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

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

WHEN: Tuesday, July 19, 2005
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741-6008

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Title 3—

The President

Proclamation 7905 of May 20, 2005

Prayer for Peace, Memorial Day, 2005

By the President of the United States of America

A Proclamation

On Memorial Day, we honor the men and women in uniform who have given their lives in service to our Nation. When the stakes were highest, our Soldiers, Sailors, Airmen, Marines, and Coast Guardsmen answered the call of duty and made the ultimate sacrifice for the security of our country and the peace of the world.

Throughout our Nation's history, members of the Armed Forces have taken great risks to keep America strong and free. These proud patriots have defended the innocent, freed the oppressed, and helped spread the promise of liberty to all corners of the earth. In serving our Nation, they have been unrelenting in battle, unwavering in loyalty, and unmatched in decency. Because of their selfless courage, millions of people who once lived under tyranny now are free, and America is more secure.

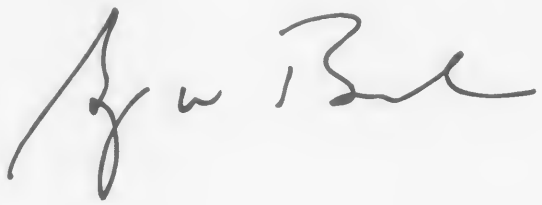
On Memorial Day, we remember that this history of great achievement has been accompanied by great sacrifice. To secure our freedom, many heroic service members have given their lives. This year we mark the 60th anniversary of the end of World War II, and we remember the Americans who died on distant shores defending our Nation in that war. On Memorial Day and all year long, we pray for the families of the fallen and show our respect for the contributions these men and women have made to the story of freedom. Our grateful Nation honors their selfless service, and we acknowledge a debt that is beyond our power to repay.

In respect for their devotion to America, the Congress, by a joint resolution approved on May 11, 1950, as amended (64 Stat. 158), has requested the President to issue a proclamation calling on the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the people of the United States might unite in prayer. The Congress, by Public Law 106–579, has also designated the minute beginning at 3:00 p.m. local time on that day as a time for all Americans to observe the National Moment of Remembrance.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim Memorial Day, May 30, 2005, as a day of prayer for permanent peace, and I designate the hour beginning in each locality at 11:00 a.m. of that day as a time to unite in prayer. I also ask all Americans to observe the National Moment of Remembrance beginning at 3:00 p.m. local time on Memorial Day. I urge the media to participate in these observances.

I also request the Governors of the United States and the Commonwealth of Puerto Rico, and the appropriate officials of all units of government, to direct that the flag be flown at half-staff until noon on this Memorial Day on all buildings, grounds, and naval vessels throughout the United States, and in all areas under its jurisdiction and control. I also request the people of the United States to display the flag at half-staff from their homes for the customary forenoon period.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of May, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and twenty-ninth.



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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV04–985–2 FIR–A2]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 2004–2005 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, the provisions of three interim final rules that increased the quantity of Class 3 (Native) spearmint oil produced in the Far West that handlers may purchase from, or handle for, producers during the 2004–2005 marketing year. This rule continues in effect the actions that increased the Native spearmint oil salable quantity by an additional 580,024 pounds from 773,474 pounds to 1,353,498 pounds, and the allotment percentage by an additional 27 percent from 36 percent to 63 percent. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, unanimously recommended this rule to avoid extreme fluctuations in supplies and prices and to help maintain stability in the Far West spearmint oil market.

EFFECTIVE DATE: June 24, 2005.

FOR FURTHER INFORMATION CONTACT: Susan M. Hiller, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, Suite 385, Portland, Oregon 97204; Telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, 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.

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 rule is issued under Marketing Order No. 985, as amended (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), 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."

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 hanler 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 not later than 20 days after the date of the entry of the ruling.

The initial salable quantity and allotment percentages for Scotch and Native spearmint oils for the 2004–2005 marketing year were recommended by the Committee at its October 8, 2003, meeting. The Committee recommended salable quantities of 766,880 pounds and 773,474 pounds, and allotment percentages of 40 percent and 36 percent, respectively, for Scotch and Native spearmint oils. A proposed rule was published in the **Federal Register** on January 23, 2004 (69 FR 3272). Comments on the proposed rule were solicited from interested persons until February 23, 2004. No comments were received. Subsequently, a final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 2004–2005 marketing year was published in the **Federal Register** on March 22, 2004 (69 FR 13213).

Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, the Committee has made unanimous Committee recommendations to increase the quantity of Native spearmint oil that handlers may purchase from, or handle for, producers during the 2004–2005 marketing year, which ends on May 31, 2005. The first revision was published as an interim final rule in the **Federal Register** on October 21, 2004 (69 FR 61755), which increased the salable quantity from 773,474 pounds to 1,095,689 pounds, and the allotment percentage from 36 percent to 51 percent. The second revision was published as an amended interim final rule in the **Federal Register** on February 23, 2005 (70 FR 8712), which further increased the salable quantity by 171,873 pounds to 1,267,562 pounds, and the allotment percentage by 8 percent to 59 percent. Finally, the third revision was published as a further amended interim final rule in the **Federal Register** on March 28, 2005 (70 FR 15557), which further increased the salable quantity an additional 85,936 pounds to 1,353,498 pounds, and the allotment percentage an additional 4 percent to 63 percent.

The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle for, producers during the marketing year. The total salable quantity is

divided by the total industry allotment base to determine an allotment percentage. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's individual allotment base for the applicable class of spearmint oil.

Taking into consideration the following discussion on adjustments to the Native spearmint oil salable quantity, the 2004–2005 marketing year salable quantity is increased to 1,353,498 pounds.

The original total industry allotment base for Native spearmint oil for the 2004–2005 marketing year was established at 2,148,539 pounds and was revised at the beginning of the 2004–2005 marketing year to 2,148,410 pounds to reflect a 2003–2004 marketing year loss of 129 pounds of base due to non-production of some producers' total annual allotments. When the revised total allotment base of 2,148,410 pounds is applied to the originally established allotment percentage of 36 percent, the 2004–2005 marketing year salable quantity of 773,474 pounds was effectively modified to 773,428 pounds.

This final rule adopts the provisions of the three interim final rules that made additional Native spearmint oil available from the reserve pool. When applied to each individual producer, the 27 percent allotment percentage increase allows each producer to take up to an amount equal to 27 percent of their allotment base from their Native spearmint oil reserve. This final rule continues in effect the actions that made an additional 580,024 pounds of Native spearmint oil available to the market. This figure is less than the salable quantity increase because not all producers have enough native spearmint oil left their reserves to take full advantage of this release.

The following table summarizes the Committee recommendation:

Native Spearmint Oil Recommendation

(A) Estimated 2004–2005 Allotment Base—2,148,539 pounds. This is the estimate that the original 2004–2005 Native spearmint oil salable quantity and allotment percentage was based on.

(B) Revised 2004–2005 Allotment Base—2,148,410 pounds. This is 129 pounds less than the estimated allotment base of 2,148,539 pounds. This is less because some producers failed to produce all of their 2003–2004 allotment.

(C) Initial 2004–2005 Allotment Percentage—36 percent. This was recommended by the Committee on October 8, 2003.

(D) Initial 2004–2005 Salable Quantity—773,474. This figure is 36 percent of 2,148,539 pounds.

(E) Revised 2004–2005 Salable Quantity—773,428 pounds. This figure reflects the salable quantity initially available after the beginning of the 2004–2005 marketing year due to the 129 pound reduction in the industry allotment base to 2,148,410 pounds.

(F) First Revision to the 2004–2005 Salable Quantity and Allotment Percentage.

(1) Increase in Allotment Percentage—15 percent. The Committee recommended a 12 percent increase at its September 13, 2004, meeting and an additional 3 percent increase at its October 6, 2004, meeting, for a total increase of 15 percent, which was effective on October 21, 2004.

(2) 2004–2005 Allotment Percentage—51 percent. This figure was derived by adding the first revised increase of 15 percent to the initial 2004–2005 allotment percentage of 36 percent.

(3) Calculated 2004–2005 Salable Quantity—1,095,689 pounds. This figure is 51 percent of the revised 2004–2005 allotment base of 2,148,410 pounds.

(4) Computed Increase in the 2004–2005 Salable Quantity—322,262 pounds. This figure is 15 percent of the revised 2004–2005 allotment base of 2,148,410 pounds.

(G) Second Revision to the 2004–2005 Salable Quantity and Allotment Percentage.

(1) Increase in Allotment Percentage—8 percent. The Committee recommended an 8 percent increase at its meeting on January 20, 2005, which was effective on February 23, 2005.

(2) 2004–2005 Allotment Percentage—59 percent. This figure was derived by adding the 8 percent to the first revised 2004–2005 allotment percentage of 51 percent.

(3) Calculated 2004–205 Salble Quantity—1,267,562 pounds. This figure is 59 percent of the revised 2004–2005 allotment base of 2,148,410 pounds.

(4) Computed Increase in the 2004–2005 Salable Quantity—171,873 pounds. This figure is 8 percent of the revised 2004–2005 allotment base of 2,148,410 pounds.

(H) Third Revision to the 2004–2005 Salable Quantity and Allotment Percentage.

(1) Increase in Allotment Percentage—4 percent. The Committee recommended a 4 percent increase at its meeting on February 23, 2005, which was effective on March 28, 2005.

(2) 2004–2005 Allotment Percentage—63 percent. This figure was derived by adding the 4 percent to the second revised 2004–2005 allotment percentage of 59 percent.

(3) Calculated 2004–2005 Salable Quantity—1,353,498 pounds. This figure is 63 percent of the revised 2004–2005 allotment base of 2,148,410 pounds.

(4) Computed Increase in the 2004–2005 Salable Quantity—85,936 pounds. This figure is 4 percent of the revised 2004–2005 allotment base of 2,148,410 pounds.

In making this recommendation, the Committee considered all available information on price, supply, and demand. The Committee also considered reports and other information from handlers and producers in attendance at the meeting and the report given by the Committee manager from handlers and producers who were not in attendance. The 2004–2005 marketing year began on June 1, 2004. Handlers have reported purchases of 1,070,801 pounds of Native spearmint oil for the period of June 1, 2004, through February 15, 2005. This amount exceeds the five-year average of 899,979 pounds for this period by 170,822 pounds. On average, handlers indicated that the estimated total demand for the 2004–2005 marketing year could range from a minimum of 1,269,000 pounds to as much as 1,279,000 pounds. This amount exceeds the five-year average for an entire marketing year of 973,456 pounds by as little as 295,544 pounds and as much as 305,544 pounds. Therefore, based on past history, the industry may not be able to meet market demand without these increases. When the Committee made its initial recommendation for the establishment of the Native spearmint oil salable quantity and allotment percentage for the 2004–2005 marketing year, it had anticipated that the year would end with an ample available supply.

Based on its analysis of available information, USDA has determined that the salable quantity and allotment percentage for Native spearmint oil for the 2004–2005 marketing year should be increased by 1,353,498 pounds and 63 percent, respectively.

This rule finalizes three interim final rules that relaxed the Native spearmint oil volume regulation and allows producers to meet market needs and improve returns. In conjunction with the issuance of this rule, the Committee's revised marketing policy statement for the 2004–2005 marketing year has been reviewed by USDA. The Committee's marketing policy statement, a requirement whenever the Committee recommends implementing volume regulations or recommends

revisions to existing volume regulations, meets the intent of § 985.50 of the order. During its discussion of revising the 2004–2005 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuring marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" has also been reviewed and confirmed.

The increases in the Native spearmint oil salable quantity and allotment percentage allow for anticipated market needs for this class of oil. In determining anticipated market needs, consideration by the Committee was given to historical sales, and changes and trends in production and demand.

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 action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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 currently 8 handlers of spearmint oil who are subject to regulation under the marketing order and 98 producers of Class 3 (Native) spearmint oil in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on SBA's definition of small entities, the Committee estimates that 2 of the 8 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 15 of the 98 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities:

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil-producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil-producing farms fall into the SBA category of large businesses.

Small spearmint oil producers generally are not as extensively diversified as larger ones and as such are more at risk to market fluctuations. Such small producers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because income from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation.

This final rule adopts, without change, the provisions of the interim final rules published in the **Federal Register** on October 21, 2004 (69 FR 61755) and amended on February 23, 2005 (70 FR 8712) and March 23, 2005 (70 FR 15557). Specifically, the rule published on October 21, 2004, increased the salable quantity from 773,474 pounds to 1,095,689 pounds, and the allotment percentage from 36 percent to 51 percent for Native spearmint oil for the 2004–2005 marketing year. The rule that subsequently amended the interim final rule was published on February 23, 2005, and increased the salable quantity an additional 171,873 pounds to 1,267,562 pounds, and the allotment percentage an additional 8 percent to 59 percent. Finally, the rule published on March 28, 2005, increased the salable quantity an additional 85,936 pounds to 1,353,498 pounds, and the allotment percentage an additional 4 percent to 63 percent. This rule finalizes three interim final rules that relaxed the Native spearmint oil volume regulations and allows producers to meet market needs and improve returns.

An econometric model was used to assess the impact that volume control has on the prices producers receive for their commodity. Without volume control, spearmint oil markets would likely be over-supplied, resulting in low producer prices and a large volume of oil stored and carried over to the next crop year. The model estimates how much lower producer prices would likely be in the absence of volume controls.

The recommended salable percentages, upon which 2004–2005 producer allotments are based, are 40 percent for Scotch and 63 percent for Native (a 27 percentage point increase from the original salable percentage of 36 percent). Without volume controls, producers would not be limited to these allotment levels, and could produce and sell additional spearmint. The econometric model estimated a $1.30 per pound decline in the season average producer price (for both classes of spearmint oil) resulting from the higher quantities that would be produced and marketed if volume controls were not used (*i.e.*, if the salable percentages were set at 100 percent). A previous price decline estimate of $1.71 per pound was based on the 2004–2005 salable percentages (40 percent for Scotch and 36 percent for Native) published in the **Federal Register** on March 22, 2004 (69 FR 13213).

The 2003 Far West producer price for both classes of spearmint oil was $9.50 per pound, which is below the average of $11.33 for the period of 1980 through 2002, based on National Agricultural Statistics Service data. The surplus situation for the spearmint oil market that would exist without volume controls in 2004–2005 also would likely dampen prospects for improved

producer prices in future years because of the buildup in stocks.

The use of volume controls allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. The use of volume controls is believed to have little or no effect on consumer prices of products containing spearmint oil and will not result in fewer retail sales of such products.

Based on projections available at the meetings, the Committee considered alternatives to each of the increases finalized herein. The Committee not only considered leaving the Native spearmint oil salable quantity and allotment percentage unchanged, but also looked at various increases. The Committee reached each of its recommendations to increase the salable quantity and allotment percentage for Native spearmint oil after careful consideration of all available information, and believes that the level now reached will achieve the objectives sought. Without the three increases, the Committee believes the industry would not have been able to meet market needs.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil handlers. 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. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee meetings were widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meetings and participate in Committee deliberations. Like all Committee meetings, the September 13, 2004, October 6, 2004, January 20, 2005, and the February 23, 2005, meetings were public meetings and all entities, both large and small, were able to express their views on each of the recommended increases in the 2004–2005 Native spearmint oil salable quantity and allotment percentage.

The first revision was published as an interim final rule in the **Federal Register** on October 21, 2004 (69 FR 61755). Comments on the interim final rule were solicited from interested persons until December 20, 2004. No comments were received. The second revision was published as an amended interim final rule in the **Federal Register** on February 23, 2005 (70 FR 8712). Comments on the amended interim final rule were solicited from interested persons until April 25, 2005. No comments were received. Finally, the third revision was published as a further amended interim final rule in the **Federal Register** on March 28, 2005 (70 FR 15557). Comments on the further amended interim final rule were solicited from interested persons until April 25, 2005. No comments were received. Copies of each of these rules were mailed by the Committee's staff to all committee members, producers, handlers, and other interested persons. In addition, each of these rules were made available through the Internet by USDA and the Office of the Federal Register.

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 by Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendations, and other information, it is found that finalizing the interim final rules, without change, as published in the **Federal Register** (69 FR 61755, October 21, 2004; 70 FR 8712, February 23, 2005; and 70 FR 15557, March 28, 2005) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ Accordingly, the interim final rules amending 7 CFR part 985 which were published at 69 FR 61755 on October 21, 2004; 70 FR 8712 on February 23, 2005; and 70 FR 15557 on March 28, 2005, are adopted as a final rule without change.

Dated: May 20, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–10441 Filed 5–24–05; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1439

RIN 0560–AH26

American Indian Livestock Feed Program; Livestock Assistance Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This regulation sets forth the terms and conditions of the 2003/2004 American Indian Livestock Feed Program (AILFP). Assistance will be available to eligible livestock producers for livestock feed crop years 2003 or 2004 whose eligible livestock occupied tribal-governed land at the time of a natural disaster in an area where a significant loss of livestock feed has occurred, creating a livestock feed emergency, as determined by the Commodity Credit Corporation (CCC). Eligible producers can receive benefits for livestock feed crop year 2003, or 2004, but not both. Eligible tribal-governed land must be located in a primary county or counties that have received an emergency declaration by the President or emergency designation by the Secretary of Agriculture on or after January 1, 2003, for losses occurring in calendar year 2003, or calendar year 2004. Although the Presidential declarations and Secretarial designations were issued for natural disasters in those calendar years, tribal governments may request an initial 90-day feeding period and up to three 90-day extensions that extend from the beginning of a livestock feed crop year, to the end of that same livestock feed crop year. Further, livestock owners who sold eligible livestock as a direct result of natural disaster shall report those livestock as owned through the end of the production year (livestock feed crop year) in order to mitigate the livestock owner's losses. This rule is intended to implement legislation and assist affected producers in overcoming the effects of drought. In addition, this rule provides technical revisions for the Livestock Assistance Program regulations.

DATES: Effective May 24, 2005.

FOR FURTHER INFORMATION CONTACT: Deborah O'Donoghue, Program Specialist, Noninsured Assistance Programs Branch (NAPB), Production, Emergencies, and Compliance Division (PECD), Farm Service Agency (FSA), United States Department of

Agriculture, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517; telephone (202) 720-5172; e-mail: *Debbie.O'Donoghue@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

Section 813 of the Agricultural Act of 1970, 7 U.S.C. 1427a, gave the Secretary of Agriculture some authority to provide assistance resulting from disasters. In 1998, remaining funds under that authority were used to fund the AILFP. Further, AILFP funding was provided for in section 806 of Public Law 106–387, which was appropriations legislation enacted in October of 2000. Section 101(b) of Division B of the Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act, 2005, Public Law 108–324, enacted in October of 2004 ("2004 Act"), provides for livestock assistance generally for producer losses in 2003 or 2004 (as elected by the producer). That assistance, generally, will be administered under the 2003–2004 Livestock Assistance Program (LAP). The 2003–2004 LAP provisions will be administered under rules separate from the AILFP regulations promulgated in this notice.

Regarding AILFP, section 101(b) permits the Secretary of Agriculture to use the LAP funds to make assistance available under AILFP, in an amount determined by the Secretary. The AILFP provision is understood to be part of an overall package of livestock assistance. Accordingly, the AILFP rules adopted here follow the same basic statutory conditions for LAP as provided in the 2004 Act. Accordingly, relief is for 2003 losses or 2004 losses, but not both, as the eligible producer elects. The same year must be chosen for all of the participant's farms. Similarly, if the participant participates in both the LAP and AILFP, the same year must be chosen for both programs. Further, LAP, under 101(b) of the 2004 Act, is confined to counties that received an emergency designation after January 1, 2003. This limitation is included in these rules. Other clarifying changes have been made to previous AILFP rules. However, the new rules generally follow the old rules. That adherence comports with the new statute's provisions in 101(b) that assistance be made available in the same manner as that administered under Section 806 of Public Law 106–387. For calculating benefit eligibilities a formula change was made to clarify and simplify the regulations in a manner that follows the LAP calculation. That change should not materially affect claims. Also, appropriations language in Public Law 108–447 provided that livestock administered in this fiscal year cover bison, elk, and reindeer, and this rule contains that provision. Further, the Secretary operated a program under Section 32 of the Act of August 24, 1935, with respect to 2004 hurricane losses. Section 101(c) of Division B of the 2004 Act provides that persons who received payments under that program are not eligible for payments under Section 101. That provision, too, is reflected in this rule.

In addition, this rule makes two technical changes to the 2003–2004 Livestock Assistance Program regulations at 7 CFR part 1439, subpart B. The first change is to remove an extra decimal place in a payment program formula. The second change removes a provision for payment of interest on delayed payments by CCC in order to conform with previous practice with respect to LAP.

Benefit-Cost Analysis

The AILFP began on November 27, 1998, for livestock feed losses suffered for the 1997 and subsequent crop-years due to unfavorable weather conditions. It provided $12.5 million from the sale of grain previously held in the Disaster Reserve. AILFP replaced the Indian Acute Distress Donation Program which was suspended in 1996. AILFP differed from previous livestock feeding programs because it made direct cash payments instead of grain donations. AILFP funding of $11.9 million was provided through an appropriation in section 806 of the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 2001 (Pub. L. 106–387, Oct. 28, 2000) (the 2001 Act) for FY 2001.

The 2005 Act appropriates no funds, but empowers the Secretary of Agriculture to use such sums as are necessary in the fiscal year ending September 30, 2005. FSA and CCC estimate that approximately $33 million in actual outlays will be made for the 2003/2004 AILFP, with some variation possible depending on the severity, extent, intensity, and duration of the drought conditions in counties where Indian reservations are located.

Notice and Comment

Section 101(g) of Division B of the 2004 Act requires that these regulations be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553 or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804), relating to notice and comment rulemaking and public participation in rulemaking. These regulations are accordingly issued as final.

Executive Order 12866

This final rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

Federal Assistance Programs

The title and number of the Federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are: 10.066, Livestock Assistance Program.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because neither the Secretary of Agriculture nor CCC are required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule.

Environmental Review

The environmental impacts of this rule have been considered consistent with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500 1508), and regulations of the Farm Service Agency (FSA) of the Department of Agriculture (USDA) for compliance with NEPA, 7 CFR part 799. An Environmental Evaluation was completed and it was determined that the proposed action does not have the potential to significantly impact the quality of the human environment and, therefore, the rule is categorically excluded from further review under NEPA. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12778

The final rule has been reviewed in accordance with Executive Order 12778. This final rule preempts State laws that are inconsistent with its provisions, but the rule is not retroactive. Before any judicial action may be brought concerning this rule, all administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with

State and local officials. *See* the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because neither the Secretary of Agriculture nor CCC are required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject matter of this rule. Also, the rule imposes no mandates as defined in UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996

Section 101(g) of Division B of the 2004 Act requires that the Secretary use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) ("SBREFA"), which allows an agency to forgo SBREFA's usual 60-day Congressional Review delay of the effective date of a major regulation if the agency finds that there is a good cause to do so. Accordingly, this rule is effective upon the date of filing for public inspection by the Office of the Federal Register.

