marketing Services (''Migdol'')
RR 4. SCPromotions, Inc. (''SCPromotions'')
RR 5. R. Dana Pennell (''Pennell'')
RR 6. Robin Day Glenn (''Glenn'')
RR 7. Jack McBirney, McGrow Consulting (''McBirney'')
RR 8. SRA International (''SRA International'')
RR 9. Harold Brown, Brown & Stadfeld (''Brown'')
RR 10. Ronald N. Rosenwasser (''Rosenwasser'')
RR 11. Louis F. Sokol (''Sokol'')
RR 12. J. Howard Beales III, Professor, George Washington University (''Beales'')
RR 13. Peter Lagarias (''Lagarias'')
RR 14. Harold L. Kestenbaum (''Kestenbaum'')
RR 15. Walter D. Wilson, Better Business Bureau of Central Georgia, Inc. (''Wilson'')
RR 16. Connie B. D'Imperio, Color Your Carpet, Inc. (''D'Imperio'')
RR 17. Q.M. Marketing, Inc (''Q.M. Marketing'')
RR 18. David Gurnick, Kindel & Anderson (''Gurnick'')
RR 19. U-Save Auto Rental (''U-Save Auto Rental'')
RR 20. The Longaberger Co. (''Longaberger'')
RR 21. Direct Selling Association (''DSA'')
RR 22. American Bar Association, Section on Antitrust Law (''ABA AT'')
RR 23. Dennis E. Wieczorek, Rudnick & Wolfe (''Wieczorek'')
RR 24. Real Estate National Nework (''RENN'')
RR 25. Attorney General Jim Ryan (''General Ryan''), State of Illinois
RR 26. Alan S. Nopar (''Nopar'')
RR 27. Snap-On, Inc. (''Snap-On'')
RR 28. Steven Rabenberg, Explore St. Louis (''Rabenberg'')
RR 29. Douglas M. Brooks, Martland & Brooks (''Brooks'')
RR 30. Robert N. McDonald (''Commissioner McDonald''), Securities Commissioner, State of Maryland
RR 31. Little Ceasars (''Little Ceasars'')
RR 32. International Franchise Association (''IFA'')
RR 33. Brownstein, Zeidman & Lore (''Brownstein Zeidman'')
RR 34. Jere W. Glover (''Glover''), Counsel for Advocacy, U.S. Small Business Administration (''SBA Advocacy'')
RR 35. Jan Meyers, Chair, House Committee on Small Business (''Representative Myers'')
RR 36. Neil A. Simon, Hogan and Hartson (''Simon'')
RR 37. Deborah Bortner (''Bortner''), Washington State Department of Financial Institutions, Securities Division
RR 38. American Franchisee Association (''AFA'')
RR 39. American Association of Franchisees & Dealers (''AAFD'')
RR 40. Warrren Lewis, Lewis & Trattner (''Lewis'')
RR 41. Century 21 Real Estate Corp. (''Century 21'')
RR 42. John Hayden (''Hayden'')
RR 43. North American Securities Administrators Association (''NASAA'')
RR 44. Robert L. Perrry (''Perry'')
RR 45. The State Bar of California, Business Law Section (''CA BLS'')
RR 46. Mike Gaston, Barkely & Evergreen (''Gaston'')
RR 47. The Southland Corp. (''Southland'')
RR 48. Medicap Pharmacies, Inc. (''Medicap'')
RR 49. Rochelle B. Spandorf (''Spandorf''), ABA Forum on Franchising, Andrew C. Selden (''Selden''), David J. Kaufman (''Kaufmann'')
RR 50. Joyce G. Mazero, Locke Pernell Rain Harrell (''Mazero'')
RR 51. Mark B. Forseth, Locke Pernell Rain Harrell (''Forseth'')
RR 52. Forte Hotels (''Forte Hotels'')
RR 53. R.A. Politte (''Politte'')
RR 54. Politte (*see supra*, RR 53).
RR 55. Brown (*see supra*, RR 9).
RR 56. Wieczorek (*see supra*, RR 23).
RR 57. Scott Shane, Georgia Institute of Technology (''Shane'')
RR 58. Friday's (''Friday's'')
RR 59. Carl E. Zwisler, Keck, Mahin & Cate (''Zwisler'')
RR 60. Wieczorek (*see supra*, RR 23)
RR 61. Enrique A. Gonzalez, Gonzalez Cavillo Y Forastierei (''Gonzalez'')
RR 62. Pepsico Restaurants (''Pepsico'')
RR 63. IFA (*see supra*, RR 32)
RR 64. Atlantic Richfield Co (''ARCO'')
RR 65. David Clanton (''Clanton'')
RR 66. Leonard Swartz, Arthur Andersen & Co. (''Swartz'')
RR 67. John R.F. Baer, Keck, Mahin & Cate (''Baer'')
RR 68. Lynn Scott (''Scott'')
RR 69. Eversheds (''Eversheds'')
RR 70. Brownstein Zeidman (*see supra*, RR 33)
RR 71. Penny Ward, Baker & McKenzie (''Ward'')
RR 72. Matthias Stein (''Stein'')
RR 73. Byron Fox, Hunton & Williams (''Fox'')
RR 74. Papa John's Pizza (''Papa Johns'')
RR 75. Harold L. Kestenbaum (*see supra*, RR 14)

Rule Review September 1995 Public Workshop Conference

Panelists

Harold Brown, Brown & Stadfeld (''Brown'')
Sam Damico, Q.M. Marketing, Inc. (''Damico'')
Connie B. D'Imperio, Color Your Carpet, Inc. (''D'Imperio'')
Eric Ellman (''Ellman''), Direct Selling Assocation (''DSA'')
Mark B. Forseth, Locke Purnell Rain Harrell (''Forseth'')
Mike Gason, Barkely & Evergreen (''Gaston'')
Susan Kezios, American Franchisee Association (''AFA'') (''Kezios'')
William Kimball, Iowa Coalition for Responsible Franchising (''Kimball'')
Warren Lewis, Lewis & Trattner (''Lewis'')
Steven Maxey (''Maxey''), North American Securities Administrators Association (''NASAA'')
Joyce G. Mazero, Locke Purnell Rain Harrell (''Mazero'')
Barry Pineles (''Pineles''), U.S. Small Business Administration (''SBA Advocacy'')
Robert Purvin, American Association of Franchisees & Dealers (''AAFD'') (''Purvin'')
Steven Rabenberg, Explore St. Louis (''Rabenberg'')
Matthew R. Shay (''Shay''), International Franchise Association (''IFA'')
Neil A. Simon, Hogan & Hartson (''Simon'')
Robin Spencer (''Spencer''), representing American Franchisee Association

Leonard Swartz, Arthur Anderson & Co. (''Swartz'')
John Tifford, Brownstein Zeidman & Lore
Ronnie Volkening (''Volkening''), The Southland Corp. (''Southland'')
Dennis E. Wieczorek, Rudnick & Wolfe (''Wieczorek'')
William J. Wimmer (Wimmer''), Iowa Coalition for Responsible Franchising

Public Participants

Peter Denzen (''Denzen'')
Bob Hessler, Wendy's (''Hessler'')
Chris Huke, SC Promotions (''Huke'')
Michael Jorgensen (''Jorgensen'')
Robert L. Perry (''Perry'')
Brian Schnell, Gray, Plant Mooty (''Schnell'')

March 1996 Public Workshop Conference

Panelists

Kay M. Ainsley, Ziebart Intl, Corp. (''Ainsley'')
John R.F. Baer, Keck, Mahin & Cate (''Baer'')
Michael Brennan, Rudnick & Wolfe (''Brennan'')
Joel R. Buckberg, HFA, Inc. (''Buckberg'')
David A. Clanton, Baker & McKenzie (''Clanton'')
Kenneth R. Costello, Loeb & Loeb (''Costello'')
Edward J. Fay, Kwik Kopy Corp. (''Fay'')
Mark B. Forseth, Locke Purnell Rain Harrell (''Forseth'')
Byron E. Fox, Hunton & Willaims (''Fox'')
Bruce Harsh, International Trade Specialist, U.S. Department of Commerce (''Harsh'')
Arnold Janofsky, Precision Tune (''Janofsky'')
Susan P. Kezios (''Kezios''), American Franchisee Association (''AFA'')
Alex S. Konigsberg, QC (''Konigsberg''), Lapoint Rosenstein
Andrew P. Loewinger, Abraham Pressman & Bauer (''Loewinger'')
H. Bret Lowell, Brownstein Zeidman (''Lowell'')
John Melle, Office of U.S. Trade Representative (''Melle'')
Raymond L. Miolla, Burger King Corp. (''Miolla'')
Alex Papadakis, Hurt Sinisi Papadakis (''Papadakis'')
Matthew R. Shay (''Shay''), International Franchise Association (''IFA'')
Neil A. Simon, Hogan & Hartson (''Simon'')
Leonard Swartz, Arthur Anderson & Co. (''Swartz'')
Greg L. Walther, Outback Steakhouse Intl (''Walther'')
Dennis E. Wieczorek, Rudnick & Wolfe (''Wieczorek'')
Erik B. Wulff, Hogan & Hartson (''Wulff'')
Philip F. Zeidman (''Zeidman'')
Carl Zwisler, Keck, Mahin & Cate (''Zwisler'')

Public Participants

Jeff Brams, Sign-A-Rama and Shipping Connections (''Brams'')
Pamela Mills, Baker & McKenzie (''Mills'')

Advance Notice of Proposed Rulemaking Commenters

ANPR 1. Kevin Brendan Murphy, Mr. Franchise (''Murphy'')
ANPR 2. Murphy (*see supra*, ANPR 1).
ANPR 3. Mike Bruce, The Michael Bruce Fund (''Bruce'')
ANPR 4. Harold Brown, Brown & Stadfeld (''Brown'')
ANPR 5. Frances L. Diaz (''Diaz'')
ANPR 6. Brown (*see supra*, ANPR 4).
ANPR 7. Diaz (*see supra*, ANPR 5).
ANPR 8. Marian Kunihisa (''Kunihisa'')
ANPR 9. Kevin Bores, Domino's Pizza Franchisee (''Bores'')
ANPR 10. Terrence L. Packer, Supercuts Franchisee (''Packer'')
ANPR 11. John Delasandro (''Delasandro'')
ANPR 12. William Cory (''Cory'')
ANPR 13. Joseph Manuszak, Domino's Franchisee (''Manuszak'')
ANPR 14. Daryl Donafin, Taco Bell Franchisee (''Donafin'')
ANPR 15. David Muncie, National Claims Service, Inc. (''Muncie'')
ANPR 16. Patrick E. Meyers, The Quizno's Corp. (''Quizno's'')
ANPR 17. David Weaver, Domino's Pizza Franchisee (''Weaver'')
ANPR 18. Karen M. Paquet, Domino's Pizza Franchisee (''Paquet'')
ANPR 19. Gary R. Duvall Graham & Dunn (''Duvall'')
ANPR 20. Andrew J. Sherman, Greenberg & Tauris (''Sherman'')
ANPR 21. S. Beavis Stubbings (''Stubbings'')
ANPR 22. Jim & Evalena Gray, Pearle Vision Franchisee (''J&E Gray'')
ANPR 23. Ernest Higginbotham (''Higginbotham'')
ANPR 24. Henry C. Su & Bryon Fox (''Su'')
ANPR 25. John R. F. Baer, Keck, Mahin & Cate (''Baer'')
ANPR 26. Clay Small & Lowell Dixon, Nat'l Franchise Mediation Program Steering Committee (''NFMP'')
ANPR 27. Richard T. Catalano (''Catalano'')
ANPR 28. Neil Simon & Erik Wulff, Hogan & Hartson (''H&H'')
ANPR 29. Glenn A. Mueller, Domino's Pizza Franchisee (''Mueller'')
ANPR 30. Doug Bell et al. Supercuts Franchisees (''Supercut Franchisees'')
ANPR 31. Michael L. Bennett, Longaberger Co. (''Longaberger'')
ANPR 32. John Rachide, Domino's Pizza Franchisee (''Rachide'')
ANPR 33. David J. Kaufmann, Kaufmann, Feiner, Yamin, Gildin & Robbins (''Kaufmann'')
ANPR 34. Joseph N. Mariano, Direct Selling Association (''DSA'')
ANPR 35. Linda F. Golodner & Susan Grant, National Consumers League (''NCL'')
ANPR 36. Jere W. Glover & Jennifer A. Smith, U.S. Small Business Administration Office of Chief Counsel for Advocacy (''SBA Advocacy'')
ANPR 37. Robert Chabot, Domino's Pizza Franchisee (''Chabot'')
ANPR 38. Teresa Maloney, National Coalition of 7-Eleven Franchisees (''Maloney'')
ANPR 39. BLANK
ANPR 40. Harold L. Kestenbaum (''Kestenbaum'')
ANPR 41. Samuel L. Sibent, KFC Franchisee (''Sibent'')
ANPR 42. Oren C. Crothers, KFC Franchisee (''Crothers'')
ANPR 43. Matthew Jankowski, KFC Franchisee (''Jankowski'')
ANPR 44. Rodney A. DeBoer, KFC Franchisee (''DeBoer'')
ANPR 45. Liesje Bertoldi, KFC Franchisee (''L. Bertoldi)''
ANPR 46. Steve Bertoldi, KFC Franchisee (''S. Bertoldi'')
ANPR 47. Charles Buckner, KFC Franchisee (''Buckner'')
ANPR 48. Walter J. Knezevich, KFC Franchisee (''Knezevich'')
ANPR 49. Jeffrey W. Gray, KFC Franchisee (''J. Gray'')
ANPR 50. Fred Jackson, KFC Franchisee (''Jackson'')
ANPR 51. Ronald L. Rufener, KFC Franchisee (''Rufener'')
ANPR 52. Tim Morris, KFC Franchisee (''Morris)''
ANPR 53. Scarlett Norris Adams, KFC Franchisee (''Adams'')
ANPR 54. Calvin G. White, KFC Franchisee (''White'')
ANPR 55. Nick Iuliano, KFC Franchisee (''N. Iuliano'')
ANPR 56. Dolores Iuliano, KFC Franchisee (''D. Iuliano'')
ANPR 57. Ralph A Harman, KFC Franchisee (''R. Harman'')
ANPR 58. Saundra S. Harman, KFC Franchisee (''S. Harman'')
ANPR 59. Richard Braden, KFC Franchisee (''Barden'')
ANPR 60. K.F. C. of Pollys, KFC Franchisee (''Pollys'')

ANPR 61. Joan Fiore, McDonalds Franchisee (''Fiore'')
ANPR 62. Susan P. Kezios, American Franchisee Association (''AFA'')
ANPR 63. Kenneth R. Costello, Loeb & Loeb (''Costello'')
ANPR 64. AFA (*see supra*, ANPR 62)
ANPR 65. Susan Rich, KFC Franchisee (''Rich'')
ANPR 66. Fiore (*see supra*, ANPR 61)
ANPR 67. Mike Johnson, Subway Franchisee (''Johnson'')
ANPR 68. Laurie Gaither, GNC Franchisee (''L. Gaither'')
ANPR 69. Greg Gaither, GNC Franchisee (''G. Gaither'')
ANPR 70. Greg Suslovic, Subway Franchisee (''Suslovic'')
ANPR 71. Richard Colenda, GNC Franchisee (''Colenda'')
ANPR 72. Bob Gagliati, GNC Franchisee (''Gagliati'')
ANPR 73. Pat Orzano, 7-Eleven Franchisee (''Orzano'')
ANPR 74. Linda Gaither, GNC Franchisee (''Li Gaither'')
ANPR 75. Kevin 100 (''Kevin 100'')
ANPR 76. Robert James, Florida Department of Agriculture & Consumer Services (''James'')
ANPR 77. Robert A. Tingler, Office of the Attorney General, State of Illinois (''IL AG'')
ANPR 78. John M. Tifford, Rudnick, Wolfe, Epstien & Zeidman (''Tifford'')
ANPR 79. Robert L. Purvin, Jr. (''Purvin'')
ANPR 80. Teresa Heron, My Favorite Muffin Franchisee (''Heron'')
ANPR 81. Purvin (*see supra*, ANPR 79)
ANPR 82. Matthew R. Shay, International Franchise Association (''IFA'')
ANPR 83. Duvall (*see supra*, ANPR 19)
ANPR 84. Lance Winslow, Car Wash Guys (''Winslow'')
ANPR 85. Winslow (*see supra*, ANPR 84)
ANPR 86. Rick Gue, The Pampered Chef, (''Pampered Chef'')
ANPR 87. John M. Tifford, Coverall North America (''Coverall'')
ANPR 88. John M. Tifford, Merchandise Mart Properties (''Merchanise Mart'')
ANPR 89. Dirk C. Bloemendaal, Amway Corproation (''Amway'')
ANPR 90. Winslow (*see supra*, ANPR 84)
ANPR 91. Winslow (*see supra*, ANPR 84)
ANPR 92. Winslow (*see supra*, ANPR 84)
ANPR 93. Winslow (*see supra*, ANPR 84)
ANPR 94. Andrew A. Caffey (''Caffey'')
ANPR 95. Entrepreneur Media, Inc. (''Entrepreneur'')
ANPR 96. Brown (*see supra*, ANPR 4)
ANPR 97. Raymond & Robert Buckley, Scorecard Plus Franchisees (''Buckley'')
ANPR 98. Mark A. Kirsch, Rudnick, Wolfe, Epstien & Zeidman (''Kirsch'')
ANPR 99. Dale E. Cantone, Maryland Division of Securities, Office of the Attorney General (''Md Securities'')
ANPR 100. Roger C. Haines, Scorecard Plus Franchisee (''Haines'')
ANPR 101. David E. Myklebust, Scorecard Plus Franchisee (''Myklebust'')
ANPR 102. Robert Larson (''Larson'')
ANPR 103. Brown (*see supra*, ANPR 4)
ANPR 104. Mark B. Forseth, CII Enterprises (''CII'')
ANPR 105. Bertrand T. Unger, PR One (''Pr One'')
ANPR 106. Dennis E. Wieczorek, Rudnick & Wolfe (''Wieczorek'')
ANPR 107. Gerald A. Marks, Marks & Krantz (''Marks'')
ANPR 108. Brown (*see supra*, ANPR 4)
ANPR 109. Everett W. Knell (''Knell'')
ANPR 110. Anne Crews, Mary Kay, Inc. (''Mary Kay'')
ANPR 111. Carl Letts, Domino's Pizza Franchisee (''Letts'')
ANPR 112. Kat Tidd (''Tidd'')
ANPR 113. Ted Poggi, National Coalition of Associations of 7-Eleven Franchisees (''NCA 7-Eleven Franchisees)
ANPR 114. Gary R. Duvall & Nadine C. Mandel (''Duvall & Mandel'')
ANPR 115. Sherry Christopher, Christopher Consulting, Inc. (''Christopher'')
ANPR 116. Carl C. Jeffers, Intel Marketing Systems, Inc. (''Jeffers'')
ANPR 117. Deborah Bortner, State of Washington, Department of Financial Institutions, Securities Divisions (''WA Securities'')
ANPR 118. Carmen D. Caruso, Noonan & Caruso (''Caruso'')
ANPR 119. Howard Bundy, Bundy & Morrill, Inc.(''Bundy'')
ANPR 120. Franchise & Business Opportunity Committee, North American Securities Administrations Association (''NASAA'')
ANPR 121. Tifford (*see supra*, ANPR 78)
ANPR 122. Wieczorek (*see supra*, ANPR 106)
ANPR 123. John & Debbie Lopez, Baskin & Robbins Franchisee (''Lopez'')
ANPR 124. Susan R. Essex & Ted Storey, California Bar, Business Law Section (''CA BLS'')
ANPR 125. Peter C. Lagarias, The Legal Solutions Group (''Lagarias'')
ANPR 126. James G. Merret, Jr. (''Merret'')
ANPR 127. W. Michael Garner, Dady & Garner (''Garner'')
ANPR 128. Jeff Brickner (''Brickner'')
ANPR 129. Bernard A. Brynda, Baskin & Robbins Franchisee (''Brynda'')
ANPR 130. Caron B. Slimak, Jacadi USA Franchisee (''Slimak'')
ANPR 131. Dr. Ralph Geiderman, Pearl Vision Franchisee (''Geiderman'')
ANPR 132. Felipe Frydmann, Minister of Economic & Trade Affairs, Embassy of the Argentine Republic (''Argentine Embassy'')
ANPR 133. Andrew C. Selden, Briggs & Morgan (''Selden'')
ANPR 134. Robert Zarco, Zarco & Pardo (''Zarco & Pardo'')
ANPR 135. Jason H. Griffing, Baskin & Robbins Franchisee (''Griffing'')
ANPR 136. Erik H. Karp, Witmer, Karp, Warner & Thuotte (''Karp'')
ANPR 137. William D. Brandt, Ferder, Brandt, Casebeer, Copper, Hoyt & French (''Brandt'')
ANPR 138. Robert S. Keating, Baskin & Robbins Franchisee (''Keating'')
ANPR 139. A. Patel, Baskin & Robbins Franchisee (''A. Patel'')
ANPR 140. Joel R. Buckberg, Cendant Corporation (''Cendant'')
ANPR 141. Duvall (*see supra*, ANPR 19)
ANPR 142. NCL (*see supra*, ANPR 35)
ANPR 143. AFA (*see supra*, ANPR 62)
ANPR 144. Catalano (*see supra*, ANPR 27)
ANPR 145. DSA (*see supra*, ANPR 34)
ANPR 146. Keating (*see supra*, ANPR 139)
ANPR 147. Kathie & David Leap, Baskin & Robbins Franchisee (''Leap'')
ANPR 148. Ted D. Kuhn, Baskin & Robbins Franchisee (''Kuhn'')
ANPR 149. Mike S. Lee, Baskin & Robbins Franchisee (''Lee'')
ANPR 150. R. Deilal, Baskin & Robbins Franchisee (''Deilal'')
ANPR 151. Frank J. Demotto, Baskin & Robbins Franchisee (''Demotto'')
ANPR 152. Thomas Hung, Baskin & Robbins Franchisee (''Hung'')
ANPR 153. Jean Jones, Baskin & Robbins Franchisee (''Jones'')
ANPR 154. Hang, Baskin & Robbins Franchisee (''Hang'')
ANPR 155. Dilip Patel, Baskin & Robbins Franchisee (''D. Patel'')
ANPR 156. Terry L. Glase, Baskin & Robbins Franchisee (''Glase'')
ANPR 157. R.E. Williamson, Baskin & Robbins Franchisee (''Williamson'')
ANPR 158. R. M Valum, Baskin & Robbins Franchisee (''Valum'')
ANPR 159. Rajendra Patel, Baskin & Robbins Franchisee (''R. Patel'')
ANPR 160. Jerry & Debbie Robinett, Baskin & Robbins Franchisee (''Robinett'')
ANPR 161. Ronald J. Rudolf, Baskin & Robbins Franchisee (''Rudolf'')

ANPR 162. Kamlesh Patel, Baskin & Robbins Franchisee (''K. Patel'')
ANPR 163. Nicholas & Marilyn Apostal, Baskin & Robbins Franchisee (''Apostal'')
ANPR 164. Patrick Sitin, Baskin & Robbins Franchisee (''Sitin'')
ANPR 165. Paul & Lisa SeLander, Baskin & Robbins Franchisee (''SeLander'')
ANPR 166. S. Bhilnym, Baskin & Robbins Franchisee (''Bhilnym'')
ANPR 167. Mike & Kathy Denino, Baskin & Robbins Franchisee (''Denino'')