Paperwork Reduction Act

Section 101(g) of Division B of the 2004 Act requires that these regulations be promulgated and the activities under this rule be administered without regard to the Paperwork Reduction Act. This means that the information to be collected from the public to implement these provisions and the burden, in time and money, the collection of the information would have on the public does not have to be approved by the Office of Management and Budget or be subject to the normal requirement for a 60 day public comment period.

Government Paperwork Elimination Act

CCC is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general, and the FSA in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required to be utilized by a person subject to this rule are implemented in a way that would allow the public to conduct business with CCC electronically. Accordingly, at this time, forms required to be submitted under this rule may be submitted to CCC by mail, fax, or electronically.

Executive Order 12612

This rule has no Federalism implications warranting a Federalism Assessment. This rule will not affect States, or their political subdivisions, or the distribution of power and responsibilities among levels of government.

List of Subjects in 7 CFR 1439

Agricultural commodities, Disaster assistance, Indian tribes, Livestock, Livestock feed.

■ Accordingly, 7 CFR part 1439 is amended as set forth below:

PART 1439—EMERGENCY LIVESTOCK ASSISTANCE

■ 1. The statutory authority continues to read as follows:

Authority: 7 U.S.C. 1427a; 15 U.S.C. 714 *et seq.*; Sec. 1103, Pub. L. 105–277, 112 Stat. 2681–42–44; Pub. L. 106–31, 113 Stat. 57; Pub. L. 106–78, 113 Stat. 1135; Pub. L. 106–113, 113 Stat. 1501; Sec. 257, Pub. L. 106–224, 114 Stat. 358; Sec's. 802, 806, & 813 Pub. L. 106–387, 114 Stat. 1549; Pub. L. 108–7, 117 Stat. 11; Sec. 101 of Division B, Pub. L. 108–324, 118 Stat. 1220; Sec. 785 of Division A, Pub. L. 108–447, 118 Stat. 2809.

Subpart B—2003–2004 Livestock Assistance Program

§ 1439.107 [Amended]

■ 2. In § 1439.107(c)(2), revise the figure "$0.54108797" to read "$0.5410879".

§ 1439.112 [Amended]

■ 3. In § 1439.112, remove paragraph (e) and redesignate paragraphs (f) through (k) as paragraphs (e) through (j), respectively.

■ 4. Add Subpart I, to read as follows

Subpart I—American Indian Livestock Feed Program

Sec.

1439.900 [Reserved]
1439.901 Applicability.
1439.902 Administration.
1439.903 Definitions.
1439.904 Region.
1439.905 Responsibilities.
1439.906 Program availability.
1439.907 Eligibility.
1439.908 Payment application.
1439.909 Payments.
1439.910 Program suspension and termination.
1439.911 Appeals.
1439.912 Estates, trusts, and minors.
1439.913 Death, incompetence, and disappearance.
1439.914 Violations.

Subpart I—American Indian Livestock Feed Program

§ 1439.900 [Reserved]

§ 1439.901 Applicability.

This subpart sets forth, subject to the availability of funds, the terms and conditions of a government-to-government program titled the American Indian Livestock Feed Program (AILFP). Assistance will be available in those regions that Commodity Credit Corporation (CCC) determines have been affected by natural disaster and are located in a primary county or counties that have received a Presidential declaration or Secretarial emergency designation issued on or after January 1, 2003, for eligible losses in 2003 or 2004. Eligible producers may receive benefits for 2003 losses, or 2004 losses, but not both. Eligible areas will only include those where a determination is made by the Deputy Administrator for Farm Programs, Farm Service Agency (FSA) (Deputy Administrator) that a livestock feed emergency exists on tribal-governed land. Contiguous counties that were not designated as a primary disaster county in their own right will not be eligible for participation for 2003 or 2004 losses under this subpart. Payments may become available as contracts with tribal governments are approved. Unless otherwise specified or determined by the Deputy Administrator, a livestock producer is not eligible to receive payments for the same loss under both this subpart and another Federal program. Payments will terminate when the specified deadline has been reached, when a tribal government requests termination, or when there is a program violation or a violation of a contract related to the program irrespective of whether the violation involves the current operation of the program for other periods of time.

§ 1439.902 Administration.

(a) This subpart will be administered by CCC under the general supervision of the Deputy Administrator for Farm Programs. This program shall be carried out in the field as prescribed in these regulations and as directed in the contract executed between the applicable tribal government and CCC, except that in the event any contract provision conflicts with these regulations, the regulations shall apply.

(b) Tribal governments, their representatives, and employees do not have authority to modify or waive any provisions of the regulations of this subpart.

(c) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any provisions of regulations of this subpart.

(d) The Deputy Administrator may authorize State and county committees to waive or modify deadlines and other program requirements in cases where the applicant or tribe, as applicable, shows that circumstances beyond the applicant's or tribe's control precluded compliance with the deadline and where lateness or failure to meet such other requirements does not adversely affect the operation of the program.

(e) The tribal government will, in accordance with this part and in coordination with the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), and FSA State and county committees, recommend the geographical size and shape of the region which will be considered to be eligible to be considered the region where the natural disaster has occurred and where all eligibility conditions are met. Such region must consist solely of tribal-governed land and be located in a primary county or counties named in a Presidential declaration or Secretarial emergency designation. Regional eligibilities will be effective only upon the Deputy Administrator's approval in writing and continued approval thereafter.

(f) The Deputy Administrator will determine all prices with respect to implementing the AILFP.

(g) Subject to review by the Deputy Administrator, the FSA State committee will determine crop yields and livestock carrying capacity with respect to implementing the AILFP.

(h) Participation in the AILFP by a tribal government for either the tribal government's benefits or for the benefit of any eligible owner is voluntary and is with the understanding that CCC will not reimburse the tribal government or its members for any administrative costs associated with the administration or implementation of the program.

(i) Except as otherwise declared by the Deputy Administrator, Subpart A shall not apply to this subpart, except §§ 1439.3 through 1439.10, and 1439.12.

(j) No delegation herein to a State or county committee or a commodity office shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee or employee of the Department of Agriculture.

§ 1439.903 Definitions.

The definitions set forth in this section shall be applicable to the program authorized by this subpart. The terms defined in § 1439.3 shall also be applicable except where those definitions conflict with the definitions set forth in this subpart. The following terms shall have the following meanings:

Approving official means a representative of the tribal government who is authorized to approve an application for assistance made in accordance with this subpart.

Carrying capacity means the stocking rate expressed as acres per animal unit that is consistent with maintaining or improving vegetation or related resources.

Dependent Indian community means a limited category of Indian lands that are neither reservations nor allotments and is:

(1) Land set aside by the Federal Government for the use of Indians as Indian land, and

(2) Under Federal superintendence.

Disaster period means the length of time that damaging weather, adverse natural occurrence, or related condition had a detrimental affect on the production of livestock feed.

Eligible feed for assistance means any type of feed (feed grain, oilseed meal, premix, or mixed or processed feed, liquid or dry supplemental feed, roughage, pasture, or forage) that provides net energy requirements, is consistent with acceptable feeding practices, and was not produced by the owner.

Eligible livestock means beef and dairy cattle; buffalo and beefalo maintained on the same basis as beef cattle; equine animals used for food or used directly in the production of food; sheep; goats; swine; elk; and reindeer.

Eligible owner means an individual or entity, including a tribe, eligible to participate in this program, who:

(1) Contributes to the production of eligible livestock or their products;

(2) Has such contributions at risk;

(3) Meets the criteria set forth in § 1439.907, and elsewhere in this part; and

(4) Meets eligibility criteria set forth by the tribal government in an approved contract.

Livestock feed crop year means a period of time beginning on the date grazing first becomes available in each county, as established by each State Committee, and ending one year later.

Livestock feed emergency means a situation in which a natural disaster causes more than a 35-percent reduction in the feed produced in a region, determined in accordance with § 1439.904 for a defined period, as determined by CCC. Any loss of feed production attributable to overgrazing or other factors not considered to be a natural disaster as specified in this subpart shall not be included in the loss used to determine if a livestock feed emergency occurred.

Natural disaster means damaging weather, including but not limited to: drought, hail, excessive moisture, freeze, tornado, hurricane, excessive wind, or any combination thereof; or an adverse natural occurrence such as earthquake, flood, or volcanic eruption; or a related condition, including but not limited to heat, or insect infestation, that occurs as a result of aforementioned damaging weather or adverse natural occurrence prior to or during the crop year that directly causes, accelerates, or exacerbates the reduction of livestock feed production.

Region means a geographic area suffering a livestock feed emergency because of natural disaster as determined by a tribal government in accordance with § 1439.904.

Tribal governed land means:

(1) All land within the limits of any Indian reservation;

(2) Dependent Indian communities;

(3) Any lands title to which is either held in trust by the United States for the benefit of an Indian tribe or Indian, or held by an Indian tribe or Indian subject to a restriction by the United States on alienation; and

(4) Land held by an Alaska Native, Alaska Native Village, or village or regional corporation under the provisions of the Alaska Native Claim Settlement Act, or other Act relating to Alaska Natives.

Tribe means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

Type and weight range means the weight range by type of livestock; provided further that for purposes of calculations of payment eligibility under this subpart, as provided for in this subpart, such livestock shall be considered to have the following daily feed need expressed in pounds of corn per head per day:

Category	Weight range	Pounds of corn per head, per day
Type—Beef Cattle (Buffalo/Beefalo):		
Beef	Under 400	3.5
Beef	400–799	6.5
Beef	800–1099	8.5
Beef	1100+	12.5
Beef, Cow	All	15.7
Beef, Bull	1000+	13.0
Type—Dairy Cattle:		
Dairy	Under 400	3.5
Dairy	400–799	6.5
Dairy	800–1099	8.5
Dairy	1100+	12.5
Dairy, Cow	Under 1100	27.0
Dairy, Cow	1100–1299	31.0
Dairy, Cow	1300–1499	33.0
Dairy, Cow	1500+	34.5
Dairy, Bull	1000+	14.5
Type—Swine:		
Swine	Under 45	0.5
Swine	45–124	1.1
Swine	125+	1.9
Swine, Sow	235+	6.5
Swine, Boar	235+	3.7
Type—Sheep:		
Sheep	Under 44	0.4
Sheep	44–82	0.9
Sheep	83+	1.1
Sheep, Ewe	150+	3.1
Sheep, Ram	150+	1.7
Type—Goats:		
Goats	Under 44	0.5
Goats	44–82	1.1
Goats	83+	1.5
Goats, Doe	125+	3.5
Goats, Doe (Dairy)	125+	5.2
Goats, Buck	125+	2.1
Type—Equine:		
Equine	Under 450	4.4
Equine	450–649	6.3
Equine	650–874	8.2
Equine	875+	11.6
Type—Reindeer:		
All	Under 400	3.5
Type—Elk		
Elk	Under 400	3.5
Elk, Cow	400–799	6.5
Elk, Bull	800–1099	8.5

§ 1439.904 Region.

In order for a region to be eligible to generate benefits under this subpart, the region must:

(a) Be located in a primary county or counties named in a Presidential declaration or Secretarial emergency designation;

(b) Be tribal-governed land physically located within the primary disaster designated county; and

(c) Have suffered a livestock feed emergency as defined in § 1439.903.

§ 1439.905 Responsibilities.

(a) During the operation of this program, CCC shall:

(1) Provide weather data, crop yields and carrying capacities to tribes requesting such information;

(2) Review contracts submitted by tribal governments requesting disaster regions; and

(3) Act as an agent for disbursing payments to eligible livestock owners in approved disaster regions.

(b) Tribal governments shall be responsible for:

(1) Submitting a contract to participate in the AILFP based on the tribes' voluntary decisions that participation will benefit all livestock owners using tribal governed land;

(2) Gathering, organizing, and reporting accurate information regarding disaster conditions and region;

(3) Advising livestock owners in an approved region that they may be eligible for payments, in addition to the method and requirements for filing applications;

(4) Determining that the information provided by individual livestock owners on payment applications is accurate and complete and that the owner is eligible for payments under this program;

(5) Submitting only accurate and complete payment applications to the designated FSA office acting as an agent for disbursing payments to eligible livestock owners.

(c) The owner or authorized representative shall:

(1) Furnish all the information specified on the payment application, as requested by CCC;

(2) Provide any other information that the tribal government deems necessary to determine the owner's eligibility; and

(3) Certify that purchased feed was or will be fed to the owner's eligible livestock.

§ 1439.906 Program availability.

(a) When a tribal government determines that a livestock feed emergency existed in calendar year 2003 or 2004 on tribal governed land due to a natural disaster, the tribal government may contact the applicable State FSA office to determine if their tribal governed land is located in a primary county or counties named in a Presidential declaration or Secretarial emergency designation made after January 1, 2003, with respect to losses in 2003 or 2004. After a Presidential or Secretarial emergency designation has been confirmed, the tribal government may submit a properly completed contract requesting approval of a region. All contracts requesting region approval must be submitted by the later of July 25, 2005, or 60 days after the end of the disaster period, whichever is later, as specified on the contract.

(b) Properly completed contracts shall consist of:

(1) A completed Contract to Participate form; and

(2) A completed Region Designation and Feed Loss Assessment form; and

(3) Supportive documentation as determined by CCC including, but not limited to:

(i) A map of the region delineated in accordance with § 1439.904;

(ii) Historical production data and estimated or actual production data for the disaster year; and

(iii) Climatological data provided by the State FSA office.

(c) The Deputy Administrator shall make a determination as to whether a livestock feed emergency existed not later than 30 days after receipt of a properly completed contract made in accordance with this subpart and shall notify the tribal government and FSA State office of such determination as applicable. Approvals will be made on the basis of a Presidential or Secretarial emergency designation for the primary county or counties named in the contract, and whether the requisite 35 percent loss on tribal governed land in that county or counties can be substantiated by supporting documentation, and other conditions as required by this subpart, other regulations, the Deputy Administrator, or CCC.

(d) The feeding period provided in the approved contract will be for a term not to exceed 90 days, except as provided in paragraph (e) of this section. The feeding period shall not be extended if the livestock feed emergency ceased to exist.

(e) The tribal government may request multiple feeding periods for up to three additional 90-day periods in a livestock feed crop year if disaster conditions did not diminish significantly and a livestock feed emergency continued and other conditions for payment are met.

(f) Tribal governments shall submit separate contracts for disasters occurring in both 2003 and 2004 calendar years; however, livestock owners shall elect only one of those years to receive benefits.

§ 1439.907 Eligibility.

(a) An eligible owner must own or jointly own the eligible livestock for which payments under this subpart are requested. Notwithstanding any other provision of this subpart, livestock leased under a contractual agreement that has been in effect at least 6 months prior to the beginning of the feeding period made under this subpart shall be considered as being owned by the lessee for that part of the feeding period in which the lease was in effect but only if the lease:

(1) Required the lessee for the full lease period to furnish the feed for such livestock; and

(2) Provided for a substantial interest, as determined by the Deputy Administrator, in such livestock in the lessee, such as the right to market a substantial share of the increase in weight of livestock.

(b) A State or non-tribal local government or subdivision thereof, or any individual or entity determined to be ineligible in accordance with § 1400.501 of this chapter are not eligible for benefits under this subpart.

(c) Any eligible owner of livestock, including the tribe, may file a CCC-approved AILFP payment application. When such a payment application is filed, the owner and an authorized tribal government representative shall execute the certification contained on such payment application no later than the deadline established by CCC upon approval of the region.

(d) To be eligible for benefits under this subpart, livestock owners must own or lease tribal-governed land in the approved delineated region, and have had livestock on such land at the time of disaster that is the basis for the region's designation.

(e) Eligible livestock owners shall be responsible for providing information to the tribal government that accurately reflects livestock feed purchases for eligible livestock during the feeding period. False or inaccurate information may affect the owner's eligibility.

§ 1439.908 Payment application.

(a) Except as provided in paragraph (d) of this section, payment applications from interested eligible owners must be:

(1) Submitted to the FSA county office where the tribal-governed land is administered, or to the tribal government, by the owner no later than a date announced by the tribe, such date being no later than the applicable date established in § 1439.907(c);

(2) Submitted by the tribal government to the office designated by CCC no later than a date announced by CCC;

(3) Accompanied by valid receipts substantiating purchase of eligible feed for assistance. Valid receipts must also be accompanied by the certification referenced in the AILFP Payment Application, (Form CCC–644 or any replacement form) and shall contain:

(i) The date of feed purchase, which must fall within the eligible feeding period as approved on the contract;

(ii) The names and addresses of the buyer and the vendor;

(iii) The type of feed purchased;

(iv) The quantity of the feed purchased;

(v) The cost of the feed; and

(vi) The vendor's signature if the vendor is not licensed to conduct this type of business transaction.

(b) The tribal government shall review each payment application, as specified by CCC, for completeness and accuracy. Except as provided in paragraphs (c) and (d) of this section, the tribal government shall approve those eligible owners and applications meeting the requirements of this subpart.

(c) No approving tribal government member shall review and approve a payment application for any operation for which such member has a direct or indirect interest. Such payment application may be reviewed for approval by a member of the tribal government who is not related to the applicant by blood or marriage.

(d) Tribal governments do not have the authority to approve a payment application for any operation for which the tribe has a direct or indirect interest. Payment applications for tribal-owned livestock shall contain an original signature of a member of the tribal government, signing as representing all owners of the tribal-owned livestock, who possesses the authority to sign documents on behalf of the tribe and shall be submitted to an office designated by the Secretary for approval.

(e) No payment application shall be approved unless the owner meets all eligibility requirements. Information submitted by the owner and any other

information, including knowledge of the tribal government concerning the owner's normal operations, shall be taken into consideration in making recommendations and approvals. If either the payment application is incomplete or information furnished by the owner is incomplete or ambiguous and sufficient information is not otherwise available with respect to the owner's farming operation in order to make a determination as to the owner's eligibility, the owner's payment application, as specified by CCC, shall be denied. The tribal government shall be responsible for notifying the owner of the reason for the denial and shall provide the owner an opportunity to submit additional information as requested.

(f) All payment applications, as specified by CCC, approved by the tribal government will be submitted to a designated FSA office for calculation of payment.

§ 1439.909 Payments.

(a) Provided all other eligibility requirements of this subpart are met, all eligible payment applications submitted to the designated FSA office shall have payments issued to the applicant by CCC.

(b) If any term, condition, or requirement of these regulations or contract are not met, payments and benefits previously provided by CCC that were not earned under the provisions of the application shall be refunded.

(c) Each owner's share of the total payment shall be indicated on the application, and each owner shall receive benefits or final payment from CCC according to benefits or payments earned under the provisions of the application and this part.

(d) Owners may file applications for more than one feeding period relating to losses occurring within the same year, either 2003 or 2004, but those years only, and in no case may a person receive payment for losses under this subpart for both 2003 and 2004. That is, eligible persons may receive benefits for one of those livestock feed crop years, but not both. CCC shall provide assistance equal to the amount of benefits determined for the owner for the feeding periods that the owner is eligible to receive benefits.

(e) The failure of any contact person to file the necessary receipts or sales documents showing that the terms and conditions of this part and the contract have been met shall render all of the persons ineligible for any payments and benefits under the contract including any payments previously made. Payments shall be refunded to CCC with interest, if applicable, as determined under § 1439.8.

(f) If the livestock owner is eligible for the AILFP and the Livestock Assistance Program (LAP), the livestock owner must elect to receive payment for the same year for all farms for both programs, either 2003 or 2004.

(g) Persons that received payments from Section 32 of the Act of August 24, 1935, with respect to 2004 hurricane losses are not eligible for payments under this subpart.

(h) Subject to such other limitations as may apply including those in § 1439.909(i), the amount of assistance provided to any owner shall not exceed the smaller of either:

(1) The dollar amount of eligible livestock feed purchased during the relevant eligible feeding period for the days for which such assistance is allowed (as documented by acceptable purchase receipts), less the dollar amount of any sale of livestock feed (whether purchased or produced) by the owner during the eligible feeding period; or

(2) Subject to adjustments, conditions, and deductions as otherwise may be provided for in this part, including, but not limited to those in paragraph (i) of this section, 30 percent of the amount computed by multiplying:

(i) The amount of the estimated daily feed need, expressed as pounds of corn, for the relevant type and weight range of the livestock using the table contained in the "type and weight range" definition contained in § 1439.3, or some alternative table chosen by the Deputy Administrator, by

(ii) The number of days the eligible owners of the livestock provided feed to the eligible livestock during the eligible days of the eligible feeding period; by

(iii) A corn price, per pound of corn, which price shall be $0.0369642 for 2003 losses, and $0.0344642 for 2004 losses unless some alternative pricing shall be chosen by the Deputy Administrator (provided further, however, that after the completion of this multiplication, the claim amount shall be reduced by the dollar amount of any sale of livestock feed whether purchased or produced by the owner during the feeding period.

(3) For purposes of the calculation required by paragraph (h)(2) of this section, the number of livestock during the livestock feed crop year on which the claim is calculated, the Deputy Administrator can include, if all other conditions are met, livestock sold as a result of the natural disaster but only subject to such conditions as may be approved by the Deputy Administrator.

§ 1439.910 Program suspension and termination.

(a) The tribal government that requested the AILFP assistance may, at any time during the operation of a program, recommend suspension or termination of the program.

(b) The Deputy Administrator may suspend or terminate the program at any time if:

(1) The tribal government requests termination or suspension; or

(2) The Deputy Administrator determines a tribal government is not following program provisions when administering the program.

§ 1439.911 Appeals.

Any person who is dissatisfied with a CCC determination made with respect to this subpart may make a request for reconsideration or appeal of such determination in accordance with part 780 of this chapter. Any person who is dissatisfied with a determination made by the tribal authority should seek reconsideration of such determination with the tribe. Decisions and determinations made under this subpart not rendered by CCC or FSA are not appealable to the National Appeals Division.

§ 1439.912 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is an owner shall be eligible for assistance under this subpart only if such person meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1439.913 Death, incompetence, and disappearance.

In the case of death, incompetence, or disappearance of any person who is eligible to receive assistance in accordance with this part, such person or persons specified in part 707 of this title may receive such assistance.

§ 1439.914 Violations.

(a) If the owner has failed to utilize the entire quantity of livestock feed purchased under the terms and conditions of the application for assistance and contract of these

programs, the owner shall not dispose of any remaining quantity of such livestock feed except as specified by CCC.