ANPR Workshop Participants

Michael Bennett, Longaberger Company (''Bennett'')
Kennedy Brooks (''Brooks'')
John Brown, Amway Corporation (''J. Brown'')
Howard Bundy, Bundy & Morrill (''Bundy'')
Delia Burke, Jenkins & Gilchrist (''Burke'')
Andrew Caffey, Esq. (''Caffey'')
Dale Catone, Office of the Maryland Attorney General (''Cantone'')
Emilio Casillas, Washington State Securities Division (''Casillas'')
Richard Catalano, Esq. (''Catalano'')
Sherry Christopher, Esq. (''Christopher'')
Michael W. Chiodo, Domino's Franchisee (''Chiodo'')
Martin Cordell, Washington State Securities Division (''Cordell'')
Joseph Cristiano, Carvel Franchisee (''Cristiano'')
John D'Alessandro, Quaker State Lube Distributor (''D'Alessandro'')
Mark Deutsch, former franchisee (''Deutsch'')
Steve Doe, Franchisee (''Doe'')
Gary Duvall, Graham & Dunn (''Duvall'')
Eric Ellman, Direct Selling Association (''Ellman'')
Debbie Fetzer, Snap-On Franchisee (''Fetzer'')
David Finigan, Illinois Securities Department (''Finigan'')
Mark B. Forseth, Jenkens & Gilchrist (''Forseth'')
Richard W. Galloway, Domino's Pizza Franchisee (''Galloway'')
Elizabeth Garceau, Pro Design (''E. Garceau'')
Michael Garceau, Pro Design (''M. Garceau'')
Roger Gerdes, Microsoft Corp. (''Gerdes'')
Rick Geu, The Pampered Chef (''Geu'')
Judy Gitterman, Jenkens & Gilchrist (''Gitterman'')
Susan Grant, National Consumers League (''Grant'')
Bruce Hoar, Hanes Franchisee (''B. Hoar'')
Thomas Hoar, Hanes Franchisee (''T. Hoar'')
Nelson Hockert-Lotz, Domino's Pizza Franchisee (''Hockert-Lotz'')
Tee Houston-Aldridge, World Inspection Network (''Houston-Aldridge'')
Robert James, Florida Dept. of Agriculture & Consumer Services (''James'')
Carl Jeffers, Intel Marketing Systems (''Jeffers'')
Erik Karp, Witmer, Karp, Warner & Thuotte (''Karp'')
David Kaufmann, Kaufmann, Feiner, Yamin, Gildin & Robbins (''Kaufmann'')
Harold Kestenbaum, Hollenbrug, Bleven, Solomon, Ross (''Kestenbaum'')
Susan Kezios, American Franchisee Association (''Kezios'')
Mark Kirsch, Rudnick Wolfe, Epstien & Zeidman (''Kirsch'')
Charles Lay, Brite Site Franchisee (''Lay'')
Mike Ludlum, Entreprenuer Media (''Ludlum'')
Marge Lundquist, Franchisee (''Lundquist'')
Gerald Marks, Marks & Krantz (''Marks'')
Philip McKee, National Consumers League (''McKee'')
Dianne Mousley, Mike Schmidt's Phil. Hoagies Franchisee (''Mousley'')
Joseph Punturo, Office of the New York Attorney General (''Punturo'')
Mehran Rafizadeh, GNC Franchisee (''Rafizadeh'')
David R. Raymond, Esq. (''Raymond'')
Iris Sandow, Blimpie Franchisee (''Sandow'')
Philip Sanson, Illinois Securities Department (''Sanson'')
Matthew Shay, International Franchise Association (''IFA'')
David Silverman, Sportworld Int'l (''Silverman'')
Neil Simon, Hogan & Hartson (''Simon'')
Caron Slimak (''Slimak''), Jacadi USA Franchisee
J. H. Snow, Jenkens & Gilcrist (''Snow'')
Adam Sokol, Illinois Attorney General's Office (''Sokol'')
Kat Tidd, Esq. (''Tidd'')
John Tifford, Rudnick Wolfe, Epstien & Zeidman, (''Tifford'')
Robert Tingler, Franchise Bureau Chief. Illinois Attorney General's Office (''Tingler'')
Bertrand Unger, PR One (''Unger'')
Dr. Spencer Vidulich, Pearle Vision Franchisee (''Vidulich'')
Dick Way, PR One (''Way'')
Dennis Wieczorek, Rudnick & Wolfe (''Wieczorek'')
Erik Wulff, Hogan & Hartson (''Wulff'')
Barry Zaslav, Coverall North America (''Zaslav'')

Franchise Rule Notice of Proposed Rulemaking Commenters

NPR 1. Patrick E. Meyers, The Quizno's Corporation (''Quizno's'')
NPR 2. Steven A. Rosen, Frannet (''Frannet'')
NPR 3. Robert Tingler, Franchise Bureau Chief, Illinois Attorney General (''IL AG'')
NPR 4. Dennis E. Wieczorek, Piper Marbury Rudnick & Wolfe (''PMR&W'')
NPR 5. Jack Schuessler, Wendy's Intl, Inc. (''Wendy's'')
NPR 6. Curtis S. Gimson, Triarc Restaurant Group (''Triarc'')
NPR 7. Eugene Stachowiak, McDonald's (''McDonalds'')
NPR 8. David E. Holmes (''Holmes'')
NPR 9. Erik B. Wulff, John F. Dienelt, Hogan & Hartson (''H&H'')
NPR 10. Ronnie R. Volkening, 7-Eleven, Inc. (''7-Eleven'')
NPR 11. John R.F. Baer, Robert T. Joseph, Alan H. Silberman, Sonnenschein Nath & Rosenthal (''Baer'')
NPR 12. Morton A. Aronson, Neil A. Simon, David J. Kaufmann, National Franchise Council (''NFC'')
NPR 13. Alaska Turner (''Turner'')
NPR 14. Susan P. Kezios, American Franchisee Association (''AFA'')
NPR 15. Warren L. Lewis, Lewis & Kolton (''Lewis'')
NPR 16. John W. Regnery, Snap-On Inc. (''Snap-On'')
NPR 17. Dale E. Cantone, Stephen W. Maxey, Joseph J. Punturo, NASAA Franchise and Business Opportunity Project Group (''NASAA'')
NPR 18. Howard E. Bundy, Bundy & Morrill, Inc. (''Bundy'')
NPR 19. Laurie Taylor (''Taylor'')
NPR 20. Jonathan Hubbell, Prudential Real Estate Affiliates (''PREA'')
NPR 21. David Gurnick, Arter & Hadden (''Gurnick'')
NPR 22. Don J. DeBolt, Matthew R. Shay, International Franchise Association (''IFA'')
NPR 23. L. Seth Stadfeld, Weston, Patrick, Willard & Redding (''Stadfeld'')
NPR 24. Eric H. Karp, Witmer, Karp, Warner & Thuotte (''Karp'')
NPR 25. Janet L. McDavid, American Bar Association, Section of Antitrust Law (''ABA AT'')
NPR 26. Randall Loeb, NaturaLawn of America (''NaturaLawn'')
NPR 27. Tony Rolland, National Franchisee Association (''NFA'')
NPR 28. Andrew P. Loewinger, Buchannan Ingersoll (''BI'')
NPR 29. Jeffrey E. Kolton, Frandata (''Frandata'')
NPR 30. AFC Enterprises (''AFC'')

NPR 31. Howard Morrill, Bundy & Morrill, Inc. (''Morrill'')
NPR 32. Carl E. Zwisler, Jenkens & Gilchrist (''J&G'')
NPR 33. Diane T. Nauer, TruServ Corporation (''TruServ'')
NPR 34. Brian H. Cole, Tricon (''Tricon'')
NPR 35. Steven Goldman, Mark Forseth, Marriott Corp. (''Marriott'')
NPR Rebuttal 36. Gurnick (*see supra*, FR-NPR 21)
NPR Rebuttal 37. Kezios (*see supra*, FR-NPR 14)
NPR Rebuttal 38. IL AG (*see supra*, FR-NPR 3)
NPR Rebuttal 39. Bundy (*see supra*, FR-NPR 18)
NPR Rebuttal 40. John W. Fitzgerald, Gray, Plant, Mooty, Mooty & Bennett (''GPM'')

Staff Report

Affiliated Foods Midwest (''Affiliated Foods'')
American Association of Franchisees and Dealers (''AAFD'')
American Franchisee Association (''AFA'')
Briggs & Morgan (''Selden'')
Bundy & Morrill, Inc. (''Bundy'')
Car Wash Guys (''Winslow'')
Cendant Corp. (''Cendant'')
CHS, Inc. (''CHS'')
Gary Duvall (''Duvall'')
Frost Brown Todd (''Graber'')
David Gurnick (''Gurnick'')
Gust Rosenfeld (''Gust Rosenfeld'')
Illinois Attorney General (''IL AG'')
Independent Distributors Cooperative (''IDC'')
International Franchise Association (''IFA'')
Jeffrey S. Haff (''Haff'')
Jenkens & Gilchrist (''J&G'')
Johnson, Hearn, Vinegar, Gee & Mercer (''Gee'')
Kaufmann, Feiner, Yamin, Gildin & Robbins (''Kaufmann'')
A. Koutsoulis (''Koutsoulis'')
Law Office of Marc N. Blumenthal (''Blumenthal'')
Law Office of Peter A. Singler (''Singler'')
Legal Solutions Group (''Lagarias'')
Marks & Associates (''Marks'')
Michael H. Seid & Assoc. (''Seid'')
National Automobile Dealers Assoc. (''NADA'')
National Cooperative Business Assoc. (''NCBA'')
National Council of Farmer Cooperatives (''NCFC'')
National Grocers Assoc. (''NGA'')
North American Securities Administrators Association (''NASAA'')
Pillsbury Winthrop (''Chevron'')
Pillsbury Winthrop (''Pillsbury Winthrop'')
Piper Rudnick (''Piper Rudnick'')
Prudential Real Estate Affiliates (''PREA'')
Richard Pu (''Pu'')
Riezman Berger (''Riezman Berger'')
Spandorf, Silberman, Joseph, and Baer (''Spandorf'')
Starwood (''Starwood'')
State Bar of California—Franchise Law Committee (''CA Bar'')
State of California Department of Corporations (''CA Dep't of Corps'')
Paul Steinberg (''Steinberg'')
Washington State Department of Financial Institutions (''WA Securities'')
Wiggin & Dana (''Wiggin & Dana'')
Witmer, Karp & Warner (''Karp'')

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Federal Register

Friday,
March 30, 2007

Part VI

Department of Agriculture

Commodity Credit Corporation

Notice of Funds Availability: Inviting Applications for the Market Access Program, Foreign Market Development Cooperator Program, Technical Assistance for Specialty Crops Program, Quality Samples Program, and Emerging Markets Program; Notices

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability: Inviting Applications for the Market Access Program

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.601.

SUMMARY: The Commodity Credit Corporation (CCC) announces that it is inviting proposals for the 2008 Market Access Program (MAP). The intended effect of this notice is to solicit applications from eligible applicants and award funds in October 2007. The MAP is administered by personnel of the Foreign Agricultural Service (FAS).

DATES: All applications must be received by 5 p.m. Eastern Daylight Time, May 14, 2007. Applications received after this date will not be considered.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Program Policy Staff, Foreign Agricultural Service, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *ppsadmin@fas.usda.gov.* Information is also available on the Foreign Agricultural Service Web site at *http://www.fas.usda.gov/mos/programs/map.asp.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Authority: The MAP is authorized under Section 203 of the Agricultural Trade Act of 1978, as amended. MAP regulations appear at 7 CFR part 1485.

Purpose: The MAP is designed to create, expand and maintain foreign markets for United States' agricultural commodities and products through cost-share assistance. Financial assistance under the MAP will be made available on a competitive basis and applications will be reviewed against the evaluation criteria contained herein. All agricultural commodities, except tobacco, are eligible for consideration.

The FAS allocates funds in a manner that effectively supports the strategic decision-making initiatives of the Government Performance and Results Act (GPRA) of 1993 and the USDA's Food and Agricultural Policy (FAP). In deciding whether a proposed project will contribute to the effective creation, expansion, or maintenance of foreign markets, the FAS seeks to identify a clear, long-term agricultural trade strategy and a program effectiveness time line against which results can be measured at specific intervals using quantifiable product or country goals. The FAS also considers the extent to which a proposed project targets markets with the greatest growth potential. These factors are part of the FAS resource allocation strategy to fund applicants who can demonstrate performance and address the objectives of the GPRA and FAP.

II. Award Information

Under the MAP, the CCC enters into agreements with eligible participants to share the costs of certain overseas marketing and promotion activities. MAP participants may receive assistance for either generic or brand promotion activities. The program generally operates on a reimbursement basis.

III. Eligibility Information

1. *Eligible Applicants.* To participate in the MAP, an applicant must be: a nonprofit U.S. agricultural trade organization, a nonprofit state regional trade group (i.e., an association of State Departments of Agriculture), a U.S. agricultural cooperative, or a State agency. A small-sized U.S. commercial entity (other than a cooperative or producer association) may participate through a MAP participant.

2. *Cost Sharing.* To participate in the MAP, an applicant must agree to contribute resources to its proposed promotional activities. The MAP is intended to supplement, not supplant, the efforts of the U.S. private sector. In the case of generic promotion, the contribution must be stated in dollars and be at least 10 percent of the value of resources provided by CCC for such generic promotion. In the case of brand promotion, the contribution must be stated in dollars and be at least 50 percent of the total cost of such brand promotion.

The degree of commitment of an applicant to the promotional strategies contained in its application, as represented by the agreed cost share contributions specified therein, is considered by the FAS when determining which applications will be approved for funding. Cost-share may be actual cash invested or in-kind contributions, such as professional staff time spent on design and execution of activities. The MAP regulations, in section 1485.13 (c), provide detailed discussion of eligible and ineligible cost-share contributions.

3. *Other.* Applications should include a justification for funding assistance from the program—an explanation as to what specifically could not be accomplished without federal funding assistance and why participating organization(s) are unlikely to carry out the project without such assistance.

IV. Application and Submission Information

1. *Address to Request Application Package.* Organizations that are interested in applying for MAP funds are encouraged to submit their requests using the Unified Export Strategy (UES) format. The UES allows interested entities to submit a consolidated and strategically coordinated single proposal that incorporates requests for funding and recommendations for virtually all the FAS marketing programs, financial assistance programs, and market access programs. The suggested UES format encourages applicants to examine the constraints or barriers to trade that they face, identify activities that would help overcome such impediments, consider the entire pool of complementary marketing tools and program resources, and establish realistic export goals. Applicants are not required, however, to use the UES format. Organizations can submit applications in the UES format by two methods. The first allows an applicant to submit information directly to the FAS through the UES application Internet Web site. The FAS highly recommends applying via the Internet, as this format virtually eliminates paperwork and expedites the FAS processing and review cycle. Applicants also have the option of submitting electronic versions (along with two paper copies) of their applications to the FAS on compact disc.

Applicants planning to use the Internet-based system must contact the FAS Program Policy Staff on (202) 720–4327 to obtain site access information. The Internet-based application, including a Help file containing step-by-step instructions for its use, may be found at the following URL address: *http://www.fas.usda.gov/cooperators.html.*

Applicants who choose to submit applications on a compact disk can obtain an application format by contacting the Program Policy Staff on (202) 720–4327.

2. *Content and Form of Application Submission.* To be considered for the MAP, an applicant must submit to the FAS information required by the MAP regulations in section 1485.13. In addition, in accordance with the Office of Management and Budget's issuance of a final policy (68 FR 38402 (June 27,2003)) regarding the need to identify entities that are receiving government awards, all applicants must submit a

Dun and Bradstreet Data Universal Numbering System (DUNS) number.

An applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711.

Incomplete applications and applications which do not otherwise conform to this announcement will not be accepted for review.

The FAS administers various other agricultural export assistance programs including the Foreign Market Development Cooperator (Cooperator) Program, Cochran Fellowships, the Emerging Markets Program, the Quality Samples Program, the Technical Assistance for Specialty Crops Program and several Export Credit Guarantee programs. Any organization that is not interested in applying for the MAP but would like to request assistance through one of the other programs mentioned should contact the Program Policy Staff on (202) 720–4327.

3. *Submission Dates and Times.* All applications must be received by 5 p.m. Eastern Daylight Time, May 14, 2007. All MAP applicants, regardless of the method of submitting an application, also must submit by the application deadline, via hand delivery or U.S. mail, an original signed certification statement as specified in 7 CFR 1485.13 (a)(2)(i)(G). Applications or certifications received after this date will not be considered.

4. *Funding Restrictions.* Certain types of expenses are not eligible for reimbursement by the program, and there are limits on other categories of expenses. CCC will not reimburse unreasonable expenditures or expenditures made prior to approval. Full details are available in the MAP regulations in section 1485.16.

5. *Other Submission Requirements and Considerations.* All Internet-based applications must be properly submitted by 5 p.m. Eastern Daylight Time, May 14, 2007. Signed certification statements also must be received by that time at one of the addresses listed below.

All applications on compact disc (with two accompanying paper copies and a signed certification statement) and any other form of application must be received by 5 p.m. Eastern Daylight Time, May 14, 2007, at one of the following addresses:

Hand Delivery (including FedEx, DHL, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Program Policy Staff, Portals Office Building, Suite 400, 1250 Maryland Ave., SW., Washington, DC 20024.

U.S. Postal Delivery: U.S. Department of Agriculture, Foreign Agricultural Service, Program Policy Staff, Stop 1042, 1400 Independence Ave., SW., Washington, DC 20250–1042.

V. Application Review Information

1. *Criteria and Review Process.* Following is a description of the FAS process for reviewing applications and the criteria for allocating available MAP funds.

(1) Phase I—Sufficiency Review and FAS Divisional Review

Applications received by the closing date will be reviewed by the FAS to determine the eligibility of the applicants and the completeness of the applications. These requirements appear at sections 1485.12 and 1485.13 of the MAP regulations. Applications that meet the requirements then will be further evaluated by the proper Commodity Branch in FAS' Market Development and Grants Management Division. The Commodity Branch will review each application against the criteria listed in section 1485.14 of the MAP regulations. The purpose of this review is to identify meritorious proposals and to recommend an appropriate funding level for each application based upon these criteria.

(2) Phase 2—Competitive Review

Meritorious .applications then will be passed on to the Office of the Deputy Administrator, Office of Trade Programs, for the purpose of allocating available funds among the applicants. Applications will compete for funds on the basis of the following allocation criteria (the number in parentheses represents a percentage weight factor):

(a) Applicant's Contribution Level (40)

* The applicant's 4-year average share (2004–2008) of all contributions (cash and goods and services provided by U.S. entities in support of overseas marketing and promotion activities) compared to

* The applicant's 4-year average share (2004–2008) of the funding level for all MAP participants.

(b) Past Performance (30)

* The 3-year average share (2004–2006) of the value of exports promoted by the applicant compared to

* The applicant's 2-year average share (2005–2007) of the funding level for all MAP applicants plus, for those groups participating in the Cooperator program, the 2-year average share (2006–2007) of Cooperator marketing plan budgets, and the share for 2005 of foreign overhead provided for co-location within a U.S. agricultural office;

(c) Projected Export Goals (15)

* The total dollar value of projected exports promoted by the applicant for 2007 compared to

* The applicant's requested funding level;

(d) Accuracy of Past Projections (15)

* Actual exports for 2005 as reported in the 2007 MAP application compared to

* Past projections of exports for 2005 as specified in the 2005 MAP application.

The Commodity Branches' recommended funding levels for each applicant are converted to percentages of the total MAP funds available then multiplied by each weight factor as described above to determine the amount of funds allocated to each applicant.

2. *Anticipated Announcement Date.* Announcements of funding decisions for the MAP are anticipated during October 2007.

VI. Award Administration Information

1. *Award Notices.* The FAS will notify each applicant in writing of the final disposition of its application. The FAS will send an approval letter and project agreement to each approved applicant. The approval letter and agreement will specify the terms and conditions applicable to the project, including the levels of MAP funding and cost-share contribution requirements.

2. *Administrative and National Policy Requirements.* Interested parties should review the MAP regulations which are available at the following URL address: *http://www.fas.usda.gov/mos/programs/map.asp.* Hard copies may be obtained by contacting PPS at (202) 720–4327.

3. *Reporting.* The FAS requires various reports and evaluations from MAP participants. Reporting requirements are detailed in the MAP regulations in section 1485 .20(b) and (c).

VII. Agency Contact(s)

For additional information and assistance, contact the Program Policy Staff, Foreign Agricultural Service, U.S. Department of Agriculture, Portals Office Building, Suite 400, Stop 1042, 1250 Maryland Avenue, SW., Washington, DC 20024, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *ppsdmin@fas.usda.gov.*

W. Kirk Miller,

Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 07–1590 Filed 3–29–07; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability: Inviting Applications for the Foreign Market Development Cooperator Program

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.600.

SUMMARY: The Commodity Credit Corporation (CCC) announces that it is inviting proposals for the 2008 Foreign Market Development Cooperator (Cooperator) Program. The intended effect of this notice is to solicit applications from eligible applicants and award funds in October 2007. The Cooperator Program is administered by personnel of the Foreign Agricultural Service (FAS).

DATES: All applications must be received by 5 p.m. Eastern Daylight Time, May 14, 2007. Applications received after this date will not be considered.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Program Policy Staff, Foreign Agricultural Service, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *ppsadmin@fas.usda.gov*. Information is also available on the Foreign Agricultural Service Web site at *http://www.fas.usda.gov/mos/programs/fmdprogram.asp*.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Authority: The Cooperator Program is authorized by title VII of the Agricultural Trade Act of 1978, as amended. Cooperator Program regulations appear at 7 CFR part 1484.

Purpose: The Cooperator Program is designed to create, expand, and maintain foreign markets for U.S. agricultural commodities and products through cost-share assistance. Financial assistance under the Cooperator Program will be made available on a competitive basis and applications will be reviewed against the evaluation criteria contained herein. All agricultural commodities, except tobacco, are eligible for consideration.

The FAS allocates funds in a manner that effectively supports the strategic decision-making initiatives of the Government Performance and Results Act (GPRA) of 1993 and the USDA's Food and Agricultural Policy (FAP). In deciding whether a proposed project will contribute to the effective creation, expansion, or maintenance of foreign markets, the FAS seeks to identify a clear, long-term agricultural trade strategy and a program effectiveness time line against which results can be measured at specific intervals using quantifiable product or country goals. The FAS also considers the extent to which a proposed project targets markets with the greatest growth potential. These factors are part of the FAS resource allocation strategy to fund applicants who can demonstrate performance and address the objectives of the GPRA and FAP.

II. Award Information

Under the Cooperator Program, the FAS enters into agreements with nonprofit U.S. trade organizations which have the broadest possible producer representation of the commodity being promoted and gives priority to those organizations which are nationwide in membership and scope. Cooperators may receive assistance only for the promotion of generic activities that do not involve promotions targeted directly to consumers. The program generally operates on a reimbursement basis.

III. Eligibility Information

1. *Eligible Applicants*. To participate in the Cooperator Program an applicant must be a nonprofit U.S. agricultural trade organization.

2. *Cost Sharing*. To participate in the Cooperator Program, an applicant must agree to contribute resources to its proposed promotional activities. The Cooperator Program is intended to supplement, not supplant, the efforts of the U.S. private sector. The contribution must be stated in dollars and be at least 50 percent of the value of resources provided by CCC for activities conducted under the project agreement.

The degree of commitment of an applicant to the promotional strategies contained in its application, as represented by the agreed cost share contributions specified therein, is considered by the FAS when determining which applications will be approved for funding. Cost-share may be actual cash invested or in-kind contributions, such as professional staff time spent on design and execution of activities. The Cooperator Program regulations, in sections 1484.50 and 1484.51, provide detailed discussion of eligible and ineligible cost-share contributions.

3. *Other*. Applications should include a justification for funding assistance from the program—an explanation as to what specifically could not be accomplished without federal funding assistance and why participating organization(s) are unlikely to carry out the project without such assistance.