(b) Fraudulent representations by any warehouseman, handler, dealer, or any other person may result in the person being suspended from participation in a program in accordance with part 1407 of this chapter if such person has:

(1) Made a false certification, representation or report in accordance with this subpart; or

(2) Otherwise failed to comply with any provisions of this part or any contracts entered into in accordance with this part. The making of such fraudulent representations shall make such person liable in accordance with applicable State and Federal criminal and civil statutes.

Signed in Washington, DC, on May 19, 2005.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 05–10467 Filed 5–24–05; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 1944

Updating of Designated Counties for Housing Application Packaging Grants

AGENCY: Rural Housing Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS) is amending its regulations to update the list of designated counties for Housing Application Packaging Grants (HAPG). Under section 509 of the Housing Act of 1949, grants are provided to package housing applications for loans under sections 502, 504, 514, 515, and 524 and grants under section 533 in colonias and designated underserved counties. The intended effect is to make eligible applicants, including public and private nonprofit organizations and State and local governments, aware of the new list of designated counties, which was based on the 2000 census data.

EFFECTIVE DATE: May 25, 2005.

FOR FURTHER INFORMATION CONTACT: Gloria L. Denson, Senior Loan Specialist, Single Family Housing Direct Loan Division, RHS, U.S. Department of Agriculture, STOP 0783, South Building, Washington, DC 20250–0783, Telephone 202–720–1474. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

Classification

This action is not subject to the provisions of Executive Order 12866 since it involves only internal Agency management. This action is not published for prior notice and comment under the Administrative Procedure Act since it involves only internal Agency management and publication for comment is unnecessary and contrary to the public interest.

Programs Affected

The Catalog of Federal Domestic Assistance number for the programs impacted by this action is 10.442—Housing Application Packaging Grants.

Paperwork Reduction Act

This final rule does not revise or impose any new information collection requirements from those previously approved by the Office of Management and Budget.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments, and the private sector. Under section 202 of the UMRA, the agency generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Final 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 the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the 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) for State, local and tribal governments, or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Environment Impact Statement

This action has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." The Agency has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Discussion

Based on the 2000 U.S. Census data and applicable criteria for 7 CFR part 1944, subpart B, twenty-four States have designated counties eligible for HAPG funds. This list must be used for any grants processed in Fiscal Year 2005, and until receipt of the 2010 U.S. Census data. Exhibit D of 7 CFR part 1944, subpart B is revised to update this information. To apply for assistance under this program or for more information, contact the Rural Development Office for your area or the individual shown in the **FOR MORE INFORMATION CONTACT** section of the preamble this notice.

Seven States have been completely removed from the original twenty-nine listed in Exhibit D (Kentucky, North Carolina, Ohio, South Carolina, Tennessee, Virginia and West Virginia) and one State (Nebraska) has been added. In addition, some of the designated counties are no longer eligible and have been removed and new ones have been added. Therefore, Exhibit D of 7 CFR part 1944, subpart B is revised to list the current designated counties.

List of Subjects in 7 CFR Part 1944

Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Migrant labor, Nonprofit organizations, Reporting requirements, Rural areas.

■ Accordingly, Chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1944—HOUSING

■ 1. This authority citation for part 1944 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 301; 42 U.S.C. 1480.

Subpart B—Housing Application Packaging Grants

■ 2. Exhibit D of subpart B is revised to read as follows:

BILLING CODE 3410–XV–P

Exhibit D of Subpart B - Designated Counties for Housing Application Packaging Grants

Alabama (2)	Alaska (4)	Arizona (8)	Arkansas (1)
Perry	Bethel Census Area	Apache County	Newton County
Wilcox	Dillingham Census Area	Coconino County	
	Wade Hampton Census Area	Graham County	
	Yukon-Koyukuk	La paz County	
		Navajo County	
		Pinal County	
		Santa Cruz County	
		Yuma County	

California (7)	Colorado (2)	Florida (3)	Georgia (2)
Alpine	Costilla County	DeSota County	Candler County
Fresno	Saguache County	Hardee County	Hancock County
Imperial County		Hendry County	
Kings County			
Merced County			
Sutter County			
Tulare County			

Idaho (1)	Louisiana (1)	Mississippi (10)	Montana (2)
Madison County	Plaquemines Parish	Benton County	Big Horn County
		Bolivar County	Glacier County
		Claiborne County	
		Holmes County	
		Humpheys County	
		Issaquena County	
		Noxubee County	
		Scott County	
		Sharkey County	
		Sunflower County	

Nebraska (1)	New Mexico (8)	North Dakota (3)	South Dakota (9)
Thurston County	Cibola County	Benson County	Bennett County
	Dona Ana County	Rolette County	Buffalo County
	Luna County	Sioux County	Corson County
	McKinley County		Dewey County
	Mora County		Jackson County
	Otero County		Mellette County
	Sandoval County		Shannon County
	San Juan County		Todd County
			Ziebach County

Texas (39	Utah (1)	Washington (1)	Wisconsin (1)
Atascosa County	San Juan County	Yakima County	Menominee County
Bee County			
Brooks County			
Cameron County			
Crosby County			
Dawson County			
Crosby County			
Dawson County			
Deaf Smith County			
Dimmit County			
Duval County			
Edwards County			
El Paso County			
Floyd County			
Frio County			
Gaines County			
Hall County			
Hidalgo County			
Hudspeth County			
Jim Hogg County			
Jim Wells County			
Kinney County			
Kleberg County			
La Salle County			
Lynn County			
McMullen County			
Maverick County			
Pecos County			
Presidio County			
Reeves County			
San Patricio County			
Starr County			
Uvalde County			
Val Verde County			
Webb County			
Willacy County			
Zapata County			

Designated Counties for Housing Application Packaging Grants

American Samoa (4)	North Marianas (3)	Puerto Rico (64)	Virgin Islands (2)
Eastern District	Rota Municipality	Adjuntas Municipio	St. Croix Island
Manu'a District	Saipan Municipality	Aguas Buenas Municipio	St. Thomas Island
Swains Island	Tinian Municipality	Albonito Municipio	
Western District		Atasco Municipio	
		Arecibo Municipio	
		Arroyo Municipio	
		Barramqiotas Municipio	
		Cabo Rojo Municipio	
		Cagias Municipio	
		Camuy Municipio	
		Canvanas Municipio	
		Carolina Municipio	
		Cayey Municipio	
		Ceiba Municipio	
		Ciales Municipio	
		Cidra Municipio	
		Coamo Municipio	
		Comerfo Municipio	
		Corozal Municipio	
		Culebra Municipio	
		Fajardo Municipio	
		Florida Municipio	
		Gubnica Municipio	
		Guayama Municipio	
		Guayanilla Municipio	
		Gurabo Municipio	
		Hatillo Municipio	
		Humacao Municipio	
		Isabela Municipio	
		Jayuya Municipio	
		Juana Dfaz Municipio	
		Juncos Municipio	
		Lajas Municipio	
		Lares Municipio	
		Las Marfas Municipio	
		Las Marfas Municipio	
		Las Piedras Municipio	
		Lofza Municipio	
		Luquillo Municipio	

Designated Counties for Housing Application Packaging Grants

		Puerto Rico (64) (continued)	
		Manaff Municipio	
		Maricao Municipio	
		Maunabo Municipio	
		Mayagnez Municipio	
		Moca Municipio	
		Morovis Municipio	
		Neguabo Municipio	
		Orocovis Municipio	
		Patillas Municipio	
		Petuelas Municipio	
		Ponce Municipio	
		Quebradillas Municipio	
		Rfo grande Municipio	
		Sabana Grande Municipio	
		Salinas Municipio	
		San German Municipio	
		San Lorenzo Municipio	
		San Sebastiban Municipio	
		Santa Isabel Municipio	
		Utuado Municipio	
		Vega Alta Municipio	
		Vieques Municipio	
		Villalba Municipio	
		Yabucoa Municipio	
		Yauco Municipio	

Dated: May 5, 2005.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. 05–10466 Filed 5–24–05; 8:45 am]

BILLING CODE 3410–XV–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH72

List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®–24P, –52B, –61BT, –32PT, –24PHB, and –24PTH Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the Transnuclear, Inc., Standardized NUHOMS® System listing within the "List of approved spent fuel storage casks" to include Amendment No. 8 to Certificate of Compliance Number (CoC No.) 1004. Amendment No. 8 to the Standardized NUHOMS® System CoC will modify the cask design by adding a new spent fuel storage and transfer system, designated the NUHOMS®–24PTH System. The NUHOMS®–24PTH System consists of new or modified components: The –24PTH dry shielded canister (DSC); a new –24PTH DSC basket design; a modified horizontal storage module (HSM), designated the HSM–H; and a modified transfer cask (TC), designated the OS 197FC TC. The NUHOMS®–24PTH System is designed to store fuel with a maximum average burnup of up to 62 gigawatts-day/metric ton of uranium; maximum average initial enrichment of 5.0 weight percent; minimum cooling time of 3.0 years; and maximum heat load of 40.8 kilowatts per DSC, under a general license.

DATES: The final rule is effective August 8, 2005, unless significant adverse comments are received by June 24, 2005. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH72) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. 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 Gallagher (301) 415–5905; e-mail *cag@nrc.gov*. Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays (telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. An electronic copy of the proposed CoC, Technical Specifications (TS), and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. ML050750211.

CoC No. 1004, the revised TS, the underlying SER for Amendment No. 8, and the Environmental Assessment (EA), are available for inspection at the NRC PDR, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*, of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that "[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, that "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR part 72 entitled, "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR part 72, entitled "Approval of Spent Fuel Storage Casks" containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on December 22, 1994 (59 FR 65920), that approved the Standardized NUHOMS® System (NUHOMS®–24P and –52B) cask designs and added them to the list of NRC-approved cask designs in § 72.214 as CoC No. 1004. Amendments 3, 5, and 6, respectively, added the –61BT, –32PT, –24PHB designs to the Standardized NUHOMS® System.

Discussion

On September 19, 2003, and as supplemented on January 22, July 6, August 16, September 17, and October 11, 2004; and January 14 and March 15, 2005, the certificate holder, Transnuclear, Inc. (TN), submitted an application to the NRC to amend CoC No. 1004 to add a new spent fuel storage and transfer system, designated the NUHOMS®–24PTH System. The NUHOMS®–24PTH System consists of new or modified components: (1) The –24PTH DSC; (2) a new –24PTH DSC basket design; (3) a modified horizontal storage module, designated the HSM–H; and (4) a modified transfer cask, designated the OS 197FC TC. The NUHOMS®–24PTH System is designed to store fuel with a maximum average burnup of up to 62 gigawatts-day/metric ton of uranium (GWd/MTU); maximum average initial enrichment of 5.0 weight percent; minimum cooling time of 3.0 years; and maximum heat load of 40.8 kilowatts (kW) per DSC. No other changes to the Standardized NUHOMS® System cask design were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there is still reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the Standardized NUHOMS® System cask design listing in § 72.214 by adding Amendment No. 8 to CoC No. 1004. The amendment consists of changes to the TS as described above. The particular TS which are changed are identified in the NRC staff's SER for Amendment No. 8.

The amended Standardized NUHOMS® System, when used in accordance with the conditions specified in the CoC, the TS, and NRC regulations, will meet the requirements of Part 72; thus, adequate protection of public health and safety will continue to be ensured.

Discussion of Amendments by Section

Section 72.214 List of Approved Spent Fuel Storage Casks

Certificate No. 1004 is revised by adding the effective date of Amendment Number 8.

Procedural Background

This rule is limited to the changes contained in Amendment 8 to CoC No. 1004 and does not include other aspects of the Standardized NUHOMS® System design. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on August 8, 2005. However, if the NRC receives significant adverse comments by June 24, 2005, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or

approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC would revise the Standardized NUHOMS® System cask design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as Compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled "Plain Language in Government Writing," directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in subpart A of 10 CFR part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule would amend the CoC for the Standardized NUHOMS® System within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. The amendment will add a new spent fuel storage and transfer system, designated the NUHOMS®–24PTH System, to the Standardized NUHOMS® System. The NUHOMS®–24PTH System consists of new or modified components: (1) The –24PTH DSC; (2) a new –24PTH DSC basket design; (3) a modified horizontal storage module, designated the HSM–H; and (4) a modified transfer cask, designated the OS 197FC TC. The NUHOMS®–24PTH System is designed to store fuel with a maximum average burnup of up to 62 GWd/MTU; maximum average initial enrichment of 5.0 weight percent; minimum cooling time of 3.0 years; and maximum heat load of 40.8 kW per DSC. The EA and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the EA and finding of no significant impact are available from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov.*

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On December 22, 1994 (59 FR 65920), the NRC issued an amendment to Part 72 that approved the Standardized NUHOMS® System (NUHOMS®–24P and –52B) by adding it to the list of NRC-approved cask designs in § 72.214. Amendments 3, 5, and 6, respectively, added the –61BT, –32PT, –24PHB designs to the Standardized NUHOMS® System. On September 19, 2003, and as supplemented on January 22, July 6, August 16, September 17, and October 11, 2004; and January 14 and March 15, 2005, the certificate holder, TN, submitted an application to the NRC to amend CoC No. 1004 to add a new spent fuel storage and transfer system, designated the NUHOMS®–24PTH System. The NUHOMS®–24PTH System consists of new or modified components: (1) The –24PTH DSC; (2) a new –24PTH DSC basket design; (3) a modified horizontal storage module, designated the HSM–H; and (4) a modified transfer cask, designated the OS 197FC TC. The NUHOMS®–24PTH System is designed to store fuel with a maximum average burnup of up to 62 GWd/MTU; maximum average initial enrichment of 5.0 weight percent; minimum cooling time of 3.0 years; and maximum heat load of 40.8 kW per DSC.

The alternative to this action is to withhold approval of this amended cask system design and issue an exemption to each general license. This alternative would cost both the NRC and the utilities more time and money because

each utility would have to pursue an exemption.

Approval of the direct final rule will eliminate this problem and is consistent with previous NRC actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and TN. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects In 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 72.44(g) also issued under secs. 142(b) and 148(c)), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1004 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004
Initial Certificate Effective Date: January 23, 1995
Amendment Number 1 Effective Date: April 27, 2000
Amendment Number 2 Effective Date: September 5, 2000
Amendment Number 3 Effective Date: September 12, 2001
Amendment Number 4 Effective Date: February 12, 2002
Amendment Number 5 Effective Date: January 7, 2004
Amendment Number 6 Effective Date: December 22, 2003
Amendment Number 7 Effective Date: March 2, 2004
Amendment Number 8 Effective Date: August 8, 2005.
SAR Submitted by: Transnuclear, Inc.
SAR Title: Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.
Docket Number: 72–1004.
Certificate Expiration Date: January 23, 2015.
Model Number: NUHOMS®–24P, –52B, –61BT, –32PT, –24PHB, and –24PTH

* * * * *

Dated at Rockville, Maryland, this 6 day of May, 2005.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. 05–10389 Filed 5–24–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 110

RIN 3150–AH67

Export and Import of Nuclear Equipment and Material; Exports to Syria Embargoed

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its export/import regulations to remove Syria from the list of restricted destinations and add it to the list of embargoed destinations. This amendment is necessary to conform the NRC's regulations with U.S. law and foreign policy.

EFFECTIVE DATE: May 25, 2005.

ADDRESSES: Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Public File Area O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments can be viewed and downloaded electronically via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC are available

electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *PDR@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Kirk Foggie, International Relations Specialist, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–2238, e-mail *kxf@nrc.gov*, or Suzanne Schuyler-Hayes, International Policy Analyst, Office of International Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–2333, e-mail: *ssh@nrc.gov*.

SUPPLEMENTARY INFORMATION:

The purpose of this final rule is to conform NRC's export/import regulations in 10 CFR Part 110, "Export and Import of Nuclear Equipment and Material", with current U.S. Government law and policy on Syria. The Executive Branch has requested that in light of the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003 (Pub. L. 108–175) (SAA) and Executive Order (E.O.) 13338, *Blocking Property of Certain Persons and Prohibiting the Export of Certain Goods to Syria* (May 11, 2004), which implements that legislation, 10 CFR Part 110 be amended by moving Syria from the restricted to the embargoed destinations list.

The purpose of this rule is to move Syria from the list of restricted destinations for exports at 10 CFR 110.29 to the list of embargoed destinations at 10 CFR 110.28. This means that no nuclear material or equipment can be exported to Syria under a general license in 10 CFR 110.21–110.25.

Administrative Procedure Act

The provisions of the Administrative Procedure Act under 5 U.S.C. 553 requiring notice of proposed rulemaking, the opportunity for public participation, and a 30-day delay in effective date are inapplicable because this rule involves a foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Accordingly, this final rule is effective immediately upon publication in the **Federal Register**.

This rule updates the NRC's regulations at 10 CFR Part 110 governing the export and import of nuclear equipment and materials to incorporate the U.S. Government's foreign policy in light of changing circumstances with respect to Syria. This rulemaking moves Syria from the list of restricted destinations at 10 CFR 110.29 to the list of embargoed destinations at 10 CFR 110.28. This action is being taken at the request of the Executive Branch.

After enactment of the SAA, on May 11, 2004, the President issued E.O. 13338, in which he determined that "the actions of the Government of Syria in supporting terrorism, continuing its occupation of Lebanon, pursuing weapons of mass destruction and missile programs, and undermining the United States and international efforts with respect to the stabilization and reconstruction of Iraq constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States," and he declared a national emergency to deal with that threat. To address that threat, and to implement the SAA, he ordered, among other things, that "No * * * agency of the United States Government shall permit the exportation or reexportation to Syria of any product of the United States, except to the extent provided in regulations, orders, directives, or licenses that may be issued pursuant to this order in a manner consistent with the SAA, and notwithstanding any license, permit, or authorization granted prior to the effective date of this order." Section 1.c. On this basis, the U.S. Department of State recently requested that Syria be moved from the list of restricted destinations at 10 CFR 110.29 to the list of embargoed destinations at 10 CFR 110.28. The effect of moving Syria from 10 CFR 110.29 to 10 CFR 110.28 will be to prohibit the export of any nuclear material and components to Syria under general license.

The NRC has determined that moving Syria from the restricted list to the embargoed list is consistent with current U.S. law and foreign policy, and will pose no unreasonable risk to the public health and safety or to the common defense and security of the United States.

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal Agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. This final rule does not constitute the establishment of a standard for which the use of a voluntary consensus standard would be applicable.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for the rule.

Paperwork Reduction Act Statement

This final rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0036.

Public Protection Notification

If a means used to impose an information collection does not display a current valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The NRC currently controls exports to Syria as a restricted destination in 10 CFR 110.29. There is no alternative to amending the regulations to achieve the stated objective of embargoing nuclear exports to Syria. This rule conforms the NRC's export controls to U.S. law and foreign policy regarding Syria.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, (5 U.S.C. 605(b)), the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The rule affects only companies exporting nuclear equipment and materials to Syria which do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act (5 U.S.C. 601(3)), or the Size Standards established by the NRC (10 CFR 2.810).

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this direct final rule because these amendments do not include any provisions that would impose backfits as defined in 10 CFR Chapter I.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement

Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 110.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

■ 1. The authority citation for Part 110 continues to read as follows:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 5, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243); Sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Sections 110.1(b)(2) and 110.1(b)(3) also issued under Pub. L. 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d, 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.30–110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42(a)(9) also issued under sec. 903, Pub. L. 102–496 (42 U.S.C. 2151 *et seq.*).

§ 110.28 [Amended]

2. Section 110.28 is amended by adding Syria to the list of embargoed destinations.

§ 110.29 [Amended]

3. Section 110.29 is amended by removing Syria from the list of restricted destinations.

Dated at Rockville, Maryland, this May 3, 2005.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director For Operations.

[FR Doc. 05–10391 Filed 5–24–05; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 102 and 134

RIN 3245–AF36

Office of Hearings & Appeals and Freedom of Information Act and Privacy Acts Office; Address Change

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

ACTION: Direct final rule.

SUMMARY: The Office of Hearings and Appeals (OHA) and Freedom of Information Act and Privacy Acts Office (FOI/PA) are amending their regulations to reflect a change in their address. This action is technical in nature and is intended to improve the accuracy of the Agency's regulations.

DATES: This rule is effective July 11, 2005 without further action, unless adverse comment is received by June 24, 2005. If the adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by the RIN number 3245-AF36, by any of the following methods: (1) Federal rulemaking portal at *http://www.regulations.gov*; (2) Agency Web site: *http://www.sba.gov/*; (3) E-mail: *delorice.ford@sba.gov*; (4) Mail to: Delorice Price Ford, Assistant Administrator, Office of Hearings & Appeals, 409 3rd Street, SW., Washington, DC 20416; and (5) Hand Delivery/Courier: 409 3rd Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Delorice Price Ford, Assistant Administrator, Office of Hearings & Appeals, 409 3rd Street, SW., Washington, DC 20416, (202) 401–8200, or by e-mail at *delorice.ford@sba.gov*.

SUPPLEMENTARY INFORMATION: OHA and FOI/PA are amending their regulations in 13 CFR parts 102 and 134 to reflect a change in its address. The current address listed in the above regulations is 409 3rd Street, SW., Suite 5900, Washington, DC 20416. The new address deletes the suite number, but the street address remains the same: 409 3rd Street, SW., Washington, DC 20416.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure are unnecessary because OHA and FOI/PA are merely correcting nonsubstantive errors.

SBA is publishing this rule as a direct final rule because it believes the rule is non-controversial since it merely conforms with SBA rules to express a change in address for service to OHA and FOI/PA. As explained in the previous paragraph, this is beneficial to parties that have dealings with OHA and FOI/PA. SBA believes that this direct final rule will not elicit any significant adverse comments. However, if adverse comments are received, SBA will publish a timely notice of withdrawal in the **Federal Register**.

Compliance With Executive Orders 13132, 12988 and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612, and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, SBA determines that this direct final rule has no federalism implications warranting preparation of a federalism assessment.

The Office of Management and Budget (OMB) has determined that this rule does not constitute a significant regulatory action under Executive Order 12866.

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

SBA has determined that this direct final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Within the

meaning of RFA, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities. Consequently, this rule does not meet the substantial number of small businesses criterion anticipated by the Regulatory Flexibility Act.

List of Subjects

13 CFR Part 102

Record Disclosure and Privacy.

13 CFR Part 134

Administrative practice and procedure, organization and functions (Government agencies).

■ For the reasons stated in the preamble, the U.S. Small Business Administration amends 13 CFR parts 102 and 134 as set forth below:

PART 102—RECORD DISCLOSURE AND PRIVACY

■ 1. The authority citation for part 102 continues to read as follows:

Authority: 5 U.S.C. 552 and 552a; 31 U.S.C. 1 *et seq.* and 67 *et seq.*; 44 U.S.C. 3501 *et seq.*; E.O. 12600, 3 CFR, 1987 Comp., p. 235.