IV. Application and Submission Information

1. *Address to Request Application Package*. Organizations that are interested in applying for Cooperator Program funds are encouraged to submit their requests using the Unified Export Strategy (DES) format. The UES allows interested entities to submit a consolidated and strategically coordinated single proposal that incorporates requests for funding and recommendations for virtually all the FAS marketing programs, financial assistance programs, and market access programs. The suggested UES format encourages applicants to examine the constraints or barriers to trade that they face, identify activities, which would help overcome such impediments, consider the entire pool of complementary marketing tools and program resources, and establish realistic export goals. Applicants are not required, however, to use the UES format. Organizations can submit applications in the UES format by two methods. The first allows an applicant to submit information directly to the FAS through the UES application Internet Web site. The FAS highly recommends applying via the Internet, as this format virtually eliminates paperwork and expedites the FAS processing and review cycle. Applicants also have the option of submitting electronic versions (along with two paper copies) of their applications to the FAS on compact disc.

Applicants planning to use the Internet-based system must contact the FAS Program Policy Staff on (202) 720–4327 to obtain site access information. The Internet-based application, including a Help file containing step-by-step instructions for its use, may be found at the following URL address: *http://www.fas.usda.gov/cooperators.html*.

Applicants who choose to submit applications on compact disc can obtain an application format by contacting the Program Policy Staff on (202) 720–4327.

2. *Content and Form of Application Submission*. To be considered for the Cooperator Program, an applicant must submit to the FAS information required by the Cooperator Program regulations in section 1484.20. In addition, in accordance with the Office of Management and Budget's issuance of a final policy (68 FR 38402 (June 27, 2003)) regarding the need to identify entities that are receiving government awards, all applicants must submit a

Dun and Bradstreet Data Universal Numbering System (DUNS) number. An applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711.

Incomplete applications and applications which do not otherwise conform to this announcement will not be accepted for review.

The FAS administers various other agricultural export assistance programs, including the Market Access Program (MAP), Cochran Fellowships, the Emerging Markets Program, the Quality Samples Program, Technical Assistance for Specialty Crops Program, and several Export Credit Guarantee programs. Any organization that is not interested in applying for the Cooperator Program but would like to request assistance through one of the other programs mentioned should contact the Program Policy Staff on (202) 720–4327.

3. *Submission Dates and Times.* All applications must be received by 5 p.m. Eastern Daylight Time, May 14, 2007. All Cooperator Program applicants, regardless of the method of submitting an application, also must submit by the application deadline, via hand delivery or U.S. mail, an original signed certification statement as specified in 7 CFR section 1484.20(a)(14). Applications or certifications received after this date will not be considered.

4. *Funding Restrictions.* Certain types of expenses are not eligible for reimbursement by the program, and there are limits on other categories of expenses. CCC will not reimburse unreasonable expenditures or expenditures made prior to approval. Full details are available in the Cooperator Program regulations in sections 1484.54 and 1484.55.

5. *Other Submission Requirements and Considerations.* All Internet-based applications must be properly submitted by 5 p.m. Eastern Daylight Time, May 14, 2007. Signed certification statements also must be received by that time at one of the addresses listed below.

All applications on compact disc (with two accompanying paper copies and a signed certification statement) and any other form of application must be received by 5 p.m. Eastern Standard Time, May 14, 2007, at one of the following addresses:

Hand Delivery (including FedEx, DHL, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Program Policy Staff, Portals Office Building, Suite 400, 1250 Maryland Ave., SW., Washington, DC 20024.

U.S. Postal Delivery: U.S. Department of Agriculture, Foreign Agricultural Service, Program Policy Staff, Stop 1042, 1400 Independence Ave., SW., Washington, DC 20250–1042.

V. Application Review Information

1. *Criteria and Review Process.* Following is a description of the FAS process for reviewing applications and the criteria for allocating available Cooperator Program funds.

(1) Phase I—Sufficiency Review and FAS Divisional Review

Applications received by the closing date will be reviewed by the FAS to determine the eligibility of the applicants and the completeness of the applications. These requirements appear at sections 1484.14 and 1484.20 of the Cooperator Program regulations. Applications that meet the requirements then will be further evaluated by the proper Commodity Branch in FAS' Market Development and Grants Management Division. The Commodity Branch will review each application against the criteria listed in sections 1484.21 and 1484.22 of the Cooperator Program regulations. The purpose of this review is to identify meritorious proposals and to recommend an appropriate funding level for each application based upon these criteria.

(2) Phase 2—Competitive Review

Meritorious applications then will be passed on to the Office of the Deputy Administrator, Office of Trade Programs, for the purpose of allocating available funds among the applicants. Applications will compete for funds on the basis of the following allocation criteria (the number in parentheses represents a percentage weight factor):

(a) Contribution Level (40)

* The applicant's 6-year average share (2003–2008) of all contributions (contributions may include cash and goods and services provided by U.S. entities in support of foreign market development activities) compared to

* The applicant's 6-year average share (2003–2008) of all Cooperator marketing plan expenditures.

(b) Past Export Performance (20)

* The 6-year average share (2002–2007) of the value of exports promoted by the applicant compared to

* The applicant's 6-year average share (2002–2007) of all Cooperator marketing plan expenditures plus a 6-year average share (2001–2006) of MAP expenditures and a 6-year average share (2001–2006) of foreign overhead provided for co-location within a U.S. agricultural trade office.

(c) Past Demand Expansion Performance (20)

* The 6-year average share (2002–2007) of the total value of world trade of the commodities promoted by the applicant compared to

* The applicant's 6-year average share (2002–2007) of all Cooperator marketing plan expenditures plus a 6-year average share (2001–2006) of MAP expenditures and a 6-year average share (2001–2006) of foreign overhead provided for co-location within a U.S. agricultural trade office.

(d) Future Demand Expansion Goals (10)

* The projected total dollar value of world trade of the commodities being promoted by the applicant for the year 2013 compared to

* The applicant's requested funding level.

(e) Accuracy of Past Demand Expansion Projections (10)

* The actual dollar value share of world trade of the commodities being promoted by the applicant for the year 2006 compared to

* The applicant's past projected share of world trade of the commodities being promoted by the applicant for the year 2006, as specified in the 2003 Cooperator Program application.

The Commodity Branches' recommended funding levels for each applicant are converted to percentages of the total Cooperator Program funds available then multiplied by each weight factor to determine the amount of funds allocated to each applicant.

2. *Anticipated Announcement Date.* Announcements of funding decisions for the Cooperator Program are anticipated during October 2007.

VI. Award Administration Information

1. *Award Notices.* The FAS will notify each applicant in writing of the final disposition of its application. The FAS will send an approval letter and project agreement to each approved applicant. The approval letter and agreement will specify the terms and conditions applicable to the project, including the levels of Cooperator Program funding and cost-share contribution requirements.

2. *Administrative and National Policy Requirements.* Interested parties should review the Cooperator Program regulations which are available at the following URL address: *http://www.fas.usda.gov/mos/programs/fmdprogram.asp.* Hard copies maybe obtained by contacting PPS at (202) 720–4327.

3. *Reporting.* The FAS requires various reports and evaluations from Cooperators. Reporting requirements are detailed in the Cooperator Program regulations in sections 1484.53, 1484.70, and 1484.72.

VII. Agency Contact(s)

For additional information and assistance, contact the Program Policy Staff, Foreign Agricultural Service, U.S. Department of Agriculture, Portals Office Building, Suite 400, Stop 1042, 1250 Maryland Avenue, SW., Washington, DC 20024, phone: (202) 720–4327; fax: (202) 720–9361, e-mail: *ppsadmin@fas.usda.gov*.

W. Kirk Miller,

Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. 07–1591 Filed 3–29–07; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability; Inviting Applications for the Technical Assistance for Specialty Crops Program

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.604.

SUMMARY: The Commodity Credit Corporation (CCC) announces the availability of funding for the 2008 Technical Assistance for Specialty Crops (TASC) Program. The intended effect of this notice is to solicit applications from the private sector and from government agencies for participation in the FY 2008 TASC Program. The TASC Program is administered by personnel of the Foreign Agricultural Service (FAS).

DATES: See paragraph IV.3 below for a detailed description of relevant dates.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Program Policy Staff, Foreign Agricultural Service, U.S. Department of Agriculture, Portals Office Building, Suite 400, 1250 Maryland Avenue, Stop 1042, SW., Washington, DC 20024, phone: (202) 720–4327, fax: (202) 720–9361, email: *ppsadmin@fas.usda.gov*. Information is also available on the Foreign Agricultural Service Web site at *http://www.fas.usda.gov/mos/tasc/tasc.asp*.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Authority: The TASC Program is authorized by section 3205 of Pub. L. 107–171. TASC regulations appear at 7 CPR part 1487.

Purpose: The TASC Program is designed to assist U.S. organizations by providing funding for projects that address sanitary, phytosanitary, or related technical barriers that prohibit or threaten the export of U.S. specialty crops. U.S. specialty crops, for the purpose of the TASC Program, are defined to include all cultivated plants, or the products thereof, produced in the United States, except wheat, feed grains, oilseeds, cotton, rice, peanuts, sugar, and tobacco.

As a general matter, TASC Program projects should be designed to accomplish the following goals:

- Projects should address a sanitary, phytosanitary, or related technical barrier that prohibits or threatens the export of U.S. specialty crops;
- Projects should demonstrably benefit the represented industry and not a specific company or brand; and,
- Projects must address barriers to U.S. specialty crops that are currently available on a commercial basis and for which barrier removal would predominantly benefit U.S. exports.

Examples of expenses that CCC may agree to reimburse under the TASC Program include, but are not limited to: initial pre-clearance programs, export protocol and work plan support, seminars and workshops, study tours, field surveys, development of pest lists, pest and disease research, database development, reasonable logistical and administrative support, and travel and per diem expenses.

II. Award Information

In general, all qualified proposals received before the specified application deadlines will compete for funding. The limited funds and the range of barriers affecting the exports of U.S. specialty crops worldwide preclude CCC from approving large budgets for individual projects. In prior years, the amount of funding per proposal has ranged from $13,000 to $250,000, the maximum allowed.

Applicants may submit multiple proposals, and applicants with previously approved TASC proposals may apply for additional funding. However, no TASC participant may have more than three approved projects underway at any given time.

FAS will consider providing either grant funds as direct assistance to U.S. organizations or providing technical assistance on behalf of U.S. organizations, provided that the organization submits timely and qualified proposals. FAS will review all proposals against the evaluation criteria contained in the program regulations.

Funding for successful proposals will be provided through specific agreements. These agreements will incorporate the proposal as approved by FAS. FAS must approve in advance any subsequent changes to the project. FAS or another Federal agency may be involved in the implementation of approved projects.

III. Eligibility Information

1. *Eligible Applicants:* Any United States organization, private or government, may apply to the program. Government organizations consist of federal, state, and local agencies. Private organizations include non-profit trade associations, universities, agricultural cooperatives, state regional trade groups, and private companies.

Foreign organizations, whether government or private, may participate as third parties in activities carried out by U.S. organizations, but are not eligible for funding assistance from the program.

2. *Cost Sharing or Matching:* Applicants are very strongly encouraged to provide matching funds or cost sharing support in this highly competitive program. Such support may be in the form of cash, goods, or in-kind services which are dedicated to the project by the organization that submitted the proposal, private industry entities, host governments, or foreign third parties.

IV. Application and Submission Information

1. *Application through the UES:* Organizations are strongly encouraged to submit applications to FAS through the Unified Export Strategy (UES) application Internet website. Using the UES application process reduces paperwork and expedites FAS' processing and review cycle. Applicants planning to use the UES Internet-based system must contact FAS Program Policy Staff on (202) 720–4327 to obtain site access information including a user ID and password. The UES Internet-based application, including a Help file containing step-by-step instructions for its use, may be found at the following URL address: *http://www.fas.usda.gov/cooperators.html*.

2. *Application through electronic and hard copies:* Applicants also have the option of submitting electronic versions in the UES format (along with two paper copies) of their applications to FAS on diskette. Applicants who choose to submit applications on diskette can obtain an application format at the following URL address:

http://www.fas.usda.gov/mos/tasc/proposals.html.

3. *Content and Form of Application Submission:* All TASC proposals must contain complete information about the proposed projects as described in § 1487.5(b) of the TASC Program regulations. In addition, in accordance with the Office of Management and Budget's policy directive regarding the use of a universal identifier for all Federal grants and cooperative agreements, all applicants must submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number. An applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711. Incomplete applications and applications which do not otherwise conform to this announcement will not be accepted for review.

4. *Submission Dates and Times:* TASC funding is limited, and in order to assure sufficient resources are available to meet unanticipated needs during the fiscal year, TASC proposals will, generally, only be evaluated on a semi-annual basis. That is:

- Proposals received prior to, but not later than, 5 p.m. Eastern Daylight Time, May 14, 2007, will be considered for funding with other proposals received by that date;
- Proposals not approved for funding during the review period will be reconsidered for funding after the review period only if the applicant specifically requests such reconsideration in writing, and only if funding remains available;
- Proposals received after 5 p.m. Eastern Daylight Time, May 14, 2007, will be considered for funding only if funding remains available.

Notwithstanding the foregoing, a proposal may be submitted for expedited consideration under the TASC Quick Response process if, in addition to meeting all requirements of the TASC program, a proposal clearly identifies a time-sensitive activity. In these cases, a proposal may be submitted at any time for an immediate evaluation.

FAS will track the time and date of receipt of all proposals.

5. *Funding Restrictions:* Proposals which request more than $250,000 of CCC funding in a given year will not be considered. Proposals to fund projects that exceed three years in duration will not be considered. No TASC participant may have more than three approved projects underway at any given time. Although funded projects may take place in the United States, all eligible projects must specifically address sanitary, phytosanitary, or technical barriers to the export of U.S. specialty crops.

Certain types of expenses are not eligible for reimbursement by the program, including the costs of market research, advertising, or other promotional expenses. CCC will not reimburse unreasonable expenditures or any expenditure made prior to approval of a proposal.

6. *Other Submission Requirements:* All Internet-based applications must be properly submitted by 5 p.m., Eastern Daylight Time, on May 14, 2007, to be considered.

All applications on diskette (with two accompanying paper copies) and any other applications must be received by 5 p.m. Eastern Daylight Time, on May 14, 2007, at one of the following addresses:

Hand Delivery (including FedEx, DHL, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Program Policy Staff, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024.

U.S. Postal Delivery: U.S. Department of Agriculture, Foreign Agricultural Service, Program Policy Staff, Stop 1042, 1400 Independence Avenue, SW., Washington, DC 20250–1042.

Application Review Information

1. *Criteria:* FAS follows the evaluation criteria set forth in § 1487.6 of the TASC regulations.

2. *Review and Selection Process:* FAS will review proposals for eligibility and will evaluate each proposal against the factors referred to above. The purpose of this review is to identify meritorious proposals, recommend an appropriate funding level for each proposal based upon these factors, and submit the proposals and funding recommendations to the Deputy Administrator, Office of Trade Programs. FAS may, when appropriate, request the assistance of other U.S. government subject area experts in evaluating the merits of a proposal.

VI. Award Administration Information

1. *Award Notices:* FAS will notify each applicant in writing of the final disposition of its application. FAS will send an approval letter and agreement to each approved applicant. The approval letter and agreement will specify the terms and conditions applicable to the project, including levels of funding, timelines for implementation, and written evaluation requirements.

2. *Administrative and National Policy Requirements:* The agreements will incorporate the details of each project as approved by FAS. Each agreement will identify terms and conditions pursuant to which CCC will reimburse certain costs of each project. Agreements will also outline the responsibilities of the participant. Interested parties should review the TASC Program regulations found at 7 CFR part 1487 in addition to this announcement.

3. *Reporting:* TASC participants are required to submit a written report(s), on no less than an annual basis, and a final report, each of which evaluates their TASC project using the performance measures presented in the approved proposal.

VII. Agency Contact

For additional information or assistance, contact the Program Policy Staff,

Foreign Agricultural Service, U.S. Department of Agriculture, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *ppsadmin@fas.usda.gov*.

W. Kirk Miller,

Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 07–1592 Filed 3–29–07; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability; Inviting Applications for the Quality Samples Program

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.605

SUMMARY: The Commodity Credit Corporation (CCC) announces the availability of $2.5 million in funding for the 2008 Quality Samples Program (QSP). The purpose of this notice is to solicit applications for participation in the FY 2008 QSP. QSP is administered by personnel of the Foreign Agricultural Service (FAS). This notice supercedes any prior notices concerning QSP.

DATES: All proposals must be received by 5 p.m. Eastern Daylight Time, May 14, 2007.

Applications received after this date will be considered only if funds are still available.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Program Policy Staff, Foreign Agricultural Service, Portals Office Building, Suite

400, 1250 Maryland Avenue, SW., Washington, DC 20024, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *ppsadmin@fas.usda.gov*. Information is also available on the Foreign Agricultural Service Web site at *http://www.fas.usda.gov/mos/programs/OSP.asp*.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Authority: QSP is authorized under Section 5(f) of the CCC Charter Act, 15 U.S.C. 714c(f).

Purpose: QSP is designed to encourage the development and expansion of export markets for U.S. agricultural commodities by assisting U.S. entities in providing commodity samples to potential foreign importers to promote a better understanding and appreciation for the high quality of U.S. agricultural commodities.

QSP participants will be responsible for procuring (or arranging for the procurement of) commodity samples, exporting the samples, and providing the technical assistance necessary to facilitate successful use of the samples by importers. Participants that are funded under this announcement may seek reimbursement for the sample purchase price and the costs of transporting the samples domestically to the port of export and then to the foreign port, or point, of entry. Transportation costs from the foreign port, or point, of entry to the final destination will not be eligible for reimbursement. CCC will not reimburse the costs incidental to purchasing and transporting samples, for example, inspection or documentation fees. Although providing technical assistance is required for all projects, CCC will not reimburse the costs of providing technical assistance. A QSP participant will be reimbursed after CCC reviews its reimbursement claim and determines that the claim is complete.

General Scope of QSP Projects: QSP projects are the activities undertaken by a QSP participant to provide an appropriate sample of a U.S. agricultural commodity to a foreign importer, or a group of foreign importers, in a given market. The purpose of the project is to provide information to an appropriate target audience regarding the attributes, characteristics, and proper use of the U.S. commodity. A QSP project addresses a single market/commodity combination.

As a general matter, QSP projects should conform to the following guidelines:

- Projects should benefit the represented U.S. industry and not a specific company or brand;
- Projects should develop a new market for a U.S. product, promote a new U.S. product, or promote a new use for a U.S. product, rather than promote the substitution of one established U.S. product for another;
- Sample commodities provided under a QSP project must be in sufficient supply and available on a commercial basis;
- The QSP project must either subject the commodity sample to further processing or substantial transformation in the importing country, or the sample must be used in technical seminars designed to demonstrate to an appropriate target audience the proper preparation or use of the sample in the creation of an end product;
- Samples provided in a QSP project shall not be directly used as part of a retail promotion or supplied directly to consumers. However, the end product, that is, the product resulting from further processing, substantial transformation, or a technical seminar, may be provided to end-use consumers to demonstrate to importers consumer preference for that end product; and,
- Samples shall be in quantities less than a typical commercial sale and limited to the amount sufficient to achieve the project goal (e.g., not more than a full commercial mill run in the destination country).

QSP projects shall target foreign importers and target audiences who:

- Have not previously purchased the U.S. commodity which will be transported under QSP;
- Are unfamiliar with the variety, quality attribute, or end-use characteristic of the U.S. commodity;
- Have been unsuccessful in previous attempts to import, process, and market the U.S. commodity (e.g., because of improper specification, blending, or formulation, or sanitary or phytosanitary issues);
- Are interested in testing or demonstrating the benefits of the U.S. commodity; or,
- Need technical assistance in processing or using the U.S. commodity.

II. Award Information

Under this announcement, the number ofprojects per participant will not be limited. However, individual projects will be limited to $75,000 of QSP reimbursement. Projects comprised of technical preparation seminars, that is, projects that do not include further processing or substantial transformation, will be limited to $15,000 of QSP reimbursement as these projects require smaller samples. Financial assistance will be made available on a reimbursement basis only; cash advances will not be made available to any QSP participant.

All proposals will be reviewed against the evaluation criteria contained herein and funds will be awarded on a competitive basis. Funding for successful proposals will be provided through specific agreements. These agreements will incorporate the proposal as approved by FAS. FAS must approve in advance any subsequent changes to the project.

III. Eligibility Information

1. *Eligible Applicants.* Any United States private or government entity with a demonstrated role or interest in exporting U.S agricultural commodities may apply to the program. Government organizations consist of federal, state, and local agencies. Private organizations include non-profit trade associations, universities, agricultural cooperatives, state regional trade groups, and profit-making entities.

2. *Cost Sharing.* FAS considers the applicant's willingness to contribute resources, including cash and goods and services of the U.S. industry and foreign third parties, when determining which proposals are approved for funding.

IV. Application and Submission Information

1. *Address to Request Application Package.* Organizations are encouraged to submit applications to FAS through the Unified Export Strategy (UES) application Internet Web site. Applicants also have the option of submitting electronic versions in the UES format (along with two paper copies) of their applications to FAS on diskette. However, the UES format is not required.

Applicants planning to use the UES Internet-based system must contact the FAS Program Policy Staff on (202) 720–4327 to obtain site access information including a user ID and password. The UES Internet-based application, including a Help file containing step-by-step instructions for its use, may be found at the following URL address: *http://www.fas.usda.gov/cooperators.html*.

Applicants who choose to submit applications on diskette can obtain an application format at the following URL address: *http://www.fas.usda.gov/mos/programs/qsp_appl.html*.

2. *Content and Form of Application Submission.* To be considered for QSP, an applicant must submit to FAS information detailed in this notice. In addition, in accordance with the Office of Management and Budget's policy directive regarding the need to identify entities that are receiving government

awards, all applicants must submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number. An applicant may request a DUNS number at no cost by calling the dedicated toll-rtee DUNS number request line at 1–866–705–5711.

Incomplete applications and applications which do not otherwise conform to this announcement will not be accepted for review.

FAS recommends that proposals contain, at a minimum, the following:

(a) Organizational information, including:

- Organization's name, address, Chief Executive Officer (or designee), Federal Tax Identification Number (TIN), and DUNS number;
- Type of organization;
- Name, telephone number, fax number, and e-mail address of the primary contact person;
- A description of the organization and its membership;
- A description of the organization's prior export promotion experience; and
- A description of the organization's experience in implementing an appropriate trade/technical assistance component.

(b) Market information, including:

- An assessment of the market;
- A long-term strategy in the market; and
- U.S. export value/volume and market share (historic and goals) for 2002–2007;

(c) Project information, including:

- A brief project title;
- Amount of funding requested;
- A brief description of the specific market development trade constraint or opportunity to be addressed by the project, performance measures for the years 2008–2010 which will be used to measure the effectiveness of the project, a benchmark performance measure for 2006, the viability of long term sales to this market, the goals of the project, and the expected benefits to the represented industry;
- A description of the activities planned to address the constraint or opportunity, including how the sample will be used in the end-use performance trial, the attributes of the sample to be demonstrated and its end-use benefit, and details of the trade/technical servicing component (including who will provide and who will fund this component);
- A sample description (i.e., commodity, quantity, quality, type, and grade), including a justification for selecting a sample with such characteristics (this justification should explain in detail why the project could not be effective with a smaller sample);
- An itemized list of all estimated costs associated with the project for which reimbursement will be sought;
- Beginning and end dates for the proposed project;
- The importer's role in the project regarding handling and processing the commodity sample; and

(d) Information indicating all funding sources and amounts to be contributed by each entity that will supplement implementation of the proposed project. This may include the organization that submitted the proposal, private industry entities, host governments, foreign third parties, CCC, FAS, or other Federal agencies. Contributed resources may include cash or goods and services.

3. *Submission Dates and Times.* All applications must be received by 5 p.m. Eastern Daylight Time, May 14, 2007. Applications received after this date will be considered only if funds are still available.