§ 102.30 [Amended]

■ 2. Section 102.30 is amended by revising the address to read "409 3rd Street, SW., Washington, DC 20416."

PART 134—RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

■ 3. The authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 504; 15 U.S.C. 632, 634(b)(6), 637(a), 648(l), 656(i) and 687(c); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

§ 134.204 [Amended]

■ 4. Section 134.204(b)(1) is amended by revising the address to read "409 3rd Street, SW., Washington, DC 20416."

Dated: May 19, 2005.

Hector V. Barreto,

Administrator.

[FR Doc. 05–10384 Filed 5–24–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM303; Special Conditions No. 25–288–SC]

Special Conditions: Bombardier Aerospace Models BD–700–1A10 and BD–700–1A11 Global Express Airplanes, Enhanced Flight Visibility System (EFVS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Bombardier Aerospace Models BD–700–1A10 and BD–700–1A11 Global Express airplanes. These airplanes, as modified by Bombardier Aerospace Corporation, will have an Enhanced Flight Visibility System (EFVS). The EFVS is a novel or unusual design feature which consists of a head up display (HUD) system modified to display forward-looking infrared (FLIR) imagery. The regulations applicable to pilot compartment view do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: *Effective Date:* May 12, 2005.

FOR FURTHER INFORMATION CONTACT: Dale Dunford, FAA, ANM–111, Airplane and Flight Crew Interface, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2239; fax (425) 227–1320; e-mail: *dale.dunford@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On February 26, 2003, Bombardier Aerospace, applied for an amendment to the type certificate to modify Bombardier Model BD–700–1A10 and BD–700–1A11 Global Express airplanes. The Model BD–700–1A10 is a transport category airplane certified to carry a maximum of 19 passengers and a minimum of 2 crew members. The Model BD–700–1A11 is a smaller version of the BD–700–1A10. The modification involves the installation of an Enhanced Flight Vision System (EFVS). This system consists of a Thales HUD system, modified to display FLIR imagery, and a FLIR camera.

The electronic infrared image displayed between the pilot and the forward windshield represents a novel or unusual design feature in the context of 14 CFR 25.773. Section 25.773 was not written in anticipation of such technology. The electronic image has the potential to enhance the pilot's awareness of the terrain, hazards, and airport features. At the same time, the image may partially obscure the pilot's direct outside compartment view. Therefore, the FAA needs adequate safety standards to evaluate the EFVS to determine that the imagery provides the intended visual enhancements without undue interference with the pilot's outside compartment view. The FAA's intent is that the pilot will be able to use the combination of information seen in the image and the natural view of the outside seen through the image as safely and effectively as a § 25.773-compliant pilot compartment view without an EVS image.

Although the FAA has determined that the existing regulations are not adequate for certification of EFVSs, it believes that EFVSs could be certified through application of appropriate safety criteria. Therefore, the FAA has determined that special conditions should be issued for certification of EFVS to provide a level of safety equivalent to that provided by the standard in § 25.773.

Note: The term "enhanced vision system (EVS)" has been commonly used to refer to a system comprised of a head up display, imaging sensor(s), and avionics interfaces that displayed the sensor imagery on the HUD and overlaid it with alpha-numeric and symbolic flight information. However, the term has also been commonly used in reference to systems which displayed the sensor imagery, with or without other flight information, on a head down display. To avoid confusion, the FAA created the term "enhanced flight visibility system (EFVS)" to refer to certain EVS systems that meet the requirements of the new operational rules in particular the requirement for a HUD and specified flight information and can be used to determine "enhanced flight visibility." EFVSs can be considered a subset of systems otherwise labeled EVSs.

On January 9, 2004, the FAA published revisions to operational rules in 14 CFR parts 1, 91, 121, 125, and 135 to allow aircraft to operate below certain altitudes during a straight-in instrument approach while using an EFVS to meet visibility requirements.

Prior to this rule change, the FAA issued Special Conditions 25–180–SC, which approved the use of an EVS on Gulfstream Model G–V airplanes. These special conditions addressed the requirements for the pilot compartment view and limited the scope of the

intended functions permissible under the operational rules at the time. The intended function of the EVS imagery was to aid the pilot during the approach and allow the pilot to detect and identify the visual references for the intended runway down to 100 feet above the touchdown zone. However, the EVS imagery alone was not to be used as a means to satisfy visibility requirements below 100 feet.

The recent operational rule change expands the permissible application of certain EVSs that are certified to meet the new EFVS standards. The new rule will allow the use of EFVSs for operation below the Minimum Descent Altitude (MDA) or Decision Height (DH) to meet new visibility requirements of § 91.175(l). The purpose of this special condition is not only to address the issue of the "pilot compartment view" as was done by 25–180–SC, but also to define the scope of intended function consistent with § 91.175(l) and (m).

Type Certification Basis

Under the provisions of 14 CFR 21.101, Bombardier Aerospace must show that the Bombardier Aerospace Model BD–700–1A10 and BD–700–1A11 Global Express airplanes, as modified, comply with the regulations in the U.S. type certification basis established for those airplanes. The U.S. type certificate basis for the airplanes is established in accordance with 14 CFR 21.21, 14 CFR 21.17, and the type certification application date. The U.S. type certification basis for these model airplanes is listed in Type Certificate Data Sheet No. T00003NY.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Bombardier Global Express airplanes modified by Bombardier Aerospace because of a novel or unusual design feature, special conditions are prescribed under the provisions of 14 CFR 21.16.

Special conditions, as appropriate, are issued in accordance with 14 CFR 11.19 after public notice, as required by 14 CFR 11.38, and become part of the type certification basis in accordance with 14 CFR 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Bombardier Aerospace apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of 14 CFR 21.101(a)(1).

Novel or Unusual Design Features

The EFVS is a novel or unusual design feature, because it projects a video image derived from a FLIR camera through the HUD. The EFVS image is projected in the center of the "pilot compartment view," which is governed by § 25.773. The image is displayed with HUD symbology and overlays the forward outside view. Therefore, § 25.773 does not contain appropriate safety standards for the EFVS display.

Operationally, during an instrument approach, the EFVS image is intended to enhance the pilot's ability to detect and identify "visual references for the intended runway" [see § 91.175(l)(3)] to continue the approach below decision height or minimum descent altitude. Depending on atmospheric conditions and the strength of infrared energy emitted and/or reflected from the scene, the pilot can see these visual references in the image better than he or she can see them through the window without EFVS.

Scene contrast detected by infrared sensors can be much different from that detected by natural pilot vision. On a dark night, thermal differences of objects which are not detectable by the naked eye will be easily detected by many imaging infrared systems. On the other hand, contrasting colors in visual wavelengths may be distinguished by the naked eye but not by an imaging infrared system. Where thermal contrast in the scene is sufficiently detectable, the pilot can recognize shapes and patterns of certain visual references in the infrared image. However, depending on conditions, those shapes and patterns in the infrared image can appear significantly different than they would with normal vision. Considering these factors, the EFVS image needs to be evaluated to determine that it can be accurately interpreted by the pilot.

The image may improve the pilot's ability to detect and identify items of interest. However, the EFVS needs to be evaluated to determine that the imagery allows the pilot to perform the normal duties of the flight crew and adequately see outside the window through the image, consistent with the safety intent of § 25.773(a)(2).

Compared to a HUD displaying the EFVS image and symbology, a HUD that only displays stroke-written symbols is easier to see through. Stroke symbology illuminates a small fraction of the total display area of the HUD, leaving much of that area free of reflected light that could interfere with the pilot's view out the window through the display. However, unlike stroke symbology, the video image illuminates most of the total display area of the HUD (approximately 30 degrees horizontally and 25 degrees vertically) which is a significant fraction of the pilot compartment view. The pilot cannot see around the larger illuminated portions of the video image, but must see the outside scene through it.

Unlike the pilot's external view, the EFVS image is a monochrome, two-dimensional display. Many, but not all, of the depth cues found in the natural view are also found in the image. The quality of the EFVS image and the level of EFVS infrared sensor performance could depend significantly on conditions of the atmospheric and external light sources. The pilot needs adequate control of sensor gain and image brightness, which can significantly affect image quality and transparency (*i.e.*, the ability see the outside view through the image). Certain system characteristics could create distracting and confusing display artifacts. Finally, because this is a sensor-based system that is intended to provide a conformal perspective corresponding with the outside scene, the system must be able to ensure accurate alignment.

Hence, there need to be safety standards for each of the following factors:

- An acceptable degree of image transparency;
- Image alignment;
- Lack of significant distortion; and
- The potential for pilot confusion or misleading information.

Section 25.773—Pilot Compartment View, specifies that "Each pilot compartment must be free of glare and reflection that could interfere with the normal duties of the minimum flight crew * * *." In issuing § 25.773, the FAA did not anticipate the development of EFVSs and does not consider § 25.773 to be adequate to address the specific issues related to such a system. Therefore, the FAA has determined that special conditions are needed to address the specific issues particular to the installation and use of an EFVS.

Discussion

The EFVS is intended to function by presenting an enhanced view during the approach. This enhanced view would help the pilot to see and recognize external visual references, as required by § 91.175(l), and to visually monitor the integrity of the approach, as described in FAA Order 6750.24D ("Instrument Landing System and Ancillary Electronic Component Configuration and Performance Requirements," dated March 1, 2000).

Based on this approved functionality, users would seek to obtain operational approval to conduct approaches—including approaches to Type I runways—in visibility conditions much lower than those for conventional Category I.

The purpose of these special conditions is to ensure that the EFVS to be installed can perform the following functions:

- Present an enhanced view that would aid the pilot during the approach.
- Provide enhanced flight visibility to the pilot that is no less than the visibility prescribed in the standard instrument approach procedure.
- Display an image that the pilot can use to detect and identify the "visual references for the intended runway" required by § 91.175(l)(3) to continue the approach with vertical guidance to 100 feet height above the touchdown zone elevation.

Depending on the atmospheric conditions and the particular visual references that happen to be distinctly visible and detectable in the EFVS image, these functions would support its use by the pilot to visually monitor the integrity of the approach path.

Compliance with these special conditions does not affect the applicability of any of the requirements of the operating regulations (*i.e.*, 14 CFR parts 91, 121, and 135). Furthermore, use of the EFVS does not change the approach minima prescribed in the standard instrument approach procedure being used; published minima still apply.

The FAA certification of this EFVS is limited as follows:

- The infrared-based EFVS image will not be certified as a means to satisfy the requirements for descent below 100 feet height above touchdown (HAT).
- The EFVS may be used as a supplemental device to enhance the pilot's situational awareness during any phase of flight or operation in which its safe use has been established.

An EFVS image may provide an enhanced image of the scene that may compensate for any reduction in the clear outside view of the visual field framed by the HUD combiner. The pilot must be able to use this combination of information seen in the image and the natural view of the outside scene seen through the image as safely and effectively as the pilot would use a § 25.773-compliant pilot compartment view without an EVS image. This is the fundamental objective of the special conditions.

The FAA will also apply additional certification criteria, not as special conditions, for compliance with related regulatory requirements, such as 14 CFR 25.1301 and 14 CFR 25.1309. These additional criteria address certain image characteristics, installation, demonstration, and system safety.

Image characteristics criteria include the following:

- Resolution,
- Luminance,
- Luminance uniformity,
- Low level luminance,
- Contrast variation,
- Display quality,
- Display dynamics (*e.g.*, jitter, flicker, update rate, and lag), and
- Brightness controls.

Installation criteria address visibility and access to EFVS controls and integration of EFVS in the cockpit.

The EFVS demonstration criteria address the flight and environmental conditions that need to be covered.

The FAA also intends to apply certification criteria relevant to high intensity radiated fields (HIRF) and lightning protection.

Discussion of Comments

Notice of proposed special conditions No. 25–05–02 for the Bombardier Aerospace Models BD–700–1A10 and BD–700–1A11 Global Express Airplanes was published in the **Federal Register** dated March 30, 2005 (70 FR 16161). Three public comments were received, one of which indicated full agreement with the special conditions.

Two commenters disagreed with the sentence in the Discussion section of the NPRM which states, "Based on this functionality, users would seek to obtain operational approval to conduct approaches—including approaches to Type I runways—when the Runway Visual Range is as low as 1,200 feet." Both commenters recommended that the FAA delete this sentence, because a visibility limit of 1200 feet RVR is inconsistent with the recent change to 14 CFR 91.175 for EFVS. For part 91 operators, there are no explicit reported visibility limitations. The FAA agrees with this suggestion.

The sentence was meant to describe the visibility conditions in which EFVS could be used for an approach. In other words, 1,200 feet RVR was intended not as an operational limit, but as an example of the low visibilities that might be encountered during Category I approaches while using EVFS. These visibility conditions could be much lower than those for conventional Category I approaches.

The FAA has revised the sentence to avoid the interpretation that it is meant to establish operational limitations or restrictions. This sentence now states: "Based on this approved equipment functionality, users would seek to obtain operational approval to conduct approaches—including approaches to Type I runways—in visibility conditions much lower than for conventional Category I."

Because none of the comments suggested any changes to the special conditions themselves, they remain unchanged.

Applicability

As discussed above, these special conditions are applicable to Bombardier Aerospace Models BD–700–1A10 and BD–700–1A11 Global Express airplanes. Should Bombardier Aerospace apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**. However, as the certification date for the Bombardier Aerospace Models BD–700–1A10 and BD–700–1A11 Global Express airplanes is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on the Bombardier Aerospace Models BD–700–1A10 and BD–700–1A11 Global Express airplane, as modified by Bombardier Aerospace. It is not a rule of general applicability and affects only the applicant which applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the amended type certification basis for Bombardier Aerospace Models BD–700–1A10 and BD–700–1A11 Global Express airplanes, modified by Bombardier Aerospace:

1. The EFVS imagery on the HUD must not degrade the safety of flight or interfere with the effective use of outside visual references for required

pilot tasks during any phase of flight in which it is to be used.

2. To avoid unacceptable interference with the safe and effective use of the pilot compartment view, the EFVS device must meet the following requirements:

a. The EFVS design must minimize unacceptable display characteristics or artifacts (*e.g.* noise, "burlap" overlay, running water droplets) that obscure the desired image of the scene, impair the pilot's ability to detect and identify visual references, mask flight hazards, distract the pilot, or otherwise degrade task performance or safety.

b. Control of EFVS display brightness must be sufficiently effective in dynamically changing background (ambient) lighting conditions to prevent full or partial blooming of the display that would distract the pilot, impair the pilot's ability to detect and identify visual references, mask flight hazards, or otherwise degrade task performance or safety. If automatic control for image brightness is not provided, it must be shown that a single manual setting is satisfactory for the range of lighting conditions encountered during a time-critical, high workload phase of flight (*e.g.*, low visibility instrument approach).

c. A readily accessible control must be provided that permits the pilot to immediately deactivate and reactivate display of the EFVS image on demand.

d. The EFVS image on the HUD must not impair the pilot's use of guidance information or degrade the presentation and pilot awareness of essential flight information displayed on the HUD, such as alerts, airspeed, attitude, altitude and direction, approach guidance, windshear guidance, TCAS resolution advisories, or unusual attitude recovery cues.

e. The EFVS image and the HUD symbols—which are spatially referenced to the pitch scale, outside view and image—must be scaled and aligned (*i.e.*, conformal) to the external scene. In addition, the EFVS image and the HUD symbols—when considered singly or in combination—must not be misleading, cause pilot confusion, or increase workload. There may be airplane attitudes or cross-wind conditions which cause certain symbols (*e.g.*, the zero-pitch line or flight path vector) to reach field of view limits, such that they cannot be positioned conformally with the image and external scene. In such cases, these symbols may be displayed but with an altered appearance which makes the pilot aware that they are no longer displayed conformally (for example, "ghosting").

f. A HUD system used to display EFVS images must, if previously certified, continue to meet all of the requirements of the original approval.

3. The safety and performance of the pilot tasks associated with the use of the pilot compartment view must be not be degraded by the display of the EFVS image. These tasks include the following:

a. Detection, accurate identification and maneuvering, as necessary, to avoid traffic, terrain, obstacles, and other hazards of flight.

b. Accurate identification and utilization of visual references required for every task relevant to the phase of flight.

4. Compliance with these special conditions will enable the EFVS to be used during instrument approaches in accordance with 14 CFR 91.175(l) such that it may be found acceptable for the following intended functions:

a. Presenting an image that would aid the pilot during a straight-in instrument approach.

b. Enabling the pilot to determine that the "enhanced flight visibility," as required by § 91.175(l)(2) for descent and operation below minimum descent altitude/decision height (MDA)/(DH).

c. Enabling the pilot to use the EFVS imagery to detect and identify the "visual references for the intended runway," required by 14 CFR 91.175(l)(3), to continue the approach with vertical guidance to 100 feet height above touchdown zone elevation.

5. Use of EFVS for instrument approach operations must be in accordance with the provisions of 14 CFR 91.175(l) and (m). Appropriate limitations must be stated in the Operating Limitations section of the Airplane Flight Manual to prohibit the use of the EFVS for functions that have not been found to be acceptable.

Issued in Renton, Washington, on May 12, 2005.

Jeffrey Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–10412 Filed 5–24–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21027; Directorate Identifier 2005–NM–048–AD; Amendment 39–14070; AD 2005–09–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting a typographical error in an existing airworthiness directive (AD) that was published in the **Federal Register** on April 25, 2005 (70 FR 21141). The error resulted in omission of a reference to an inspection area. This AD applies to all Boeing Model 747 series airplanes. This AD requires repetitive inspections for cracking of the top and side panel webs and panel stiffeners of the nose wheel well (NWW), and corrective actions if necessary.

DATES: Effective May 10, 2005.

ADDRESSES: The AD docket contains the proposed AD, comments, and any final disposition. You can 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 U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2005–21027; the directorate identifier for this docket is 2005–NM–048–AD.

FOR FURTHER INFORMATION CONTACT: Nick Kusz, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6432; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: On April 13, 2005, the FAA issued AD 2005–09–02, amendment 39–14070 (70 FR 21141, April 25, 2005), for all Boeing Model 747 series airplanes. This AD requires repetitive inspections for cracking of the top and side panel webs and panel stiffeners of the nose wheel well (NWW), and corrective actions if necessary.

As published, we inadvertently did not specify a certain area for a required

inspection. Where paragraph (i) of the AD specifies "Do a UT inspection of the sidewall panel web for cracks, * * *," the correct areas to inspect are the top and sidewall panel web. References to the inspection areas are all identified correctly in all other parts of the AD.

No other part of the regulatory information has been changed; therefore, the final rule is not republished in the **Federal Register**.

The effective date of this AD remains May 10, 2005.

PART 39—[AMENDED]

§ 39.13 [Corrected]

■ In the **Federal Register** of April 25, 2005, on page 21144, in the second column, paragraph (i) of AD 2005–09–02 is corrected to read as follows:

* * * * *

(i) Do a UT inspection of the top and sidewall panel webs for cracks, in accordance with Boeing ASB 747–53A2465, Revision 4, dated February 24, 2005, at the later of the times specified in paragraphs (i)(1) and (i)(2) of this AD. Repeat the inspections thereafter at intervals not to exceed 500 flight cycles.

* * * * *

Issued in Renton, Washington, on May 16, 2005.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–10424 Filed 5–24–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19289; Airspace Docket No. 04–AGL–20]

Establishment of Class E Airspace; McGregor, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at McGregor, MN. Standard Instrument Approach Procedures have been developed for McGregor/Isedor Iverson Airport, McGregor, MN. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approach procedures. This action establishes an area of controlled airspace for McGregor/Isedor Iverson Airport.

DATES: *Effective Date:* 0901 UTC, September 1, 2005.

FOR FURTHER INFORMATION CONTACT: J. Mark Reeves, Central Service Office, Airspace and Procedures Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

On Monday, December 27, 2004, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at McGregor, MN (69 FR 77146). The proposal was to establish controlled airspace extending upward from 700 feet or more above the surface of the earth to contain Instrument Flight Rules operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceedings by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at McGregor, MN, to accommodate aircraft executing instrument flight procedures into and out of McGregor/Isedor Iverson Airport. The area will be depicted on appropriate aeronautical charts.

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

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 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, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 Feet or more above the surface of the earth.

* * * * *

AGL MN E5 McGregor, MN [New]

McGregor/Isedor Iverson Airport, MN
(Lat. 46°37′08″ N, long. 93°18′35″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the McGregor/Isedor Iverson Airport.

* * * * *

Issued in Des Plaines, Illinois on April 18, 2005.

Nancy B. Kort,

Area Director, Central Terminal Operations.

[FR Doc. 05–10375 Filed 5–24–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20576; Airspace Docket No. 05–ACE–13]

Modification of Class E Airspace; Boonville, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule

which revises Class E airspace at Boonville, MO.

DATES: *Effective Date:* 0901 UTC, July 7, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 31, 2005 (70 FR 16408). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and then unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 7, 2005. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on May 12, 2005.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–10370 Filed 5–24–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20065; Airspace Docket No. 05–ACE–7]

Modification of Class E Airspace Monett, MO; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date; correction.

SUMMARY: This action withdraws the Direct final rule, confirmation of effective date of a rule that was published in the **Federal Register** on Thursday, May 5, 2005 (70 FR 23790). The action was inadvertently published as a Direct final rule, confirmation of effective date when it should have been published as a final rule. It is replaced with a final rule. This rule establishes a Class E surface area at Monett, MO. It also modifies the Class E airspace area extending upward from 700 feet above the surface at Monett, MO.

The effect of this rule is to provide appropriate controlled Class E airspace for aircraft departing from and executing instrument approach procedures to Monett Municipal Airport and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: *Effective Date:* 0901 UTC, July 7, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

On Thursday, March 7, 2005, the FAA proposed to amend 14 CFR part 71 to establish a Class E surface area and to modify other Class E airspace at Monett, MO (70 FR 10917). The proposal was to establish a Class E surface area at Monett, MO. It was also to modify the Class E5 airspace area to bring it into compliance with FAA directives. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) establishes Class E airspace designated as a surface area for an airport at Monett, MO. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures to Monett Municipal Airport. Weather observations will be provided by an Automatic Weather Observing/Reporting System (AWOS) and communications will be direct with Springfield Terminal Radar Approach Control Facility.

This rule also revises the Class E airspace area extending upward from 700 feet above the surface at Monett, MO. An examination of this Class E airspace area for Monett, MO revealed noncompliance with FAA directives. This corrects identified discrepancies by increasing the area from a 6.5-mile to a 7.5-mile radius of Monett Municipal Airport, eliminating the extension to the airspace area, correcting errors in the Monett Municipal Airport airport reference point and defining airspace of appropriate dimensions to protect aircraft departing and executing instrument approach procedures to Monett Municipal Airport. The airspace area is brought into compliance with FAA directives. Both areas will be depicted on appropriate aeronautical charts.

Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in this document will be published subsequently in the Order.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Monett Municipal Airport.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 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 7400.9M, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE MO E2 Monett, MO

Monett Municipal Airport, MO
(Lat. 36°54′22″ N., long. 94°00′46″ W.)

Within a 4.5-mile radius of Monett Municipal Airport.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Monett, MO

Monett Municipal Airport, MO
(Lat. 36°54′22″ N., long. 94°00′46″ W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Monett Municipal Airport.

* * * * *

Issued in Kansas City, MO, on May 12, 2005.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–10369; Filed 05–24–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20575; Airspace Docket No. 05–ACE–12]

Modification of Class E Airspace; Washington, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Washington, KS.

DATES: *Effective Date:* 0901 UTC, July 7, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on April 11, 2005 (70 FR 18296). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 7, 2005. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on May 12, 2005.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–10368 Filed 5–24–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21141; Airspace Docket No. 05–AEA–11]

Amendment of Class E Airspace; Brunswick, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Brunswick Naval Air Station (NAS), ME. This action is prompted by the relocation of the Brunswick Navy TACAN navigational aid. Portions of the designated airspace were described using the TACAN radials and distances. This action describes the airspace using the Airport Reference Point (ARP) as the sole point of origin instead of the airport and TACAN.

DATES: Effective 0901 UTC, September 1, 2005.

Comments for inclusion in the Rules Docket must be received on or before June 24, 2005.

ADDRESSES: Send comments on the rule to the Docket Management System, U.S. Department of Transportation. Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number, FAA–2005–21141/Airspace Docket No. 05–AEA–11, 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 at 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 located on the plaza level of the Department of Transportation NASSIF Building at the street address stated above.

An informal docket may also be examined during normal business hours at the Office of the Area Director, Eastern Terminal Operations, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, NY 11434–4809; telephone (718) 553–4501; fax (718) 995–5691.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Airspace Specialist, Airspace and Operations, ETSU, 1 Aviation Plaza, Jamaica, NY 11434–4809; telephone (718) 553–4521; fax (718) 995–5693.

SUPPLEMENTARY INFORMATION: The FAA is revising the Class E airspace at Brunswick, ME from one based on the Brunswick TACAN and airport locations to one based solely on airport locations. The FAA uses the Brunswick, ME E–5 airspace to accommodate aircraft using standard instrument approach procedures (SIAPs) to Brunswick NAS and Wiscasset Airport under Instrument Flight Rules (IFR). The current definition of the airspace area uses the Brunswick Navy TACAN as a reference point. Since the United States Navy is changing the location of the TACAN, the airspace description must be changed to reference only the Airport Reference Point (ARP) for Brunswick NAS and Wiscasset Airport. This change will not result in any changes in the size of the Brunswick E–5 controlled airspace area. Class E airspace designations for airspace areas extending upward from 700 feet above the surface are published in paragraph 6005 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR

71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment, and, therefore, issues it as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications must identify both docket numbers. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Agency Findings

This rule does not have federalism implications, as defined in Executive Order No. 13132, because it does not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that these proposed rules will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with issuing regulations to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it defines controlled airspace in the vicinity of the Palmer Metropolitan Airport to ensure the safety of aircraft operating near that airport and the efficient use of that airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

■ 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.

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

§ 71.1 [Amended]

Paragraph 6005—Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANE ME E5 Brunswick, ME [Revised]

Brunswick NAS, ME
(Lat. 43°53′32″ N, long. 69°56′19″ W)
Wiscasset Airport, ME
(Lat. 43°57′40″ N, long. 69°42′48″ W)

That airspace extending upward from 700 feet above the surface within a 7.8-mile radius of Brunswick NAS and within 3 miles each side of the 169° bearing from the Brunswick NAS extending from the 7.8-mile radius to 10 miles south of the airport and within an 8.4-mile radius of Wiscasset Airport and within 4 miles south and 6 miles north of the 109° bearing from the Wiscasset Airport extending from the 8.4-mile radius to 15.5 miles east of the airport.

* * * * *

Issued in Jamaica, New York, on May 18, 2005.

John G. McCartney,

Acting Area Director, Eastern Terminal Operations.

[FR Doc. 05–10418 Filed 5–24–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21142; Airspace Docket No. 05–AEA–12]

Amendment of Class E Airspace; Brunswick, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E–4 airspace area at Brunswick Naval Air Station (NAS), ME. This action is prompted by the relocation of the Brunswick Navy TACAN navigational aid. Portions of the designated airspace were described using the TACAN

radials and distances. This action describes the airspace using the Airport Reference Point (ARP) as the sole point of origin instead of the airport and TACAN.

DATES: Effective 0901 UTC, September 1, 2005.

Comments for inclusion in the Rules Docket must be received on or before June 24, 2005.

ADDRESSES: Send comments on the rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number, FAA–2005–21142/Airspace Docket No. 05–AEA–12, 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 at the Dockets Office between 9 am and 5 pm, Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated above.

An informal docket may also be examined during normal business hours at the office of the Area Director, Eastern Terminal Operations, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, NY 11434–4809; telephone (718) 553–4501; fax (718) 995–5691.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace and Operations, ETSU, 1 Aviation Plaza, Jamaica, NY 11434–4809; telephone (718) 553–4521; fax (718) 995–5693.

SUPPLEMENTARY INFORMATION: The FAA is revising the Class E–4 airspace designation at Brunswick, ME from one based on the Brunswick TACAN and the airport location to one based solely on the airport location. The FAA uses the Brunswick, ME E–4 airspace to accommodate aircraft using standard instrument approach procedures (SIAPs) to Brunswick NAS under Instrument Flight Rules (IFR). The current definition of the airspace area uses the Brunswick Navy TACAN as a reference point. Since the United States Navy is changing the location of the TACAN, the airspace description must be changed to reference only the Airport Reference Point (ARP). This change will not result in any changes in the size of the Brunswick E–4 controlled airspace area. Class E–4 airspace designations for airspace areas extending upward from the surface are published in paragraph 6004 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment, and, therefore, issues it as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications must identify both docket numbers. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Agency Findings

This rule does not have federalism implications, as defined in Executive Order No. 13132, because it does not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that these proposed rules will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with issuing regulations to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it defines controlled airspace in the vicinity of the Palmer Metropolitan Airport to ensure the safety of aircraft operating near that airport and the efficient use of that airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

■ 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.

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

§ 71.1 [Amended]

Paragraph 6004—Class E airspace areas extending upward from the surface of the earth.

* * * * *

ANE ME E4 Brunswick, ME [Revised]

Brunswick NAS, ME
(Lat. 43°53′32″N, long. 69°56′19″W)

That airspace extending upward from the surface within 3 miles each side of the 169° bearing from the Brunswick NAS extending from the 4.3-mile radius of the airport to 6.5 miles south of the airport and within 2 miles each side of the 017° bearing from the Brunswick NAS extending from the 4.3-mile radius of the airport to 9.5 miles northeast of the airport.

* * * * *

Issued in Jamaica, New York, on May 18, 2005.

John G. McCartney,

Acting Area Director, Eastern Terminal Operations.

[FR Doc. 05–10419 Filed 5–24–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2004–17178; Airspace Docket No. 03–AWA–7]

RIN 2120–AA66

Establishment of Prohibited Area 51; Bangor, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a prohibited area (P–51) over the U.S. Naval Submarine Base, at Bangor, WA. The prohibited area replaces a Temporary Flight Restriction (TFR) that is currently in effect. The FAA is taking this action in response to a request from the U.S. Navy as part of its efforts to enhance the security of the Naval Submarine Base, Bangor, WA.

EFFECTIVE DATE: 0901 UTC, December 22, 2005.

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

SUPPLEMENTARY INFORMATION:

History

On June 28, 2004, the FAA published a notice in the **Federal Register**, proposing to establish a prohibited area over the U.S. Naval Submarine Base, Bangor, WA (69 FR 36031). The FAA proposed this action, at the request of the U.S. Navy, to enhance the security of the Bangor facility. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. The FAA received 576 comments in response to this notice. All comments, including those addressed to Members of Congress, were considered. Although the official comment period ended August 12, 2004, comments were received through September, 2004, and were considered in this rulemaking action. The FAA believed due to the intense public interest and the comments on file, that extending the official deadline would not have resulted in any additional information that would have contributed to our decision making process.

Analysis of Comments

The vast majority of these comments expressed general opposition to the proposal. The following is a discussion of the substantive comments received.

A number of comments suggested that other large military facilities in California and Virginia do not have Temporary Flight Restrictions (TFR's) and that the restrictions were established in an inconsistent manner. They also pointed out that there is no credible terrorism threat here in the United States that would warrant such restrictions.

Other large naval facilities, such as those in California and Virginia, do not have the same operational requirements or mission as that at U.S Naval Submarine Base, Bangor, WA. The attacks of September 11, 2001, exposed weaknesses in the defense of U.S. assets. Today, some critics still claim the necessary steps to prevent terrorist attacks have not been taken. P–51 will allow the Navy to protect vital U.S. assets (TRIDENT submarines) by preventing aircraft over flights at low altitude.

A few commenters stated there is not enough time to scramble aircraft to intercept hostile aircraft.

The FAA does not agree. Establishing a prohibited area will give the government the time to react if an aircraft enters the area. The government's intention would be for taking defensive measures on the surface to preparing to use lethal force from air or ground naval assets.

Some commenters stated that if a terrorist wants to fly an aircraft into a submarine, P–51 will not prevent them from doing so. Terrorists don't follow the rules.

The FAA agrees. However, the Navy aggressively pursues a multitude of defense measures to deter an airborne attack. Each of these measures includes identification of potential hostile aircraft. The only feasible way for early identification is to prevent low altitude flight over the facilities. Aircraft violating P–51 will draw the attention of security forces and may provide the time needed to take the actions necessary to protect the people, submarines, and buildings on the ground.

Numerous comments were received stating that general aviation aircraft (GA) are not viable threats. (The commenters cited the suicidal pilot in a small aircraft that crashed his plane into an office building, in Florida causing very little damage.) They stated that a small aircraft fully loaded with explosives would not damage a submarine.

The FAA does not agree. The characteristics and design of TRIDENT submarines are classified and, therefore, we are unable to discuss them in specifics. However, the FAA does believe the potential for serious damage to the submarine does exists, whether it is from a direct impact or from collateral damage (fire, flood, etc.) around or near the submarine.

Some commenters pointed out that P–51 will only serve to advertise U.S. Naval Submarine Base Bangor as a target for terrorist.

The FAA does not agree. There has never been any secrecy to the existence or the location of U.S. Naval Submarine Base, Bangor, in Washington state; which can be sourced and confirmed on the Internet. The important issue is that we protect our national assets instead of hoping terrorists are not aware of the locations.

Several commenters including the Aircraft Owners and Pilots Association (AOPA) stated that P–51 conflicts with V–165/V–287 because the width of these airways is 4NM each side of the centerline.

The FAA does not agree. The minimum enroute altitude for the segment of V–165/V–287 that runs directly west of P–51 is above the altitude of P–51. Hence, there is no conflict between P–51 and V–165/V–287.

Some commenters stated that P–51 will interfere with the Bremerton ILS RWY 19 instrument approach.

The FAA agrees. The southern boundary of P–51 is 7.5 miles north of the Bremerton ILS RWY 19 Outer Marker Compass Locator (LOM). Aircraft conducting the full ILS approach are required to remain within 10 miles of the LOM when executing a procedure turn. Bremerton ILS RWY 19 approach will have to be modified by either adding a restriction to remain at/above 3,000 feet until southbound on the procedure turn or eliminate the procedure turn segment of the route altogether. The Bremerton ILS approach, as it is charted today, will be impacted; but it can be modified to remain clear of P–51 to eliminate any conflict between the approach and P–51.

A number of commenters stated that P–51 poses a hazard to GA aircraft because at times of lower cloud layers, they cannot climb above P–51.

The FAA does not agree. When the Bangor TFR was first implemented in 2001, it was inconvenient for aircraft to circumnavigate during periods of inclement weather. The Navy and the FAA, in response to the public, significantly reduced the size of area by modifying the TFR to accommodate the desires of the general aviation community and minimized the distance required to circumnavigate the flight restriction. With the designation of P–51, the altitude of the existing area is reduced from 4,900 feet to 2,500 feet Mean Sea Level (MSL) further reducing the burden on general aviation.

Some commenters stated that P–51 will cost the GA pilot more money for extra fuel and engine time while circumnavigating the area.

The FAA agrees. However, if an aircraft were transiting south to north along the Hood Canal and began to circumnavigate just south of P–51, the aircraft would fly approximately an additional two (2) nautical miles to avoid P–51 and continue on course. The additional distance required to circumnavigate P–51 is considered minimal when compared to the national security benefit associated with establishing P–51. Moreover, instead of circumnavigating P–51, the aircraft operator can transit the area above 2,500 feet MSL.

A lot of comments were received stating that P–51 will only add congestion for VFR aircraft transiting west of Seattle Class B airspace because a natural corridor lies between the mountainous terrain and P–51.

The public commenters are correct. However, the combination of National Security Areas (NSA) is the real complicating factor, not Bangor itself. The three existing NSAs (Bremerton, Everett, and Port Townsend) were established on December 23, 2004. The presence of the NSAs significantly increase the complexity of this area. However, while the NSAs do add to the complexity of flying between the Class B and the mountainous terrain, it is important to note that staying clear of the NSA is voluntary and those areas are still available for transit.

Several commenters suggested reducing the altitude to 1,000 feet MSL because the area would be more manageable for GA.

The FAA does not agree. A prohibited area from the surface to 1,000 feet MSL would make it virtually impossible to differentiate between a threat and a non-threat aircraft. P–51, as detailed in the NPRM, significantly reduces the altitudes of the existing Bangor TFR, FDC Notice 4/2125, which pilots have endured for 3 years now. The proposed P–51 reduces the altitude to below 2,500 feet MSL (*i.e.* surface up to but not including 2,500') from its current 4,900 feet altitude as a TFR. The FAA reduced the altitude of the original U.S. Navy request from 4,900 feet MSL in order to lessen the impact on GA operations. Also, this lowered altitude allows air traffic control to provide standard instrument flight rule (IFR) services in the area, with minimal adverse impact from the presence of the proposed P–51.

Several commenters, including AOPA, stated that P–51 will affect flight operations at both Apex airport and Poulsbo seaplane base.

The FAA does not agree. The dimensions of P–51 do not affect flight into those airports. It was brought up as a concern prior to the latest modification of the previous TFR. Poulsbo seaplane base is located over 1.5 nautical miles from the outer boundary of P–51. Apex airport is located 1.75 nautical miles from the outer boundary of P–51. Additionally, the southwest corner of P–51 was specifically modified so that aircraft could depart to the north or arrive from the south without excessive maneuvering.

A number of commentors expressed concern that the area is not well defined and difficult to avoid prompting some aviators to avoid flying in the area.

The FAA disagrees. P–51, is defined by five longitude latitude points making it relatively easy to avoid for GPS equipped aircraft, Non-GPS equipped aircraft can use Dabob Bay to the West, Highway 3 to the East and South, and Highway 104 to the North as visual references to avoid P–51.

Comments were received suggesting the FAA should lower Seattle's Class B airspace to include the U.S. Naval Submarine Base, Bangor, and let the FAA maintain control of all aircraft in the area.

The FAA does not agree. Class B airspace is clearly defined as controlled airspace surrounding a major airport protecting the arrival/departure routes for that airport's turbojet aircraft. Under existing regulations, Class B airspace is not designed to provide restricted access for security reasons. These comments are, therefore, beyond the scope of this rule.

Many comments suggested the new regulation will only end up in the issuance of flight violations for law-abiding aviators who become lost or disoriented.

The FAA does not agree. P–51 will be published on the Seattle sectional and VFR Terminal Area navigational charts which will provide the GA pilot visual references of the location.

Several commentors expressed concern that P–51 will be a hazard to GA and the surrounding area if air defense measures are implemented against an aircraft. A pilot could be unnecessarily shot down because they were lost.

The FAA does not agree. Safety of general aviation and the general public is of the utmost importance and one reason P–51 is being considered. Since a prohibited area is published on navigational charts and identifies the area to avoid, incursion into P–51 will not automatically equate to lethal force, but will draw the attention of the defense force. What P–51 will do, is make it easier to identify aircraft that do pose a threat because low altitude over flights will not be the norm.

A number of comments, including AOPA, the Experimental Aircraft Association (EAA), Washington Seaplane Pilots Association, Washington Air Search and Rescue, and the Canadian Owners and Pilots Association, recommended establishing a NSA instead of a Prohibited Area.

The FAA does not agree. NSAs are voluntary in nature and do not prohibit aircraft over flight. An NSA would allow the opportunity for low-flying aircraft to routinely transit the airspace over, U.S. Navy Submarine Base, Bangor, making identification of aircraft extremely difficult and increasing the potential for an accident to occur. The

submarine berthing at U.S. Naval Submarine Base, Bangor, is a vital national asset and has been determined to be in the interest of national defense to protect the facilities with prohibited airspace. By sterilizing the airspace above these facilities and assets, defense forces can more easily identify aircraft displaying hostile intent and, if necessary, take appropriate action.

A commenter stated an environmental assessment should still be done, and another stated the FAA had not complied with the EPA.

The FAA does not agree. Designation of prohibited areas is categorically excluded from environmental actions under the National Environmental Policy Act in accordance with FAA Order 1050.1E Paragraphs 303d, 311a, and 312d.

Another commentor pointed out, that even if there were a valid security concern justifying the proposed P–51, the FAA should not consider establishing a new prohibited area while a) the proposed prohibited area at St. Marys, GA is still pending, and b) the FAA continues to fail to provide the legally required documentation to Congress regarding the justification for the continued existence of the Temporary Flight Restrictions and DC-area ADIZ that have existed for nearly three years now.

The FAA disagrees. The prohibited airspace being established over U.S Navy Submarine Base, Bangor, has been determined to be in the interest of national defense. The issue of required documentation to Congress concerning the DC-area ADIZ is outside the scope of this action. The situation concerning St. Marys is being addressed in separate rulemaking action.

A commenter stated this action should be considered a major action and requires a regulatory evaluation.

The FAA does not agree. In accordance with Executive Order 12886, this action is not a significant rule, under DOT Regulatory Polices and procedures (44 FR 11034; February 26, 1979); and does not warrant preparation of a regulatory evaluation.

Statutory Authority

The FAA Administrator has broad authority under Title 49 of the United States Code (49 U.S.C.) to regulate the use of the navigable airspace. In exercising that authority, the Administrator is required to give consideration to the requirements of national defense, commercial and general aviation, and the public's right of freedom of transit through the navigable airspace (49 U.S.C. 40101). The Administrator is also empowered to develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace (49 U.S.C. 40103(b)). Additionally, the Administrator shall, in consultation with the Secretary of Defense, establish areas in the airspace the Administrator decides are necessary in the interest of national defense (49 U.S.C. 40103(b)(3)(A)). In consideration of the statutory authority above, the Secretary of Defense and the Administrator of the FAA have determined this action necessary in the interest of national defense.

The Rule

In response to the U.S. Navy request, the FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 73 by designating P–51 over the U.S. Naval Submarine Base at Bangor, WA. P–51 consists of that airspace from the surface up to, but not including, 2,500 feet MSL, to include base property on the east side of the Hood Canal, the water across the Hood Canal, and the base owned land portion of the Toandos Peninsula. No person may operate an aircraft within a prohibited area unless authorization has been granted by the using agency.

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

Environmental Review

The FAA has determined that this action qualifies for a categorical exclusion from further environmental analysis under the National Environmental Policy Act in accordance with FAA Order 1050.1E Paragraphs 303d, 311a, and 312d.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of Amendment

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

PART 73—SPECIAL USE AIRSPACE

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

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

For administrative purposes and ease of documentation we are listing all current Prohibited Areas in sections 73.87–73.91.

§ 73.93 [New]

■ 2. § 73.93 is added as follows:

§ 73.87

P–56 District of Columbia

Boundaries. A. Beginning at the southwest corner of the Lincoln Memorial (lat. 38°53′20″N., long. 77°03′02″ W.); thence via a 327° bearing, 0.6 mile, to the intersection of New Hampshire Avenue and Rock Creek and Potomac Parkway, NW (lat. 38°53′45″ N., long. 77°03′23″ W.); thence northeast along New Hampshire Avenue, 0.6 mile, to Washington Circle, at the intersection of New Hampshire Avenue and K Street, NW (lat. 38°54′08″ N., long. 77°03′01″ W.); thence east along K Street, 2.5 miles, to the railroad overpass between First and Second Streets, NE (lat. 38°54′08″ N., long. 77°00′13″ W.); thence southeast via a 158° bearing, 0.7 mile, to the southeast corner of Stanton Square, at the intersection of Massachusetts Avenue and Sixth Street, NE (lat. 38°53′35″ N., long. 76°59′56″ W.); thence southwest via a 211° bearing, 0.8 mile, to the Capitol Power Plant at the intersection of New Jersey Avenue and E Street, SE (lat. 38°52′59″ N., long. 77°00′24″ W.); thence west via a 265° bearing, 0.7 mile, to the intersection of the Southwest Freeway (Interstate Route 95) and Sixth Street, SW extended (lat. 38°52′56″ N., long. 77°01′12″ W.); thence north along Sixth Street, 0.4 mile, to the intersection of Sixth Street and Independence Avenue, SW (lat. 38°53′15″ N., long. 77°01′12″ W.); thence west along the north side of Independence Avenue, 0.8 mile, to the intersection of Independence Avenue and 15th Street, SW (lat. 38°53′16″ N., long. 77°02′01″ W.); thence west along the southern lane of Independence Avenue, 0.4 mile to the west end of the Kutz Memorial Bridge over the Tidal Basin (lat. 38°53′12″ N., long. 77°02′27″ W.); thence west via a 285° bearing, 0.6 mile, to the southwest corner of the Lincoln Memorial, to the point of beginning.

B. That area within a ½-mile-radius from the center of the U. S. Naval Observatory located between Wisconsin and Massachusetts Avenues at 34th Street, NW (lat. 38°55′17″ N., long. 77°04′01″ W.).

Designated altitudes. Surface to 18,000 feet MSL.

Time of designation. Continuous.

Using agency. United States Secret Service, Washington, DC.

Amendments 3/25/99 64 FR 13334 (Amended)

§ 73.89

P–47 Amarillo, TX

Boundaries. Beginning at lat. 35°21′09″ N., long. 101°37′05″ W.; to lat. 35°21′11″ N., long. 101°32′29″ W.; to lat. 35°18′09″ N., long. 101°32′29″ W.; to lat. 35°18′09″ N., long. 101°34′50″ W.; to lat. 35°17′55″ N., long. 101°35′10″ W.; to lat. 35°17′55″ N., long. 101°35′39″ W.; to lat. 35°19′05″ N., long. 101°35′42″ W.; to lat. 35°19′05″ N., long. 101°36′06″ W.; to lat. 35°18′02″ N., long. 101°36′29″ W.; to lat. 35°18′02″ N., long. 101°37′05″ W.; to the point of beginning.