4. *Funding Restrictions.* Proposals which request more than $75,000 of CCC funding for individual projects will not be considered. Projects comprised of technical preparation seminars will be limited to $15,000 in QSP funding. CCC will not reimburse expenditures made prior to approval of a proposal or unreasonable expenditures.

5. *Other Submission Requirements.* All applications on diskette (with two accompanying paper copies) and any other form of application must be received by 5 p.m. Eastern Daylight Time, May 14, 2007, at one of the following addresses:

Hand Delivery (including FedEx, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Program Policy Staff, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024.

U.S. Postal Delivery: U.S. Department of Agriculture, Foreign Agricultural Service, Program Policy Staff, Stop 1042, 1400 Independence Ave., SW., Washington, DC 20250–1042.

v. Application Review Information

1. *Criteria.* FAS will use the following criteria in evaluating proposals:

- The ability of the organization to provide an experienced staff with the requisite technical and trade experience to execute the proposal;
- The extent to which the proposal is targeted to a market in which the United States is generally competitive;
- The potential for expanding commercial sales in the proposed market;
- The nature of the specific market constraint or opportunity involved and how well it is addressed by the proposal;
- The extent to which the importer's contribution in terms of handling and processing enhances the potential outcome of the project;
- The amount of reimbursement requested and the organization's willingness to contribute resources, including cash and goods and services of the U.S. industry and foreign third parties; and
- How well the proposed technical assistance component assures that performance trials will effectively demonstrate the intended end-use benefit.

Highest priority for funding under this announcement will be given to meritorious proposals that target countries meeting either of the following criteria:

- Per capita income less than $10,725 (the ceiling on upper middle income economies as determined by the World Bank [World Development Indicators; July 2006]); and population greater than 1 million. Proposals may address suitable regional groupings, for example, the islands of the Caribbean Basin; or
- U.S. market share of imports of the commodity identified in the proposal of 10 percent or less.

2. *Review and Selection Process.* Proposals will be evaluated by the applicable FAS Commodity Branches in the Market Development and Grants Management Division. The Commodity Branches will review each proposal against the factors described above. The purpose of this review is to identify meritorious proposals, recommend an appropriate funding level for each proposal based upon these factors, and submit the proposals and funding recommendations to the Deputy Administrator, Office of Trade Programs.

3. *Anticipated Announcement Date.* Announcements of funding decisions for QSP are anticipated during August 2007.

VI. Award Administration Information

1. *Award Notices.* FAS will notify each applicant in writing of the final disposition of its application. FAS will send an approval letter and agreement to each approved applicant. The approval letter and agreement will specify the terms and conditions applicable to the project, including the levels of QSP funding and any cost-share contribution requirements.

2. *Administrative and National Policy Requirements.* The agreements will incorporate the details of each project as approved by FAS. Each agreement will

identify terms and conditions pursuant to which CCC will reimburse certain costs of each project. Agreements will also outline the responsibilities of the participant, including, but not limited to, procurement (or arranging for procurement) of the commodity sample at a fair market price, arranging for transportation of the commodity sample within the time limit specified in the agreement (organizations should endeavor to ship commodities within 6 months of effective date of agreement), compliance with cargo preference requirements (shipment on United States flag vessels, as required), compliance with the Fly America Act requirements (shipment on United States air carriers, as required), timely and effective implementation of technical assistance, and submission of a written evaluation report within 90 days of expiration of the agreement.

QSP agreements are subject to review and verification by the FAS Compliance, Security and Emergency Planning Division. Upon request, a QSP participant shall provide to CCC the original documents which support the participant's reimbursement claims. CCC may deny a claim for reimbursement if the claim is not supported by adequate documentation. If a participant receives a reimbursement which is later disallowed, the participant shall within 30 days of such disallowance repay CCC the amount owed by submitting a check payable to CCC.

3. *Reporting.* A written evaluation report must be submitted within 90 days of the expiration of each participant's QSP agreement. Evaluation reports should address all performance measures that were presented in the proposal.

VII. Agency Contact(s)

For additional information and assistance, contact the Program Policy Staff, Foreign Agricultural Service, U.S. Department of Agriculture, Portals Office Building, Suite 400, Stop 1042, 1250 Maryland Avenue, SW., Washington, DC 20024, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *ppsadmin@fas.usda.gov*.

W. Kirk Miller,

Administrator, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 07–1593 Filed 3–29–07; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Funds Availability: Inviting Applications for the Emerging Markets Program

Announcement Type: New.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.603.

SUMMARY: The Commodity Credit Corporation (CCC) announces the availability of approximately $8 million in funding for the Emerging Markets Program (EMP) for fiscal year (FY) 2007. The intended effect of this notice is to solicit applications from the private sector and from government agencies for FY 2007 and award funds in August 2007. The EMP is administered by personnel of the Foreign Agricultural Service (FAS).

DATES: All proposals must be received by 5 p.m. Eastern Daylight Time, May 14, 2007. Applications received after this time will not be considered.

FOR FURTHER INFORMATION CONTACT: Entities wishing to apply for funding assistance should contact the Program Policy Staff, Foreign Agricultural Service, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *ppsadmin@fas.usda.gov*. Information is also available on the Foreign Agricultural Service Web site at *http://www.fas.usda.gov/mos/em-markets/em-markets.asp*.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Authority: The EMP is authorized by section 1542(d)(1)(D) of the Food, Agriculture, Conservation and Trade Act of 1990 (The Act), as amended. EMF regulations appear at 7 CFR part 1486.

1. *Purpose:* The EMP provides funding for technical assistance to assist U.S. organizations, public and private, to improve market access through generic, rather than branded, activities that can develop and promote U.S. agricultural products and/or processes in low- to middle-income countries that offer promise of emerging market opportunities.

Activities funded are those that primarily benefit U.S. industry as a whole. All agricultural products, except tobacco, are eligible for consideration. Proposals which include multiple commodities are also eligible. Only technical assistance activities are eligible for reimbursement.

2. *Appropriate Activities:* Following are types of project activities that may be funded:

—Projects designed specifically to improve market access in emerging foreign markets. Examples: Activities intended to mitigate the impact of sudden political events or economic and currency crises in order to maintain U.S. market share; responses to time-sensitive market opportunities;

—Marketing and distribution of value-added products, including new products or uses. Examples: Food service development; market research on potential for consumer ready foods or new uses of a product;

—Studies of food distribution channels in emerging markets, including infrastructural impediments to U.S. exports; such studies should be specific in their focus and may include cross-commodity activities which address specific problems. Examples: Grain storage handling and inventory systems development; distribution infrastructure development;

—Projects that specifically address various constraints to U.S. exports, including sanitary and phytosanitary issues and other non-tariff barriers. Examples: Seminars on U.S. food safety standards and regulations; assessing and addressing pest and disease problems that inhibit U.S. exports;

—Assessments and follow up activities designed to improve country-wide food and business systems, to reduce trade barriers, to increase prospects for U.S. trade and investment in emerging markets, and to determine the potential use for general export credit guarantees for commodities and services. Examples: Product needs assessments and market analysis; assessments to address infrastructural impediments;

—Projects that help foreign governments collect and use market information and develop free trade policies that benefit U.S. exporters as well as the target country or countries. Examples: Agricultural statistical analysis; development of market information systems; policy analysis; and,

—Short-term training in broad aspects of agriculture and agribusiness trade that will benefit U.S. exporters, including seminars and training at trade shows designed to expand the potential for U.S. agricultural exports by focusing on the trading system. Examples: Retail training; marketing seminars; transportation seminars; training on opening new or expanding existing markets. The program funds technical assistance activities on a project-by-project basis.

EMP funds may not be used to support normal operating costs of individual organizations, nor as a source by which to recover pre-award costs or prior expenses from previous or ongoing projects.

Proposals that counter national strategies or duplicate activities already planned or underway by national non-profit commodity or trade associations (''cooperator'') organizations will not be considered.

Ineligible activities include restaurant promotions; branded product promotions (including labeling and supplementing normal company sales activities intended to increase awareness and stimulate sales of branded products); advertising; administrative and operational expenses for trade shows; and the preparation and printing of brochures, flyers, posters, etc., except in connection with specific technical assistance activities such as training seminars. Other items excluded from funding are contained in the EMP Regulations.

3. *Eligible Markets:* The Act defines an emerging market as any country that the Secretary of Agriculture determines:

(a) Is taking steps toward a market-oriented economy through the food, agriculture, or rural business sectors of the economy of the country; and

(b) Has the potential to provide a viable and significant market for United States agricultural commodities or products of United States agricultural commodities.

Because funds are limited and the range of potential emerging market countries is worldwide, proposals for technical assistance activities will be considered which target those countries or regional groups with per capita income less than $10,725 (the current ceiling on upper middle income economies as determined by the World Bank [WorId Development Indicators; July 2006]) and populations of greater than 1 million.

Income limits and their calculation can change from year to year, with the result that a given country may qualify under the legislative and administrative criteria one year but not the next. Therefore, CCC has not established a fixed list of ''emerging market'' countries. For FY 2007, however, the following guidance is provided regarding country eligibility for the EMP:

—Eligible. All of the countries of Central and South America; most in the Caribbean; all of sub-Saharan Africa; some countries in the Middle East; and the developing economies of Asia.

—Generally Ineligible. Canada; Japan; Taiwan; Hong Kong; South Korea; Australia; New Zealand; all countries of Western Europe; Slovenia; Israel; Aruba, and Antigua and Barbuda in the Caribbean; and Saudi Arabia, the United Arab Emirates, and Qatar in the Middle East.

Some markets can be more difficult to develop and sustain over a period of time; proposed activities in such markets should be considered in terms of whether they provide ''viable and significant markets'' for U.S. agricultural exports.

In the case of some oil-rich countries in the Middle East, however, e.g., Saudi Arabia, targeted activities may be considered on a case-by-case basis, for example, addressing technical barriers to exporting U.S. commodities.

A few countries technically qualify as emerging markets, but because of political sensitivities may require a separate determination before funding can be considered.

II. Award Information

In general, all qualified proposals received before the application deadline will compete for EMP funding. Priority consideration will be given to proposals that identify and seek to address specific problems or constraints to agricultural exports in emerging markets through technical assistance activities that are intended to expand or maintain U.S. agricultural exports. Priority will also be given to those proposals that include the willingness of the applicant to commit its own funds, or those of the U.S. industry, to seek export opportunities in an emerging market. The percentage of private funding proposed for a project will, therefore, be a critical factor in determining which proposals are funded under the EMP. Proposals will also be judged on their ability to provide benefits to the organization receiving EMP funds and to the broader industry which that organization represents.

The limited funds and the range of emerging markets worldwide in which the funds may be used preclude CCC from approving large budgets for individual projects. While there is no minimum or maximum amount set for EMP-funded projects, most are funded at a level of less than $250,000 and for a duration of approximately one year. Multi-year proposals, and those requesting higher levels of funding, may be considered in the context of a strategic detailed plan of implementation. Funding in such cases is normally provided one year at a time, with commitments beyond the first year subject to interim evaluations.

Funding for successful proposals will be provided through specific agreements. The CCC, through FAS, will be kept informed of the implementation of approved projects through the requirement to provide quarterly progress reports and final performance reports. Changes in the original project time lines and adjustments within project budgets must be approved by FAS.

III. Eligibility and Qualification Information

1. *Eligible Applicants.* Any United States private or Government entity with a demonstrated role or interest in exports of U.S. agricultural commodities or products may apply to the program. Government organizations consist of Federal, State, and local agencies. Private organizations include non-profit trade associations, universities, agricultural cooperatives, state regional trade groups, and profit-making entities and consulting businesses. Proposals from research and consulting organizations will be considered if they provide evidence of substantial participation in and financial support by the U.S. industry. For-profit entities are also eligible, but may not use program funds to conduct private business, promote private self-interests, supplement the costs of normal sales activities, or promote their own products or services beyond specific uses approved by CCC in a given project.

U.S. market development cooperators and state regional trade groups (SRTGs) may seek funding to address priority, market specific issues and to undertake activities not suitable for funding under other marketing programs, e.g., the Foreign Market Development Cooperator (Cooperator) Program and the Market Access Program (MAP). Foreign organizations, whether government or private, may participate as third parties in activities carried out by U.S. organizations, but are not eligible for funding assistance from the program.

2. *Cost Sharing.* No private sector proposal will be considered without the element of cost-share from the participant and/or U.S. partners. The EMP is intended to complement, not supplant, the efforts of the U.S. private sector. There is no minimum or maximum amount of cost share, though the range in recent successful proposals has been between 35 and 75 percent. The degree of commitment to a proposed project, represented by the amount and type of private funding, is used in determining which proposals will be approved for funding. Cost-share

may be actual cash invested or professional time of staff assigned to the project. Proposals for which private industry is willing to commit cash, rather than in-kind contributions such as staff resources, will be given priority consideration.

Cost-sharing is not required for proposals from U.S. Government agencies, but is mandatory for all other eligible entities, even when they may be party to a joint proposal with a U.S. Government agency. Contributions from USDA or other U.S. Government agencies or programs may not be counted toward the stated cost share requirement. Similarly, contributions from foreign (non-U.S.) organizations may not be counted toward the cost share requirement, but may be counted in the total cost of the project.

3. *Other.* Proposals should include a justification for funding assistance from the program—an explanation as to what specifically could not be accomplished without federal funding assistance and why the participating organization(s) would be unlikely to carry out the project without such assistance. Applicants may submit more than one proposal.

IV. Application and Submission Information

1. *Address to Request Application Package.* EMP applicants have the opportunity to utilize the Unified Export Strategy (UES) application process, an online system which provides a means for interested applicants to submit a consolidated and strategically coordinated single proposal that incorporates funding requests for any or all of the market development programs administered by FAS.

Applicants are not required to use the UES, but are strongly encouraged to do so because it reduces paperwork and expedites the FAS processing and review cycle. Applicants planning to use the on-line system must contact the Program Policy Staff at (202) 720–4327 to obtain site access information including a user id and password. The Internet-based application, including step-by-step instructions for its use, is located at the following URL address: *http://www.fas.usda.gov/cooperators.html.* A Help file is available to assist applicants with the process. Applicants using the online system should also provide, promptly after the deadline for submitting the on-line application, a printed or e-mailed version of each proposal (using Word or compatible format) to one of the following addresses:

Hand Delivery (including FedEx, DHL, UPS, etc.): U.S. Department of Agriculture, Foreign Agricultural Service, Program Policy Staff, Portals Office Building, Suite 400, 1250 Maryland Avenue, SW., Washington, DC 20024.

U.S. Postal Delivery: U.S. Department of Agriculture, Foreign Agricultural Service, Program Policy Staff, STOP 1042, 1400 Independence Ave., SW., Washington, DC 20250–1042.

Applicants electing not to use the on-line system must submit both (1) a printed copy of their application to the addresses above and (2) an electronic version to the e-mail address above.

2. *Content and Form of Application Submission.* It is highly recommended that any organization considering applying to the program first obtain a copy of the EMP Regulations. The regulations contain information on requirements that a proposal must include in order to be considered for funding under the program, along with other important information. EMP regulations and additional information may be obtained from the Program Policy Staff at the address above. The regulations are also available at the following URL address: *http://www.fas.usda.gov/mos/em-markets/em-markets.asp.*

In addition, in accordance with the Office of Management and Budget's policy directive regarding the use of a universal identifier for all Federal grants or cooperative agreements, all applicants must submit a Dun and Bradstreet Data Universal Numbering System (DUNS) number prior to submitting applications. An applicant may request a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711.

Applications should be no longer than ten (10) pages and include the following information:

(a) Date of proposal;

(b) Name of organization submitting proposal;

(c) Organization address, telephone and fax numbers;

(d) Tax ID number;

(e) DUNS number;

(f) Primary contact person;

(g) Full title of proposal;

(h) Target market(s);

(i) Current conditions in the target market(s) affecting the intended commodity or product;

(j) Description of problem(s), i.e., constraint(s), to be addressed by the project, such as inadequate knowledge of the market, insufficient trade contacts, lack of awareness by foreign officials of U.S. products and business practices, impediments (inftastructure, financing, regulatory or other non-tariff barriers), etc.;

(k) Project objectives;

(l) Performance measures: benchmarks for quantifying progress in meeting the objectives;

(m) Rationale: Explanation of the underlying reasons for the project proposal and its approach, the anticipated benefits, and any additional pertinent analysis;

(n) Clear demonstration that successful implementation will benefit a particular industry as a whole, not just the applicant(s);

(o) Explanation as to what specifically could not be accomplished without federal funding assistance and why the participating organization(s) would be unlikely to carry out the project without such assistance;

(p) Specific description of activity/activities to be undertaken;

(q) Time line(s) for implementation of activity, including start and end dates (start date should be no earlier than September 2007);

(r) Information on whether similar activities are or have previously been funded with USDA sources in target country/countries (e.g., under MAP and/or FMD programs); and

(s) Detailed line item activity budget. Cost items should be allocated separately to each participating organization. Expense items constituting a proposed activity's overall budget (e.g., salaries, travel expenses, consultant fees, administrative costs, etc.), with a line item cost for each, should be listed, clearly indicating:

(1) Which items are to be covered by EMP funding;

(2) Which by the participating U.S. organization(s); and

(3) Which by foreign third parties (if applicable). Cost items for individual consultant fees should show calculation of daily rate and number of days. Cost items for travel expenses should show number of trips, destinations, cost, and objective for each trip. Qualifications of applicant(s) should be included as an attachment.

3. *Submission Dates and Times.* All proposals must be received by 5 p.m. Eastern Daylight Time on May 14, 2007, in the PPS office, either electronically, hand delivered, or by mail. Proposals received after this date and time will not be reviewed or considered for program funding.

4. *Funding Restrictions.* Certain types of expenses are not eligible for reimbursement by the program, and there are limits on other categories of expenses such as indirect overhead charges, travel expenses and consulting fees. CCC will not reimburse

expenditures made prior to approval of a proposal or unreasonable expenditures. Full details are available in the EMP regulations.

Application Review Information

1. *Criteria.* Key criteria used in judging proposals include:

—Appropriateness of the activities for the targeted market(s), and the extent to which the project identifies market barriers, e.g., a fundamental deficiency in the market, and/or a recent change in market conditions;
—Potential of the project to expand U.S. market share, increase U.S. exports or sales, and/or improve awareness of U.S. agricultural commodities and products;
—Quality of the project's performance measures, and the degree to which they relate to the objectives, proposed approach and activities, and deliverables;
—Justification for federal funding;
—Budget: overall cost and the amount of funding provided by applicants, the U.S. private sector and partners, if any; and
—Evidence that the organization has the knowledge, expertise, ability, and resources to successfully implement the project.

2. *Review and Selection Process.* All applications undergo a multi-phase review within FAS, by appropriate FAS field offices, and by the private sector Advisory Committee on Emerging Markets to determine qualifications, quality and appropriateness of projects, and reasonableness of project budgets.

3. *Anticipated Announcement Date.* Announcements of funding decisions for the EMP are anticipated in August 2007.

VI. Award Administration Information

1. *Award Notices.* FAS will notify applicants in writing of the final disposition of each application. FAS will send an approval letter and project agreement to each approved applicant. The approval letter and agreement will specify the terms and conditions applicable to the project, including the levels of EMP funding and cost-share contribution requirements.

2. *Administrative and National Policy Requirements.* Interested parties should review the EMP regulations which are available at the following URL address: *http://www.fas.usda.gov/mos/em-markets/em-markets.asp.* Printed copies may be obtained by contacting PPS at (202) 720–4327.

3. *Reporting.* Quarterly progress reports for all programs one year or longer in duration are required. Projects of less than one year generally require a mid-term progress report. Final performance reports are due 90 days after completion of each project. Content for both types of reports is contained in the Project Agreement. Final financial reports are also due 90 days after completion of each project, as attachments to the final reports.

VII. Agency Contact(s)

For additional information and assistance, contact the Program Policy Staff, Foreign Agricultural Service, U.S. Department of Agriculture, Portals Office Building, Suite 400, Stop 1042, 1250 Maryland Avenue, SW., Washington, DC 20024, phone: (202) 720–4327, fax: (202) 720–9361, e-mail: *ppsadmin@fas.usda.gov.*

W. Kirk Miller,

Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. 07–1594 Filed 3–29–07; 8:45 am]

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Federal Register

Friday,
March 30, 2007

Part VII

The President

Proclamation 8117—National Child Abuse Prevention Month, 2007

Proclamation 8118—National Donate Life Month, 2007

Federal Register
Vol. 72, No. 61
Friday, March 30, 2007

Presidential Documents

Title 3—

The President

Proclamation 8117 of March 27, 2007

National Child Abuse Prevention Month, 2007

By the President of the United States of America

A Proclamation

All Americans share a responsibility to protect our Nation's children. During National Child Abuse Prevention Month, we renew our commitment to prevent child abuse and neglect and to work to enable our children to realize their full potential.

Childhood is a formative time, and abuse can have devastating long-term effects on young lives. In order to provide a safe environment for our young people, parents must work to protect their children from the dangers that threaten them. Family members, educators, public officials, and faith-based and community organizations all play important roles in helping to ensure that children are safe and can grow surrounded by love and stability.

My Administration is committed to supporting children and promoting safe and stable families across America. Last year, I signed into law the Child and Family Services Improvement Act of 2006, which will help to prevent and address child abuse and neglect by improving child welfare services and continuing vital mentoring and family programs. Additionally, the Department of Justice's Project Safe Childhood program and the Adam Walsh Child Protection and Safety Act of 2006 help officials at all levels of government protect our children and bring sexual and online predators, Internet pornographers who prey on our children, and other violent criminals to justice with stronger laws and improved coordination among authorities.

As we observe National Child Abuse Prevention Month, we underscore our commitment to building an America where all children can thrive, develop character, and learn to be responsible citizens in an environment of security and love. By honoring our obligation to support and protect our young people, all Americans have an opportunity to make a positive difference in the life of a child and build a brighter future for our country. For more information about how each of us can help stop child abuse, please visit childwelfare.gov.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 2007 as National Child Abuse Prevention Month. I encourage all citizens to help protect our children and work to create strong, healthy communities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of March, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-first.

[FR Doc. 07–1626
Filed 3–29–07; 11:45 am]
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Presidential Documents

Proclamation 8118 of March 28, 2007

National Donate Life Month, 2007

By the President of the United States of America

A Proclamation

Donating organs, marrow, and tissue is a kind and compassionate act that can protect and enhance the precious gift of life. During National Donate Life Month, we recognize the generosity of donors and raise awareness of the importance of donating.

In recent years, there has been great progress in this important effort, and the rate of organ donation has steadily increased—helping save thousands of lives. Despite this success, more than 95,000 Americans currently await organ transplants, and hundreds more are added to the transplant list each month. My Administration strongly supports organ, marrow, and tissue donation, and we are working with public and private groups to help more citizens understand the impact of organ donation.

Americans who wish to become organ and tissue donors can register with their State's donor registry, designate their intent on their driver's license, and sign and carry donor cards, which are available at organdonor.gov. I urge all citizens to consider becoming donors and encourage all donors to inform their loved ones of their decision so their wishes can be fulfilled. Every human life holds inherent dignity and matchless value, and National Donate Life Month is an opportunity to celebrate our country's organ and tissue donors. The decision to donate the gift of life demonstrates the compassionate spirit of our Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 2007 as National Donate Life Month. I call upon health care professionals, volunteers, educators, government agencies, faith-based and community groups, and private organizations to help raise awareness of the urgent need for organ and tissue donors throughout our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of March, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-first.

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Production and airworthiness approvals, parts marking, and miscellaneous proposals; comments due by 4-2-07; published 2-14-07 [FR E7-02537]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 1129/P.L. 110–16

To provide for the construction, operation, and maintenance of an arterial road in St. Louis County, Missouri. (Mar. 28, 2007; 121 Stat. 71)

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