Designated altitudes. Surface to 4,800 feet MSL (1,200 feet AGL).

Time of designation. Continuous.

Using agency. Manager, Pantex Field Office, Department of Energy, Amarillo, TX.

P–49 Crawford, TX

Boundaries. That airspace within a 3 NM radius of lat. 31°34′45″ N., long. 97°32′00″ W.

Designated altitudes. Surface to 5,000 feet MSL.

Time of designation. Continuous.

Using agency. United States Secret Service, Washington, DC.

Amendments 5/15/03 68 FR 7917 (Amended)

§ 73.90

P–40 Thurmont, MD

Boundaries. That airspace within a 3 NM radius of the Naval Support Facility, lat. 39°38′53″ N., long. 77°28′00″ W.

Designated altitudes. Surface to but not including 5,000 feet MSL.

Time of designation. Continuous.

Using agency. Administrator, FAA, Washington, DC.

§ 73.91

P–73 Mount Vernon, VA

Boundaries. That airspace within a 0.5-mile radius of lat. 38°42′28″ N., long. 77°05′10″ W.

Designated altitudes. Surface to but not including 1,500 feet MSL.

Time of designation. Continuous.

Using agency. Administrator, FAA, Washington, DC.

§ 73.93 [New]

P–51 Bangor, WA [Added]

Boundaries: Beginning at lat. 47°46′31″ N., long. 122°46′12″ W.; to lat. 47°46′29″ N., long. 122°41′31″ W.; to lat. 47°41′42″ N., long. 122°41′27″ W.; to lat. 47°41′40″ N., long. 122°44′11″ W.; to lat. 47°43′19″ N., long. 122°46′09″ W.; to the point of beginning.

Designated Altitudes. Surface to but not including 2,500 MSL.

Time of designation. Continuous.

Using agency. Administrator, FAA, Washington, DC.

§ 73.94

P–67 Kennebunkport, ME

Boundaries. A circular area of 1-mile radius centered on lat. 43°20′40″ N., long. 70°27′34″ W.

Designated altitudes. Surface to 1,000 feet MSL.

Time of designation. Continuous.

Using agency. Administrator, FAA, Washington, DC.

* * * * *

Issued in Washington, DC on May 16, 2005.

Edith V. Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–10371 Filed 5–24–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1271

[Docket No. 1997N–0484T]

Human Cells, Tissues, and Cellular and Tissue-Based Products; Donor Screening and Testing, and Related Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule; opportunity for public comment.

SUMMARY: The Food and Drug Administration (FDA) is issuing an interim final rule to amend certain regulations regarding the screening and testing of donors of human cells, tissues, and cellular and tissue-based products (HCT/Ps), and related labeling. FDA is taking this action in response to comments from affected interested persons regarding the impracticability of complying with certain regulations as they affect particular HCT/Ps.

DATES: The interim final rule is effective May 25, 2005. Submit written or electronic comments on the interim final rule by August 23, 2005.

ADDRESSES: You may submit comments, identified by Docket No. 1997N–0484T, by any of the following methods:

- 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.
- E-mail: *fdadockets@oc.fda.gov*. Include Docket No. 1997N–0484T in the subject line of your e-mail message.
- 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.

Instructions: All submissions received must include the agency name and Docket No. for this rulemaking. All comments received will be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see section IX 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, 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: Paula S. McKeever, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

We (FDA), have issued three final rules to implement a comprehensive new system for regulating HCT/Ps in part 1271 (21 CFR part 1271). The final rules are as follows:

- Human Cells, Tissues, and Cellular and Tissue-Based Products; Establishment Registration and Listing (66 FR 5447, January 19, 2001) (registration final rule);
- Eligibility Determination for Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (69 FR 29786, May 25, 2004) (donor-eligibility final rule); and
- Current Good Tissue Practice for Human Cell, Tissue, and Cellular and Tissue-Based Product Establishments; Inspection and Enforcement (69 FR 68612, November 24, 2004) (CGTP final rule).

This interim final rule is making changes in response to comments from affected interested persons regarding the impracticability of complying with certain regulations as they affect particular HCT/Ps, as well as certain other editorial changes.

II. Legal Authority

We are issuing these regulations under the authority of section 361 of the

Public Health Service Act (PHS Act) (42 U.S.C. 264). By authority delegated under that section, we may make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases between the States or from foreign countries into the States. Intrastate transactions affecting interstate communicable disease transmission may also be regulated under section 361 of the PHS Act. (See *Louisiana* v. *Mathews*, 427 F. Supp. 174, 176 (E.D. La. 1977).) This interim final rule addresses the impracticability of complying with certain regulations that affect particular HCT/Ps.

III. Issuance of an Interim Final Rule; Effective Date

Under the provisions of the Administrative Procedure Act at 5 U.S.C. 553(b)(B) and FDA's administrative practices and procedures regulations at § 10.40(e)(1) (21 CFR 10.40(e)(1)), the Commissioner of Food and Drugs (the Commissioner) finds that use of prior notice and comment procedures for issuing this interim final rule is contrary to the public interest. In addition, the Commissioner finds good cause under 5 U.S.C. 553(d)(3) and § 10.40(c)(4)(ii) for making this interim final rule effective May 25, 2005.

We conclude that this interim final rule is necessary to assure that the changes become effective concurrently with the donor-eligibility final rule and the CGTP final rule on May 25, 2005. In this way, establishments will not be required to take steps to comply with the provisions that will be replaced by the changes set out in this rule, and certain HCT/Ps will continue to be available. If the rule is not effective immediately (before the agency could take comment on a proposed rule and issue a final rule), delay could result in certain HCT/Ps being unavailable for donation. Based on existing donation practices, we believe that delay would increase the risk that some patients will not be able to obtain certain donated HCT/Ps.

Although we are publishing this regulation as an interim final rule without prior notice and comment on a proposed rule, we are providing opportunity for comment on this interim final rule. After reviewing public comment submitted to the docket, we will issue a final rule.

IV. Provisions of the Interim Final Rule

We are making the following changes to part 1271.

A. Sections 1271.55 and 1271.290

Section 1271.55 describes:

- The records that must accompany the HCT/P at all times once the donor-eligibility determination is made (§ 1271.55(a));
- The summary of records used to make the donor-eligibility determination (§ 1271.55(b));
- The deletion of personal information (§ 1271.55(c)); and
- The record retention requirements (§ 1271.55(d)).

Section 1271.55(a)(1) requires you to affix a distinct identification code to the HCT/P container, e.g., an alphanumeric, that relates the HCT/P to the donor and to all records pertaining to the HCT/P. In the interest of confidentiality, the distinct identification code must not include an individual's name, social security number, or medical record number. We make an exception to this prohibition for autologous or directed reproductive donations because in such donations, the donor is already known to the recipient.

This interim final rule adds to this exception donations made by first-degree or second-degree blood relatives. Donors who are first-degree or second-degree blood relatives know and are known by the recipient, similar to directed reproductive donations. Adding this exception may increase the comfort of the recipient by helping to confirm that the HCT/P is from the designated donor.

The revision to § 1271.290 is a technical change to reference the provisions in § 1271.55(a)(1).

B. Section 1271.80

Section 1271.80 describes the general requirements for donor testing, such as:

- The requirement to test for relevant communicable diseases;
- Timing of specimen collection;
- What tests to use; and
- Who is an ineligible donor.

The interim final rule revises the requirements regarding timing of the specimen collection. We deleted the statement in § 1271.80(b) regarding specimen collection at the time of recovery, because we are aware that this has been interpreted to mean that a testing specimen collected from a donor on the day of donation is superior. We believe that, for a cadaveric donor, either a pre-mortem specimen collected within 7 days before death or a post mortem specimen are appropriate specimens. However, the pre-mortem specimen, if available, may be preferable because it is likely to be less hemolyzed, and excessive hemolysis can interfere with the test results. In addition, a cadaveric donor may have received fluid infusions prior to death, resulting in plasma dilution sufficient to affect test results. For these reasons, a specimen collected on the day of donation from a cadaveric donor may not be superior to a specimen collected within 7 days before death.

The interim final rule also modifies the timing of sample collection for donors of bone marrow (when considered an HCT/P under § 1271.3(d) (21 CFR 1271.3(d))) and oocytes. The change will permit the collection of a donor specimen for testing up to 30 days before recovery of the HCT/P for these additional HCT/Ps. In the donor-eligibility final rule we state that we permit collection of the donor specimen up to 30 days before recovery for donors of peripheral blood stem/progenitor cells due to the myeloablative treatment regimen and the need to determine the eligibility of the donor before the recipient's treatment begins (69 FR 29786 at 29808). Because this reasoning also applies to donors of bone marrow covered by the HCT/P regulations and donors of oocytes who must undergo conditioning regimens beginning more than 7 days before recovery of oocytes, we have included a reference to bone marrow and oocytes in § 1271.80(b) to permit testing up to 30 days before recovery.

C. Section 1271.90

Section 1271.90(a) describes exceptions to the requirement for donor-eligibility determination and related labeling requirements. The exceptions apply to the following HCT/Ps:

- Cells and tissues for autologous use;
- Reproductive cells or tissue donated by a sexually intimate partner of the recipient; and
- Cryopreserved cells or tissue for reproductive use, other than embryos, intended for directed donation.

In the donor eligibility final rule at § 1271.90(a)(2), a donor eligibility determination is not required for reproductive cells or tissue donated by a sexually intimate partner of the recipient for reproductive use. We are now adding a new exemption from screening and testing in § 1271.90(a)(4) for cryopreserved embryos that, while originally exempt from the donor eligibility requirement because the donors were sexually intimate partners, are later intended for directed or anonymous donation. When possible, appropriate measures should be taken to screen and test the semen and oocyte donors before transfer of the embryo to a recipient.

This change reflects the fact that sexually intimate partners may decide to donate their cryopreserved embryos long after their fertility treatments are completed. Because the embryos were

intended for use in a sexually intimate relationship, the donors would not have been required to be screened and tested for communicable disease agents at the time that oocytes and semen were recovered. The new provision recommends that appropriate measures be taken to screen and test the semen and oocyte donors before transfer of the embryo to the recipient, when possible.

If appropriate screening and testing of the semen and oocyte donors are performed subsequent to cryopreservation and before transfer of the embryo to the recipient, the labeling requirement in § 1271.90(b)(6) applies, i.e., "Advise recipient that screening and testing of the donor(s) were not performed at the time of cryopreservation of the reproductive cells or tissue, but have been performed subsequently." If screening and testing of the semen and oocyte donors are not performed, this rule would not prohibit the transfer of the embryo into a recipient. In such an event, the labeling requirements in § 1271.90(b)(2) and (b)(3) are applicable. The HCT/P must be labeled with "NOT EVALUATED FOR INFECTIOUS SUBSTANCES" and "WARNING: Advise recipient of communicable disease risks." This labeling would provide information to the treating physician to permit discussion with the recipient of the potential risks.

Since we issued the donor eligibility rule, we have received letters and comments in meetings concerning the importance of cryopreserved embryos to individuals seeking access to donated embryos. Donated embryos may provide a very important treatment to some individuals. For example, a couple may not be able to conceive a child because the female partner has had her ovaries removed and the male partner has undergone chemotherapy and no longer has viable spermatozoa. In order to assure that such a treatment continues to be available, we have re-evaluated the screening and testing requirements imposed by these rules. Screening and testing of semen and oocyte donors is recommended given the potential risk that such tissue, like any cell or tissue derived from the human body, could transmit communicable disease. However, it is possible that the couple would not be available for screening and testing due to refusal of a partner or death. In such instances, the embryo would be labeled as required under the rule, and this rule would not prohibit the transfer of the embryo.

We believe this change will enhance the availability of embryos for donation. However, we are soliciting comments on the effectiveness of this change to enhance the availability of embryos, and the potential benefits, risks, and any other direct or indirect effects of this change. Section 1271.90(b) contains labeling requirements for the previously described HCT/Ps excepted from the donor-eligibility determination requirements. We are revising § 1271.90(b) to clarify when each required label is appropriate for the HCT/Ps described in § 1271.90(a), i.e., autologous cells and tissues, reproductive cells and tissues donated by a sexually intimate partner, and cryopreserved reproductive cells and tissues, including embryos, where the donor(s) was not screened and tested at the time of collection. We have also clarified § 1271.90(b)(3), that cells and tissues for autologous use do not require the label "Advise patient of communicable disease risk" because the patient's own cells or tissues are being returned, and in this situation, there is minimal, if any, risk.

D. Section 1271.370

Section 1271.370 contains labeling requirements in addition to §§ 1271.55, 1271.60, 1271.65, and 1271.90 for HCT/Ps regulated solely under section 361 of the PHS Act and part 1271, e.g., distinct identification code, expiration date, and warnings. We are revising § 1271.370(b)(4) to state that if applying the applicable warnings to the container is physically impossible, then the labeling must, instead, accompany the HCT/P. This change is necessary because the container for some HCT/Ps, such as those used for semen cryopreservation, is so small that it does not accommodate the warning language. In addition, the use of a tie-tag with warning language is not feasible because it is difficult to securely attach the tie-tag to a container stored in liquid nitrogen. In such cases, the warning language must accompany the HCT/P.

V. Analysis of Impacts

FDA has examined the impacts of the interim final rule under Executive Order 12866 as well as under the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this interim final rule is not an economically significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this rule makes certain issued regulations affecting reproductive and hematopoietic stem cell HCT/Ps more practicable, and does not impose any new requirements, FDA certifies that the interim final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $115 million, using the most current (2003) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this interim final rule to result in any 1–year expenditure that would meet or exceed this amount.

VI. The Paperwork Reduction Act of 1995

This interim final rule contains no collections of information. Therefore, clearance by OMB under the Paperwork Reduction Act of 1995 is not required.

VII. Environmental Impact

The agency has determined under 21 CFR 25.30(i) and (j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Federalism

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

consequently, a federalism summary impact statement is not required.

IX. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this interim final 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 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.

List of Subjects in 21 CFR 1271

Biological Drugs, Communicable diseases, HIV/AIDS, Human cells, tissues, and cellular and tissue-based products, Medical devices, Reporting and recordkeeping requirements.

■ Therefore, under the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, Chapter I of title 21 of the Code of Federal Regulations is amended as follows:

PART 1271—HUMAN CELLS, TISSUES, AND CELLULAR AND TISSUE-BASED PRODUCTS

■ 1. The authority citation for 21 CFR part 1271 continues to read as follows:

Authority: 42 U.S.C. 216, 243, 263a, 264, 271.

■ 2. Section 1271.55 is amended by revising paragraph (a)(1) to read as follows:

§ 1271.55 What records must accompany an HCT/P after the donor-eligibility determination is complete; and what records must I retain?

(a) * * *

(1) A distinct identification code affixed to the HCT/P container, e.g., alphanumeric, that relates the HCT/P to the donor and to all records pertaining to the HCT/P and, except in the case of autologous donations, directed reproductive donations, or donations made by first-degree or second-degree blood relatives, does not include an individual's name, social security number, or medical record number;

* * * * *

■ 3. Section 1271.80 is amended by revising paragraph (b) to read as follows:

§ 1271.80 What are the general requirements for donor testing?

* * * * *

(b) *Timing of specimen collection.* You must collect the donor specimen for testing at the time of recovery of cells or tissue from the donor; or up to 7 days before or after recovery, except:

(1) For donors of peripheral blood stem/progenitor cells, bone marrow (if not excepted under § 1271.3(d)(4)), or oocytes, you may collect the donor specimen for testing up to 30 days before recovery; or

(2) In the case of a repeat semen donor from whom a specimen has already been collected and tested, and for whom retesting is required under § 1271.85(d), you are not required to collect a donor specimen at the time of each donation.

* * * * *

■ 4. Section 1271.90 is amended by revising paragraphs (a)(3) introductory text and (b), and by adding paragraph (a)(4) to read as follows:

§ 1271.90 Are there exceptions from the requirement of determining donor eligibility, and what labeling requirements apply?

(a) * * *

(3) Cryopreserved cells or tissue for reproductive use, other than embryos, originally exempt under paragraphs (a)(1) or (a)(2) of this section at the time of donation, that are subsequently intended for directed donation, provided that

* * * * *

(4) A cryopreserved embryo, originally exempt under paragraph (a)(2) of this section at the time of cryopreservation, that is subsequently intended for directed or anonymous donation. When possible, appropriate measures should be taken to screen and test the semen and oocyte donors before transfer of the embryo to the recipient.

(b) *Required labeling.* As applicable, you must prominently label an HCT/P described in paragraph (a) of this section as follows:

(1) "FOR AUTOLOGOUS USE ONLY," if it is stored for autologous use.

(2) "NOT EVALUATED FOR INFECTIOUS SUBSTANCES," unless you have performed all otherwise applicable screening and testing under §§ 1271.75, 1271.80, and 1271.85. This paragraph does not apply to reproductive cells or tissue labeled in accordance with paragraph (b)(6) of this section.

(3) Unless the HCT/P is for autologous use only, "WARNING: Advise recipient of communicable disease risks,"

(i) When the donor-eligibility determination under § 1271.50(a) is not performed or is not completed; or

(ii) If the results of any screening or testing performed indicate:

(A) The presence of relevant communicable disease agents and/or

(B) Risk factors for or clinical evidence of relevant communicable disease agents or diseases.

(4) With the Biohazard legend shown in § 1271.3(h), if the results of any screening or testing performed indicate:

(i) The presence of relevant communicable disease agents and/or

(ii) Risk factors for or clinical evidence of relevant communicable disease agents or diseases.

(5) "WARNING: Reactive test results for (name of disease agent or disease)," in the case of reactive test results.

(6) "Advise recipient that screening and testing of the donor(s) were not performed at the time of cryopreservation of the reproductive cells or tissue, but have been performed subsequently," for paragraphs (a)(3) or (a)(4) of this section.

■ 5. Section 1271.290 is amended by revising the second sentence in paragraph (c) to read as follows:

§ 1271.290 Tracking.

* * * * *

(c) * * * Except as described in § 1271.55(a)(1), you must create such a code specifically for tracking, and it may not include an individual's name, social security number, or medical record number. * * *

* * * * *

■ 6. Section 1271.370 is amended by revising paragraph (b)(4) to read as follows:

§ 1271.370 Labeling.

* * * * *

(b) * * *

(4) Warnings required under § 1271.60(d)(2), § 1271.65(b)(2), or § 1271.90(b), if applicable and physically possible. If it is not physically possible to include these warnings on the label, the warnings must, instead, accompany the HCT/P.

* * * * *

Dated: May 23, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–10583 Filed 5–24–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD05–04–043]

RIN 1625–AA01

Anchorage Grounds; Hampton Roads, VA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the anchorage regulations in the Port of Hampton Roads. Infrastructure improvements and increases in vessel traffic and draft calling on the port have prompted this rulemaking. This regulation will ensure that the Hampton Roads Anchorage Grounds continue to safely support current and future vessel anchoring demands.

DATES: This rule is effective June 24, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of the docket CGD05–04–043 and are available for inspection or copying at Commander (oan), Fifth Coast Guard District, 431 Crawford Street, Room 401, Portsmouth, VA 23704–5004 between 9 a.m. and 3 p.m., Monday through Friday, except public holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Timothy Martin, Fifth Coast Guard District, Aids to Navigation and Waterways Management Branch, (757) 398–6285, Email: *trmartin@lantd5.uscg.mil.*

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 27, 2004 we published a notice of proposed rulemaking (NPRM) entitled "Anchorage Grounds, Hampton Roads, VA" in the **Federal Register** (69 FR 57656). We received one telephone call commenting on the proposed rule. No public meeting was requested, and none was held.

On March 30, 2005 we published a supplemental notice of proposed rulemaking (SNPRM) entitled "Anchorage Grounds Hampton Roads, VA" in the **Federal Register** (70 FR 16195). We received no comments on the SNPRM. No public meeting was requested, and none was held.

Background and Purpose

Recreational, public, and commercial vessels use the Hampton Roads Anchorage Grounds. General regulations covering the anchorage of vessels in the port are set out in 33 CFR 110.168. In June 1986, the U.S. Army Corps of Engineers (USACE) completed a study of the Norfolk Harbor, including its anchorages. The study is entitled, "General Design Memorandum 1, Norfolk Harbor and Channels, Virginia, Main Report." Comments from the Coast Guard, Navy, Virginia Port Authority, Virginia Pilots Association and Hampton Roads Maritime Association requesting improvements to Anchorages F and K were considered in the study. Anchorage F currently has two 400-yard radius berths. The USACE, in 1998, constructed a single 500-yard radius berth for Anchorage F and is currently maintaining the anchorage at a project depth of 50 feet. This rule changes Anchorage F to a single 500 yard radius berth to reflect the construction completed by the USACE in 1998. The USACE was congressionally authorized in November of 1986 to increase the project depth of Anchorage F to 55 feet, see H. Doc. 99–85, 99th Cong., 1st session. Improvements were also proposed by the Coast Guard to the Newport News Middle Ground, Anchorage K, by increasing the easternmost berth, K–1 from a swing radius of 400 yards to one of 500 yards. In addition, Berth K–2, currently maintained at 40 feet, would be deepened to 45 feet. The increase in size to Berth K–1, the increase in depth to Berth K–2, and the increase in depth to Anchorage F have all been congressionally authorized and will be scheduled for construction once the increase in vessel drafts support the project. The circular boundaries for Berth K–1, referred to as East Anchorage, and Berth K–2, referred to as West Anchorage, will be shown on future chart editions for the area when this rule is published.

The overall boundary of Anchorage K has been changed so that the entire anchorage lies north of the Fairway for Shallow Draft Vessels and Tows.

A new quarantine anchorage, new Anchorage Q, replaces Berth K–3, which is currently not maintained by the USACE. The new quarantine anchorage is located east of York Spit Channel between Chesapeake Channel Lighted Buoy 36 (LL 7215) and Chesapeake Channel Lighted Buoy 38 (LL 7230), west of Cape Charles. The new anchorage is located in naturally deep water with charted depths in excess of 60 feet and has two 500 yard, swing-radius berths.

Current trends indicate that shipping companies will call on the Port of Hampton Roads using larger, deeper draft vessels, thereby creating a need for fewer trips when visiting the Port of Hampton Roads in the future. With the increase in size, The Navigation Plan for the Port of Hampton Roads, conducted by the USACE in February of 2000, indicated that by the year 2010 almost 40 percent of containerized cargo will be moved on ships capable of carrying 4,000 twenty-foot trailer equivalent units (TEU). Some "Mega Ships" already in service are capable of carrying up to 6,000 TEUs. Hyuandai Heavy Industries is currently building ships with 10,000 TEU capacities for delivery to Cosco. The average container ship calling on the port today carries between 1,500 and 4,000 TEUs. The bulk carriers that call on the Port of Hampton Roads have also increased in size and will play a significant role in the port's future design considerations. In addition to the projected increase in the size of vessels calling on the Port of Hampton Roads, there are two infrastructure improvement projects in the port that affect the anchorage grounds. In September 2001, APM Terminals North America, Inc. (Maersk) purchased 570 acres of property located on the Elizabeth River, south of Craney Island. Dredging has begun in the vicinity of Anchorage P for the development of a major marine container handling facility on this property. The first ship is due to moor at this new terminal sometime in 2007. Anchorage P lies between the future terminal and the Federal navigation channel. Parts of Anchorage P will be made unusable following completion of the terminal and the approach channels. Maersk has requested the discontinuation of Anchorage P.

Likewise, construction of the Norfolk International Terminal North (NIT North) approach channel, which passes through the existing Anchorage M, has rendered that anchorage unusable. This rule discontinues Anchorage M.

To further enhance the safety of the port's anchorages, this rule amends the boundaries of Berths 3 and 4 within Explosive Anchorage G. Currently, these berths overlap each other and pose a potential hazard to anchored vessels. The rule separates the berths, eliminating the risk of collision as a result of overlapping swing circles.

The rule renames existing Anchorage R as Anchorage M, renames existing Anchorage T as Anchorage N, renames existing Anchorage U, The Hague, as Anchorage O, The Hague. The rule eliminates existing Anchorages Q and S. The changes are listed in the following table:

Current Anchorage [33 CFR 110.168 (a)]	Change.
A—Cape Henry Naval Anchorage (1)	No change.
B—Chesapeake Bay, Thimble Shoals Channel Naval Anchorage (CBTSC) [(2)(i)].	No change.
C—CBTSC Naval Anchorage [(2)(ii)]	No change.
D—CBTSC Navel Anchorage [(2)(iii)]	No change.
E—Commercial Explosive Anchorage [(2)(iv)]	No change.
E–1—Explosive Handling Berth [(2)(v)(A)]	No change.
F—Hampton Bar [(3)(i)]	No changes to anchorage limits. One 500 yard swing radius berth will replace two 400 yard swing radius berths. Single berth dredged to a depth of 50 feet in 1998, authorized depth 55 feet. New regulations included in part [(e)(3)] exclude vessels with drafts less than 45 ft from using Anchorage F without permission from the Captain of the Port. Previously, vessels with a draft less than 40 ft and a length of less than 700 ft were excluded.
F–1—[(3)(i)(A)]	Designation refers to 500 yard berth.
F–2—[(3)(i)(B)]	Discontinued.
G—Hampton Flats Naval Explosives Anchorage [(3)(ii)]	New center positions created for Berths 3 and 4, removing overlapping circumferences.
G–1—Explosives Handling Berth [(3)(ii)(A)]	No change.
G–2—Explosives Handling Berth [(3)(ii)(B)]	No change.
G–3—Explosives Handling Berth [(3)(ii)(C)]	A new center position replaces current center position removing overlapping circumferences with G–4.
G–4—Explosives Handling Berth [(3)(ii)(D)]	A new center position replaces current center position removing overlapping circumferences with G–3.
H—Newport News Bar [(3)(iii)]	No change.
I—Newport News [(4)(i)]	No change to overall anchorage boundaries.
I–1—[(4)(i)(A)]	No change.
I–2—[(4)(i)(B)]	A new center position replaces current center position to remove ambiguous boundary lines.
J—Newport News Middle Ground [(4)(ii)]	New boundary lines.
K—Newport News Middle Ground [(4)(iii)]	New boundary lines. Replace boundary lines for K–1 and K–2 with berth circumferences. Discontinue K–3.
K–1—East Anchorage [(4)(iii)(A)]	K–1 will have a 400 yard swing radius and be maintained at a depth of 45 ft. Future plans include increasing the swing radius to 500 yards.
K–2—West Anchorage [(4)(iii)(B)]	K–2 will have a 400 yard swing radius and be maintained at a depth of 45 ft. Future plans include increasing the depth to 45 ft.
K–3—Quarantine Berth [(4)(iii)(C)]	Discontinued. New quarantine anchorage established adjacent to Cape Charles, east of York spit Channel.
L—Craney Island Flats [(4)(iv)]	New boundary lines.
M—Norfolk Harbor Channel Anchorages (NHCA) [(5)(i)]	Old Anchorage M is eliminated.
N—NHCA [(5)(ii)]	Old Anchorage N is eliminated.
O—NHCA [(5)(iii)]	Old Anchorage O is eliminated.
P—Lambert's Point [(6)(i)]	Anchorage P has been eliminated.
Q—Elizabeth River Anchorage (ERA) [(6)(ii)]	Anchorage Q has been eliminated.
R—ERA, Port Norfolk [(6)(iii)]	Current Anchorage R is redesignated Anchorage M.
S—ERA, Port Norfolk [(6)(iv)]	Anchorage S has been eliminated.
T—ERA, Hospital Point [(6)(v)]	Current Anchorage T is redisignated Anchorage N.
U—The Hague [(7)]	Current Anchorage U is redisignated Anchorage O.
Q—Quarantine Anchorage	New quarantine anchorage established adjacent to Cape Charles east of York Spit Channel.

Discussion of Comments and Changes

One comment was received via telephone from NOAA's Nautical Data Branch in Silver Spring, MD in response to the NPRM. The first two positions in Anchorage N, Hospital Point have been interchanged putting the positions in their intended sequence. Also noted by NOAA, the center coordinate for Berth Q–2 was inadvertently excluded from the NPRM when published in the **Federal Register**. The center coordinate for Berth Q–2 will be included in the final rule. The word "permission" has replaced the word "permit" in paragraph (c)(2), (d)(2), (e)(2), and, (e)(2)(iii) to align the regulation with current Coast Guard procedures.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. The rule changes complement current anchorage usage and waterway modifications made by the USACE resulting in minimal impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The rule will affect the owners or operators of small pleasure craft wishing to anchor in the Elizabeth River anchorages that will be discontinued due to shallow natural water depths. Anchorages available for use by owners and operators of small pleasure craft include Hospital Point Anchorage, new Anchorage M in the vicinity of Portsmouth Marine Terminal, and The Hague.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its affects on them and participate in the rulemaking process.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction, from further environmental documentation. The rule deals directly with establishing, disestablishing and renaming anchorage areas.

A final "Environmental Analysis Check list" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 110

Anchorage grounds.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

■ 1. The authority for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, and 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 110.168 to read as follows:

110.168 Hampton Roads, Virginia and adjacent waters (Datum: NAD 83).

(a) *Anchorage Grounds.* (1) *Anchorage A (Naval Anchorage).* The waters bounded by the shoreline and a line connecting the following points:

Latitude	*Longitude*
36°55′33.0″ N	76°02′47.0″ W
36°57′02.8″ N	76°03′02.6″ W
36°56′45.0″ N	76°01′30.0″ W
36°55′54.0″ N	76°01′37.0″ W

(2) *Chesapeake Bay, Thimble Shoals Channel Anchorages.*

(i) *Anchorage B (Naval Anchorage).* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°57′58.0″ N	76°06′07.0″ W
36°57′11.0″ N	76°03′02.1″ W
36°55′48.8″ N	76°03′14.0″ W
36°56′31.8″ N	76°06′07.0″ W
36°57′04.0″ N	76°06′07.0″ W
36°57′08.5″ N	76°06′24.5″ W

(ii) *Anchorage C (Naval Anchorage).* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°58′54.8″ N	76°09′41.5″ W

Latitude	*Longitude*
36°58′18.8″ N	76°07′18.0″ W
36°57′27.0″ N	76°07′37.5″ W
36°58′04.0″ N	76°10′00.0″ W

(iii) *Anchorage D (Naval Anchorage).* The waters bounded by the shoreline and a line connecting the following points:

Latitude	*Longitude*
36°55′49.0″ N	76°10′32.8″ W
36°58′04.0″ N	76°10′02.1″ W
36°57′31.2″ N	76°07′54.8″ W
36°55′24.1″ N	76°08′28.8″ W

(iv) *Anchorage E (Commercial Explosive Anchorage).* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°59′58.7″ N	76°13′47.0″ W
36°59′08.2″ N	76°10′33.8″ W
36°58′13.0″ N	76°10′51.8″ W
36°59′02.0″ N	76°14′10.2″ W

(v) *Explosive Handling Berth E–1 (Explosives Anchorage Berth).* The waters bounded by the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	*Longitude*
36°59′05.0″ N	76°11′23.0″ W

(3) *Hampton Roads Anchorages.* (i) *Anchorage F, Hampton Bar.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°59′51.6″ N	76°19′12.0″ W
36°59′25.2″ N	76°18′48.5″ W
36°58′49.1″ N	76°19′33.8″ W
36°59′25.0″ N	76°20′07.0″ W

(ii) *Anchorage Berth F–1.* The waters bounded by a line connecting the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	*Longitude*
36°59′29.1″ N	76°19′15.1″ W

(iii) *Anchorage G, Hampton Flats (Naval Explosives Anchorage).* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°59′25.0″ N	76°20′07.0″ W
36°58′49.1″ N	76°19′33.8″ W
36°57′41.4″ N	76°21′07.7″ W
36°57′34.6″ N	76°21′26.7″ W
36°57′31.1″ N	76°22′01.9″ W
36°58′07.0″ N	76°22′03.0″ W
36°58′54.8″ N	76°21′42.6″ W

(iv) *Explosives Handling Berth G–1.* The waters bounded by the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	*Longitude*
36°57′50.0″ N	76°21′37.0″ W

(v) *Explosives Handling Berth G–2.* The waters bounded by the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	*Longitude*
36°58′14.0″ N	76°21′01.5″ W

(vi) *Explosives Handling Berth G–3.* The waters bounded by the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	*Longitude*
36°58′34.2″ N	76°20′31.4″ W

(vii) *Explosives Handling Berth G–4.* The waters bounded by the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	*Longitude*
36°58′54.9″ N	76°20′03.2″ W

(viii) *Anchorage H, Newport News Bar.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°58′07.0″ N	76°22′03.0″ W
36°57′31.1″ N	76°22′01.9″ W
36°57′18.0″ N	76°24′11.2″ W
36°57′38.3″ N	76°24′20.0″ W
36°57′51.8″ N	76°22′31.0″ W

(4) *James River Anchorages.* (i) *Anchorage I, Newport News.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°57′06.7″ N	76°24′44.3″ W
36°56′22.6″ N	76°24′28.0″ W
36°56′03.0″ N	76°24′37.0″ W
36°57′53.7″ N	76°26′41.5″ W
36°58′23.0″ N	76°27′11.0″ W
36°58′48.5″ N	76°27′11.0″ W
36°58′35.4″ N	76°26′38.4″ W
36°57′51.7″ N	76°26′02.8″ W
36°57′30.6″ N	76°25′34.5″ W

(ii) *Anchorage Berth I–1.* The waters bounded by the arc of a circle with a radius of 400 yards and with the center located at:

Latitude	*Longitude*
36°57′08.5″ N	76°25′21.6″ W

(iii) *Anchorage Berth I–2.* The waters bounded by the arc of a circle with a radius of 400 yards and with the center located at:

Latitude	*Longitude*
36°57′23.8″ N	76°25′46.0″ W

(iv) *Anchorage J, Newport News Middle Ground.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°55′59.9″ N	76°22′11.7″ W
36°55′59.9″ N	76°24′00.0″ W
36°56′25.3″ N	76°23′48.0″ W
36°57′10.2″ N	76°24′09.9″ W
36°57′12.0″ N	76°23′47.3″ W
36°56′38.5″ N	76°21′39.1″ W
36°56′38.5″ N	76°20′47.0″ W

(v) *Anchorage K, Newport News Middle Ground.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°57′56.4″ N	76°20′30.5″ W
36°57′08.5″ N	76°20′31.0″ W
36°56′48.8″ N	76°20′22.5″ W
36°56′45.0″ N	76°20′32.0″ W
36°56′45.0″ N	76°21′37.7″ W
36°57′14.1″ N	76°23′29.1″ W
36°57′28.1″ N	76°21′11.7″ W

(vi) *Anchorage Berth K–1.* The waters bounded by the arc of a circle with a radius of 400 yards and with the center located at:

Latitude	*Longitude*
36°57′30.5″ N	76°20′45.3″ W

(vii) *Anchorage Berth K–2.* The waters bounded by the arc of a circle with a radius of 400 yards and with the center located at:

Latitude	*Longitude*
36°57′16.8″ N	76°21′09.5″ W

(viii) *Anchorage Berth L, Craney Island Flats.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°55′59.9″ N	76°22′11.7″ W
36°56′38.5″ N	76°20′45.5″ W
36°56′30.0″ N	76°20′24.3″ W
36°56′04.2″ N	76°20′26.2″ W

(5) *Elizabeth River Anchorages.* (i) *Anchorage M, Port Norfolk.* The waters bounded by a line connecting the following points:

Latitude	*Longitude*
36°51′45.7″ N	76°19′31.5″ W
36°51′45.8″ N	76°19′20.7″ W
36°51′37.8″ N	76°19′24.3″ W
36°51′32.5″ N	76°19′31.1″ W
36°51′40.7″ N	76°19′37.3″ W
36°51′45.7″ N	76°19′31.5″ W

(ii) *Anchorage N, Hospital Point.* The waters bounded by a line connecting the following points:

Latitude	Longitude
36°51′05.4″ N	76°18′22.4″ W
36°50′50.0″ N	76°18′00.0″ W
36°50′36.7″ N	76°17′52.8″ W
36°50′33.6″ N	76°17′58.8″ W
36°50′49.3″ N	76°18′09.0″ W
36°50′50.3″ N	76°18′07.8″ W
36°50′56.2″ N	76°18′12.5″ W
36°51′01.8″ N	76°18′32.3″ W

(iii) *Anchorage O, The Hague.* The waters of the basin known as "The Hague", north of the Brambleton Avenue Bridge, except for the area within 100 feet of the bridge span that provides access to and from the Elizabeth River.

(6) *Anchorage Q. Quarantine Anchorage.* The waters bounded by a line connecting the following points:

Latitude	Longitude
37°17′13.7″ N	76°06′41.6″ W
37°17′30.3″ N	76°05′53.9″ W
37°16′25.0″ N	76°05′18.4″ W
37°16′08.4″ N	76°06′06.0″ W

(i) *Anchorage Berth Q–1.* The waters bounded by the arc of a circle with a radius of 500 yards and with the center located at:

Latitude	Longitude
37°17′05.7″ N	76°06′08.9″ W

(ii) *Anchorage Berth Q–2.* The waters bounded by the arc of a circle with a radius of 500 yards with the center located at:

Latitude	Longitude
37°16′33.0″ N	76°05′51.1″ W

(b) *Definitions.* As used in this section—

Class 1 (explosive) materials means Division 1.1, 1.2, 1.3, and 1.4 explosives, as defined in 49 CFR 173.50.

Dangerous cargo means "certain dangerous cargo" as defined in § 160.204 of this title.

U.S. naval vessel means any vessel owned, operated, chartered, or leased by the U.S. Navy; any pre-commissioned vessel under construction for the U.S. Navy, once launched into the water; and any vessel under the operational control of the U.S. Navy or a Combatant Command.

(c) *General regulations.* (1) Except as otherwise provided, this section applies to vessels over 20 meters long and vessels carrying or handling dangerous cargo or Class 1 (explosive) materials while anchored in an anchorage ground described in this section.

(2) Except as otherwise provided, a vessel may not occupy an anchorage for more than 30 days, unless the vessel obtains permission from the Captain of the Port.

(3) Except in an emergency, a vessel that is likely to sink or otherwise become a menace or obstruction to navigation or to the anchoring of other vessels, may not occupy an anchorage, unless the vessel obtains permission from the Captain of the Port.

(4) The Captain of the Port may, upon application, assign a vessel to a specific berth within an anchorage for a specified period of time.

(5) The Captain of the Port may grant a revocable permit to a vessel for a habitual use of a berth. Only the vessel that holds the revocable permit may use the berth during the period that the permit is in effect.

(6) The Commander, Fifth Coast Guard District, may authorize the establishment and placement of temporary mooring buoys within a berth. Placement of a fixed structure within an anchorage may be authorized by the District Engineer, U.S. Army Corps of Engineers.

(7) If an application is for the long-term lay up of a vessel, the Captain of the Port may establish special conditions in the permit with which the vessel must comply.

(8) Upon notification by the Captain of the Port to shift its position within an anchorage, a vessel at anchor must get underway at once or signal for a tug. The vessel must move to its new location within 2 hours after notification.

(9) The Captain of the Port may prescribe specific conditions for vessels anchoring within the anchorages described in this section, including, but not limited to, the number and location of anchors, scope of chain, readiness of engineering plant and equipment, usage of tugs, and requirements for maintaining communications guards on selected radio frequencies.

(10) A vessel that does not have a sufficient crew on board to weigh anchor at any time must have two anchors in place, unless the Captain of the Port waives this requirement. Members of the crew may not be released until the required anchors have been set.

(11) No vessel at anchor or at a mooring within an anchorage may transfer oil to another vessel unless the vessel has given the Captain of the Port the four hours advance notice required by § 156.118 of this title.

(12) Barges may not anchor in the deeper portions of anchorages or interfere with the anchoring of deep-draft vessels.

(13) Barges towed in tandem to an anchorage must be nested together when anchored.

(14) Any vessel anchored or moored in an anchorage adjacent to the Chesapeake Bay Bridge Tunnel or Monitor-Merrimac Bridge Tunnel (MMBT) must be capable of getting underway within 30 minutes with sufficient power to keep free of the bridge tunnel complex.

(15) A vessel may not anchor or moor in an anchorage adjacent to the Chesapeake Bay Bridge Tunnel or Monitor-Merrimac Bridge Tunnel (MMBT) if its steering or main propulsion equipment is impaired.

(d) *Regulations for vessels handling or carrying dangerous cargoes or Class 1 (explosive) materials.* This paragraph applies to every vessel, except a naval vessel, handling or carrying dangerous cargoes or Class 1 (explosive) materials.

(1) Unless otherwise directed by the Captain of the Port, each commercial vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials must be anchored or moored within Anchorage Berth E–1.

(2) Each vessel, including each tug and stevedore boat, used for loading or unloading dangerous cargoes or Class 1 (explosive) materials in an anchorage, must have permission issued by the Captain of the Port.

(3) The Captain of the Port may require every person having business aboard a vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials while in an anchorage, other than a member of the crew, to hold a form of valid identification.

(4) Each person having business aboard a vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials while in an anchorage, other than a member of the crew, must present the identification prescribed by paragraph (d)(3) of this section to any Coast Guard boarding officer who requests it.

(5) Each non-self-propelled vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials must have a tug in attendance at all times while at anchor.

(6) Each vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials while at anchor must display by day a red flag (Bravo flag) in a prominent location and by night a fixed red light.

(e) *Regulations for Specific Anchorages.* (1) *Anchorages A, B, C, and D.* Except for a naval vessel, military support vessel, or vessel in an emergency situation, a vessel may not anchor in Anchorages A, B, C, or D without the permission of the Captain of

the Port. The Captain of the Port must consult with the Commander, Naval Amphibious Base Little Creek, before granting a vessel permission to anchor in Anchorages A, B, C, or D.

(2) *Anchorage E.* (i) A vessel may not anchor in Anchorage E without permission from the Captain of the Port.

(ii) The Captain of the Port must give commercial vessels priority over naval and public vessels.

(iii) The Captain of the Port may at any time revoke permission to anchor in Anchorage E issued under the authority of paragraph (e)(4)(i) of this section.

(iv) A vessel may not anchor in Anchorage Berth E–1, unless it is handling or carrying dangerous cargoes or Class 1 (explosive) materials.

(v) A vessel may not anchor within 500 yards of Anchorage Berth E–1 without the permission of the Captain of the Port, if the berth is occupied by a vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials.

(3) *Anchorage F.* A vessel having a draft less than 45 feet may not anchor in Anchorage F without the permission of the Captain of the Port. No vessel may anchor in Anchorage F for a longer period than 72 hours without permission from the Captain of the Port. Vessels expecting to be at anchor for more than 72 hours must obtain permission from the Captain of the Port.

(4) *Anchorage G.* (i) Except for a naval vessel, a vessel may not anchor in Anchorage G without the permission of the Captain of the Port.

(ii) When handling or transferring Class 1 (explosive) materials in Anchorage G, naval vessels must comply with Department of Defense Ammunition and Explosives Safety Standards, or the standards in this section, whichever are the more stringent.

(iii) When barges and other vessels are berthed at the Ammunition Barge Mooring Facility, located at latitude 36°58′34″ N, longitude 76°21′12″ W., no other vessel, except a vessel that is receiving or offloading Class 1 (explosive) materials, may anchor within 1,000 yards of the Ammunition Barge Mooring Facility. Vessels transferring class 1 (explosive) materials must display by day a red flag (Bravo flag) in a prominent location and by night a fixed red light.

(iv) Whenever a vessel is handling or transferring Class 1 (explosive) materials while at anchor in Anchorage G, no other vessel may anchor in Anchorage G without the permission of the Captain of the Port. The Captain of the Port must consult with the Commander, Naval Station Norfolk, before granting a vessel permission to anchor in Anchorage G.

(v) A vessel located within Anchorage G may not handle or transfer Class 1 (explosive) materials within 400 yards of Norfolk Harbor Entrance Reach.

(vi) A vessel may not handle or transfer Class 1 (explosive) materials within 850 yards of another anchored vessel, unless the other vessel is also handling or transferring Class 1 (explosive) materials.

(vii) A vessel may not handle or transfer Class 1 (explosive) materials within 850 yards of Anchorage F or H.

(5) *Anchorage I: Anchorage Berths I–1 and I–2.* A vessel that is 500 feet or less in length or that has a draft of 30 feet or less may not anchor in Anchorage Berth I–1 or I–2 without the permission of the Captain of the Port.

(6) *Anchorage K: Anchorage Berths K–1 and K–2.* A vessel that is 500 feet or less in length or that has a draft of 30 feet or less may not anchor in Anchorage Berth K–1 or K–2 without the permission of the Captain of the Port.

(7) *Anchorage N.* Portions of this anchorage are a special anchorage area under § 110.72aa of this part during marine events regulated under § 100.501 of this chapter.

(8) *Anchorage O.* (i) A vessel may not anchor in Anchorage O unless it is a recreational vessel.

(ii) No float, raft, lighter, houseboat, or other craft may be laid up for any reason in Anchorage O without the permission of the Captain of the Port.

(9) *Anchorage Q: Quarantine Anchorage.* (i) A vessel that is arriving from or departing for sea and that requires an examination by public health, customs, or immigration authorities shall anchor in Anchorage Q. Vessels not needing examination may use Anchorage Q at any time.

(ii) Every vessel using Anchorage Q must be prepared to move promptly under its own power to another location when directed by the Captain of the Port, and must promptly vacate Anchorage Q after being examined and released by authorities.

(iii) Any non-self-propelled vessel using Anchorage Q must have a tugboat in attendance while undergoing examination by quarantine, customs, or immigration authorities, except with the permission of the Captain of the Port.

Dated: May 6, 2005.

L.J. Bowling,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 05–10364 Filed 5–24–05; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 111

Address Sequencing Service

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends section 507.7 of the *Mailing Standards of the United States Postal Service, Domestic Mail Manual* (DMM®) to streamline the seed address process. It adopts a proposed rule that was published in the **Federal Register** (69 FR 64877, November 9, 2004.).

DATES: This rule is effective June 24, 2005.

FOR FURTHER INFORMATION CONTACT: Becky Dunn, National Customer Support Center, United States Postal Service, 800–238–3150.

SUPPLEMENTARY INFORMATION: On November 9, 2004, the Postal Service published in the **Federal Register** a proposed rule to amend section A920 of the *Domestic Mail Manual* (69 FR 64877). The Postal Service has since published a final rule in the **Federal Register** announcing that it has adopted *Mailing Standards of the United States Postal Service, Domestic Mail Manual* (DMM), which redesigned and renamed *Domestic Mail Manual,* Issue 58 (70 FR 14534, March 23, 2005). The redesigned DMM has required that this final rule be renumbered to conform to the new numbering of the *Mailing Standards of the United States Postal Service, Domestic Mail Manual.* Former section A920 of the *Domestic Mail Manual* is now section 507.7 of the *Mailing Standards of the United States Postal Service, Domestic Mail Manual.* The Postal Service received eight comments on its proposed rule to amend former section A920 of the *Domestic Mail Manual.* Six comments fully supported the proposed changes. Two comments raised concerns.

One comment expressed concern that the Postal Service would disclose a mailer's confidential information contained in the Processing Acknowledgment Form (PAF) that mailers submit. The PAF requires a mailer to disclose the method by which it develops an address list if the mailer states that it did not obtain that address list from a Computerized Delivery Sequence (CDS) subscriber.

The comment expressed concerns that CDS subscribers who permit intermediaries to "rent" their lists to mailers must be held responsible for the actions of these intermediaries. In addition, when the Postal Service locates a seed in an address list, and

notifies both the CDS subscriber who owns the seed and the mailer who submitted the list, the parties may not be able to reach a resolution.

The second comment expressed the concern that a mailer who acquires another business that does not sell its lists may not have records on how the business created its lists, particularly if the lists were developed over a period of many years. Thus, the mailer may not be able to furnish information requested on the PAF. Also, some mailers may not have maintained records on how they created address lists.

After considering the concerns, the Postal Service determined not to change the text of its proposed changes based on the following:

(1) The Postal Service does not share with the public information concerning the methodology and source information provided on the PAF.

(2) A mailer who submits an address list containing a CDS subscriber's seed has many avenues available to it to resolve the differences concerning the use of the address list. The PAF requires the intermediary who "rents" a list to a mailer on behalf of a seed owner to provide the mailer with documentation establishing the mailer's right to use an address list. The Postal Service anticipates that this measure will reduce the occurrence of innocent mis-use of seed addresses, and will assist CDS subscribers in tracking use of their address lists.

(3) An increase in the number of seed addresses provided to CDS customers should prevent the innocent appearance of a seed address disqualifying a mailer. For example, if a list contains only one seed address when the CDS subscriber owns several seed addresses for a ZIP Code™, the appearance of just one of several seed addresses could be used to support the mailer s argument that the use of the seed address was innocent.

(4) The Postal Service believes that it is reasonable to ask mailers submitting lists for CDS qualification to maintain records of where it obtained addresses when building address lists. The Postal Service understands that this is a new requirement, and will consider a mailer's inability to set forth how it created an address list on a case-by-case basis.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the *Mailing Standards of the United States Postal Service, Domestic Mail Manual*, which is incorporated by reference in the Code of Federal Regulations.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

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, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Amend the following sections of the *Mailing Standards of the United States Postal Service, Domestic Mail Manual* as set forth below:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

500 Additional Services

* * * * *

507 Mailer Services

* * * * *

7.0 ADDRESS SEQUENCING SERVICES

* * * * *

7.2 Service Levels

* * * * *

[Revise 7.2d and 7.2e to read as follows:]

d. Mailers who have obtained address sequencing services described in 7.2.c. above and in 7.5.1 for address lists, and who have a current Computerized Delivery Sequence (CDS) subscription, may apply to USPS to obtain seed addresses to include in their address lists. Qualified CDS subscribers may elect to include a seed address in an address file for identifying the list and detecting the use of the address list by another mailer.

e. If the mailer has obtained an address list from another party, and USPS locates a seed address when processing that address list for Level 3 Service, USPS will notify both the mailer who submitted the address list as well as the CDS subscriber to whom USPS has assigned the seed address. USPS will provide the CDS subscriber with the identity of the mailer, and will provide the mailer with the identity of the CDS subscriber. USPS will not release to the mailer those portions of the address list for the ZIP Codes containing the seed address, unless USPS receives written authorization to do so from the CDS subscriber if the mailer has obtained the address list from the CDS subscriber or a party acting on behalf of the CDS subscriber. USPS will only release those portions of the address list for ZIP Codes not containing seed addresses if the mailer meets the address sequencing requirements.

7.3 Card Preparation and Submission

* * * * *

[Revise 7.3.2 to read as follows:]

7.3.2 Limitations

The mailer is required to remit all fees to USPS for address sequencing service performed by USPS, including service for which USPS does not release to the mailer a ZIP Code containing a seed address. (See 507.7.6 below.) The following apply:

a. In order to obtain Level 3 Service, the mailer must submit address cards or an address file (address list) that contains at least ninety percent (90%), but not more than one hundred ten percent (110%) of all possible delivery addresses for a specific 5-digit ZIP Code delivery area.

b. If a mailer requests Level 3 Service for an address list and fails to meet any USPS address sequencing requirements for a ZIP Code within that address list, the mailer may resubmit the address list for Level 3 Service for the 5-digit ZIP Code that fails to meet USPS requirements. In the event the mailer fails to meet all USPS address sequencing requirements for the 5-digit ZIP Code on the third time it submits the address list to USPS, USPS will not accept the address list for that 5-digit ZIP Code for a period of 1 year from the date the mailer submits the list to USPS for the third time.

An appropriate amendment to 39 CFR Part 111 will be published to reflect these changes.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 05–10386 Filed 5–24–05; 8:45 am]

BILLING CODE 7710–12–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 90

[ET Docket No. 04–243; FCC 05–69]

Narrowbanding for Private Land Mobile Radio Service

AGENCY: Federal Communications Commission

ACTION: Final rule; correction.

SUMMARY: On April 27, 2005 (70 FR 21652), the Commission published final rules in the Report and Order, which specified the procedures by which forty Private Land Mobile Radio (PLMR) channels, which are located in

frequency bands that are allocated primarily for Federal use, are to transition to narrower, more spectrally efficient channels in a process commonly known as "narrowbanding." This document contains a correction to the effective date in footnote US312 and § 90.20 (e)(6), which was incorrectly stated.

DATES: Effective May 27, 2005.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 418–2450, email: *Tom.Mooring@fcc.gov.*

SUPPLEMENTARY INFORMATION: In FR Doc. 05–8338, appearing on pages 21659 and 21660 in the **Federal Register** of Wednesday, April 27, 2005, the following corrections are made:

1. On page 21659, in the third column, third sentence in footnote US312 the date "April 27, 2019" is corrected to read as "May 27, 2019".

2. On page 21660, in paragraph (e)(6), in the third column, first sentence the date "April 27, 2019" is corrected to read "May 27, 2019".

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 05–10336 Filed 5–24–05; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 05–46]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission addresses the minimum requirements for a telecommunications carrier to be designated as an "eligible telecommunications carrier" or "ETC," and thus eligible to receive federal universal service support. Specifically, consistent with the recommendations of the Federal-State Joint Board on Universal Service (Joint Board), we adopt additional mandatory requirements for ETC designation proceedings.

DATES: Effective June 24, 2005 except for §§ 54.202 and 54.209 which contain information collection requirements that have not been approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections. Written comments by the public on the new and/or modified information collection requirements are due July 25, 2005.

ADDRESSES: All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov.* Parties should also send three paper copies of their filings to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW., Room 5–B540, Washington, DC 20554. *See* Supplemental Information for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Mark Seifert, Assistant Chief, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0484. For additional information concerning the information collection(s) contained in this document, contact Judith B. Herman at (202) 418–0214, or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, in CC Docket No. 96–45, FCC 05–46, released March 17, 2005. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

I. Introduction

1. This *Report and Order* addresses the minimum requirements for a telecommunications carrier to be designated as an "eligible telecommunications carrier" or "ETC," and thus eligible to receive federal universal service support. Specifically, consistent with the recommendations of the Federal-State Joint Board on Universal Service (Joint Board), we adopt additional mandatory requirements for ETC designation proceedings in which the Commission acts pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act). In addition, as recommended by the Joint Board, we encourage states that exercise jurisdiction over ETC designations pursuant to section 214(e)(2) of the Act, to adopt these requirements when deciding whether a common carrier should be designated as an ETC. We believe that application of these additional requirements by the Commission and state commissions will allow for a more predictable ETC designation process.

2. We also believe that because these requirements create a more rigorous ETC designation process, their application by the Commission and state commissions will improve the long-term sustainability of the universal service fund. Specifically, in considering whether a common carrier has satisfied its burden of proof necessary to obtain ETC designation, we require that the applicant: (1) Provide a five-year plan demonstrating how high-cost universal service support will be used to improve its coverage, service quality or capacity in every wire center for which it seeks designation and expects to receive universal service support; (2) demonstrate its ability to remain functional in emergency situations; (3) demonstrate that it will satisfy consumer protection and service quality standards; (4) offer local usage plans comparable to those offered by the incumbent local exchange carrier (LEC) in the areas for which it seeks designation; and (5) acknowledge that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act. In addition, we make these additional requirements applicable on a prospective basis to all ETCs previously designated by the Commission, and we require these ETCs to submit evidence demonstrating how they comply with this new ETC designation framework by October 1, 2006, at the same time they submit their annual certification filing. As explained in greater detail below, however, we do not adopt the Joint Board's recommendation to evaluate separately whether ETC applicants have the financial resources and ability to provide quality services throughout the designated service area because we conclude the objective of such criterion will be achieved through the other requirements adopted in this *Report and Order.*

3. In this *Report and Order*, we also set forth the analytical framework the Commission will use to determine whether the public interest would be served by an applicant's designation as an ETC. We find that, under the statute, an applicant should be designated as an

ETC only where such designation serves the public interest, regardless of whether the area where designation is sought is served by a rural or non-rural carrier. Although the outcome of the Commission's § 214(e)(6) analysis may vary depending on whether the area is served by a rural or non-rural carrier, we clarify that the Commission's public interest examination for ETC designations will review many of the same factors for ETC designations in areas served by non-rural and rural incumbent LECs. In addition, as part of our public interest analysis, we will examine the potential for creamskimming effects in instances where an ETC applicant seeks designation below the study area level of a rural incumbent LEC. We also encourage states to apply the Commission's analysis in determining whether or not the public interest would be served by designating a carrier as an ETC.

4. In addition, we further strengthen the Commission's reporting requirements for ETCs in order to ensure that high-cost universal service support continues to be used for its intended purposes. An ETC, therefore, must submit, among other things, on an annual basis: (1) Progress updates on its five-year service quality improvement plan, including maps detailing progress towards meeting its five-year improvement plan, explanations of how much universal service support was received and how the support was used to improve service quality in each wire center for which designation was obtained, and an explanation of why any network improvement targets have not been met; (2) detailed information on outages in the ETC's network caused by emergencies, including the date and time of onset of the outage, a brief description of the outage, the particular services affected by the outage, the geographic areas affected by the outage, and steps taken to prevent a similar outage situation in the future; and (3) how many requests for service from potential customers were unfulfilled for the past year and the number of complaints per 1,000 handsets or lines. These annual reporting requirements are required for all ETCs designated by the Commission. We encourage states to require these reports to be filed by all ETCs over which they possess jurisdiction.

5. As explained below, we do not adopt the recommendation of the Joint Board to limit high-cost support to a single connection that provides access to the public telephone network. Section 634 of the 2005 Consolidated Appropriations Act prohibits the Commission from utilizing appropriated funds to "modify, amend, or change" its rules or regulations to implement this recommendation. Nevertheless, we believe the rigorous ETC designation requirements adopted above will ensure that only ETCs that can adequately provide universal service will receive ETC designation, thereby lessening fund growth attributable to the designation and supporting the long-term sustainability of the universal service fund.

6. We also agree with the Joint Board's recommendation that changes are not warranted in our rules concerning procedures for redefinition of service areas served by rural incumbent LECs. In addition, in this *Report and Order*, we grant several petitions for redefinition of rural incumbent LEC service areas. Moreover, we direct the Universal Service Administrative Company (USAC), in accordance with direction from the Wireline Competition Bureau, to develop standards as necessary for the submission of any maps that ETCs are required to submit to USAC under the Commission's rules. We also modify the Commission's annual certification and line count filing deadlines so that newly designated ETCs are permitted to file that data within sixty days of their ETC designation date. This will allow high-cost support to be distributed as of the date of ETC designation. In addition, to enable price cap LECs and/or competitive ETCs that miss the June 30 annual interstate access support (IAS) certification deadline to receive IAS support, we modify the quarterly certification schedule for the receipt of IAS support. These carriers may file their certification after June 30 in order to receive IAS support in the second calendar quarter after the certification is filed. Finally, we decline to define mobile wireless customer location in terms of "place of primary use," as defined by the Mobile Telecommunications Sourcing Act (MTSA), for universal service purposes.

II. Scope of Support

7. On December 8, 2004, Congress passed the *2005 Consolidated Appropriations Act*, which includes a provision prohibiting the Commission from utilizing appropriated funds to "modify, amend, or change its rules or regulations for Universal Service support payments to implement the February 27, 2004 recommendations of the Federal-State Joint Board on Universal Service regarding single connection or primary line restrictions on universal service support payments." Accordingly, in this *Report and Order*, we do not consider the portion of the Joint Board's *Recommended Decision*, released February 27, 2004, related to limiting the scope of high-cost support to a single connection that provides access to the public telephone network.

III. ETC Designation Process

8. State commissions and the Commission are charged with reviewing ETC designation applications for compliance with section 214(e)(1) of the Act. A common carrier designated as an ETC must offer the services supported by the federal universal service mechanisms throughout the designated service area. The ETC must offer such services using either its own facilities or a combination of its own facilities and resale of another carrier's services. The ETC must also advertise the supported services and the associated charges throughout the service area for which designation is received, using media of general distribution. In addition, an ETC must advertise the availability of Lifeline and Link Up services in a manner reasonably designed to reach those likely to qualify for those services. In this *Report and Order*, we adopt additional requirements consistent with section 214 of the Act that all ETC applicants must meet to be designated an ETC by this Commission. Further, although specific requirements set forth in this *Report and Order* may be relevant only for wireless ETC applicants and some may be relevant for wireline ETC applicants, this ETC designation framework generally applies to any type of common carrier that seeks ETC designation before the Commission under section 214(e)(6) of the Act.

9. In addition, we set forth our public interest analysis for ETC designations, which includes an examination of (1) the benefits of increased consumer choice, (2) the impact of the designation on the universal service fund, and (3) the unique advantages and disadvantages of the competitor's service offering. As part of our public interest analysis, we also will examine the potential for creamskimming in instances where an ETC applicant seeks designation below the study area level of a rural incumbent LEC.

10. We encourage state commissions to require ETC applicants over which they have jurisdiction to meet these same conditions and to conduct the same public interest analysis outlined in this *Report and Order*. We further encourage state commissions to apply these requirements to all ETC applicants in a manner that is consistent with the principle that universal service support mechanisms and rules be competitively neutral.

A. Eligibility Requirements

11. As described above, ETC applicants must meet statutorily prescribed requirements before we can approve their designation as an ETC. Based on the record before us, we find that an ETC applicant must demonstrate: (1) A commitment and ability to provide services, including providing service to all customers within its proposed service area; (2) how it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the incumbent LEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Act. As noted above, these requirements are mandatory for all ETCs designated by the Commission. ETCs designated by the Commission prior to this *Report and Order* will be required to make such showings when they submit their annual certification filing on October 1, 2006. We also encourage state commissions to apply these requirements to all ETC applicants over which they exercise jurisdiction. We do not believe that different ETCs should be subject to different obligations, going forward, because of when they happened to first obtain ETC designation from the Commission or the state. These are responsibilities associated with receiving universal service support that apply to all ETCs, regardless of the date of initial designation.

1. Commitment and Ability To Provide the Supported Services

12. We adopt the requirement that an ETC applicant must demonstrate its commitment and ability to provide supported services throughout the designated service area: (1) By providing services to all requesting customers within its designated service area; and (2) by submitting a formal network improvement plan that demonstrates how universal service funds will be used to improve coverage, signal strength, or capacity that would not otherwise occur absent the receipt of high-cost support. We encourage states to adopt these requirements and, as recommended by the Joint Board, to do so in a manner that is flexible with applicable state laws and policies. For example, states that adopt these requirements should determine, pursuant to state law, what constitutes a "reasonable request" for service. In addition, we encourage states to follow the Joint Board's proposal that any build-out commitments adopted by states "be harmonized with any existing policies regarding line extensions and carrier of last resort obligations."

13. First, we agree with and adopt the Joint Board recommendation to establish a requirement that an ETC applicant demonstrate its capability and commitment to provide service throughout its designated service area to all customers who make a reasonable request for service. We conclude that this requirement, which we adopted in the *Virginia Cellular ETC Designation Order*, 69 FR 8958, February 26, 2004 and *Highland Cellular ETC Designation Order*, 69 FR 26097, May 11, 2004 is appropriate as a general rule to ensure that all ETCs serve requesting customers in their designated service area. Therefore, consistent with these orders, we require that an ETC applicant make specific commitments to provide service to requesting customers in the service areas for which it is designated as an ETC. If the ETC's network already passes or covers the potential customer's premises, the ETC should provide service immediately. In those instances where a request comes from a potential customer within the applicant's licensed service area but outside its existing network coverage, the ETC applicant should provide service within a reasonable period of time if service can be provided at reasonable cost by: (1) Modifying or replacing the requesting customer's equipment; (2) deploying a roof-mounted antenna or other equipment; (3) adjusting the nearest cell tower; (4) adjusting network or customer facilities; (5) reselling services from another carrier's facilities to provide service; or (6) employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment. We believe that these requirements will ensure that an ETC applicant is committed to serving customers within the entire area for which it is designated. If an ETC applicant determines that it cannot serve the customer using one or more of these methods, then the ETC must report the unfulfilled request to the Commission within 30 days after making such determination.

14. Second, we require an applicant seeking ETC designation from the Commission to submit a formal plan detailing how it will use universal service support to improve service within the service areas for which it seeks designation. Specifically, we require that an ETC applicant submit a five-year plan describing with specificity its proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its designated service area. The five-year plan must demonstrate in detail how high-cost support will be used for service improvements that would not occur absent receipt of such support. This showing must include: (1) How signal quality, coverage, or capacity will improve due to the receipt of high-cost support throughout the area for which the ETC seeks designation; (2) the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; (3) the specific geographic areas where the improvements will be made; and (4) the estimated population that will be served as a result of the improvements. To demonstrate that supported improvements in service will be made throughout the service area, applicants should provide this information for each wire center in each service area for which they expect to receive universal service support, or an explanation of why service improvements in a particular wire center are not needed and how funding will otherwise be used to further the provision of supported services in that area. We clarify that service quality improvements in the five-year plan do not necessarily require additional construction of network facilities. Furthermore, as discussed *infra*, in connection with its annual reporting obligations, an ETC applicant must submit coverage maps detailing the amount of high-cost support received for the past year, how these monies were used to improve its network, and specifically where signal strength, coverage, or capacity has been improved in each wire center in each service area for which funding was received. In addition, an ETC applicant must submit on an annual basis a detailed explanation regarding why any targets established in its five-year improvement plan have not been met.

15. Some commenters assert that an applicant should submit more detailed build-out plans than discussed above, while other commenters request that the build-out plans include a specific timeline, including start and completion dates. Our approach incorporates many commenters' suggestions; however, mandatory completion dates established by the Commission would not account for unique circumstances that may affect build-out, including the amount of universal service support or customer demand. On balance, we find that our approach allows consideration of fact-specific circumstances of the carrier and

the designated service area, while ensuring that high-cost support will be used to improve service.

2. Ability To Remain Functional in Emergency Situations

16. We adopt the Joint Board's recommendation that we require an ETC applicant to demonstrate its ability to remain functional in emergency situations. Specifically, in order to be designated as an ETC, an applicant must demonstrate it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations. We believe that functionality during emergency situations is an important consideration for the public interest. Moreover, to ensure that ETCs continue to comply with this requirement, as discussed *infra*, ETCs designated by the Commission must certify on an annual basis that they are able to function in emergency situations. Because most emergency situations are local in nature, we anticipate that state commissions that choose to adopt an emergency functionality requirement may also identify other geographically-specific factors that are relevant for consideration. If states impose any additional requirements, we encourage them to do so in a manner that is consistent with the universal service principle of competitive neutrality.

17. We also disagree with commenters that propose that the Commission adopt a specific benchmark requiring an ETC to maintain eight hours of back-up power and ability to reroute traffic to other cell sites in emergency situations. We believe that such a benchmark is inappropriate because, although an ETC may have taken reasonable precautions to remain functional during an emergency, the extreme or unprecedented nature of the emergency may render the carrier inoperable despite any precautions taken, including battery back-up and plans to reroute traffic. Furthermore, we reject suggestions that ETCs should be required to publish signal strength for their primary digital technology because signal coverage, quality, or capacity will already be reported on an annual basis to the Commission as part of the five-year network improvement plan.

18. Furthermore, as discussed *infra*, in connection with its annual reporting obligations, an ETC applicant must submit data concerning outages in its designated service areas on an annual basis. In addition, to minimize the administrative burdens that may be associated with such reports, these reporting requirements are modeled after the Commission's reporting requirements concerning outages adopted in the *Outage Reporting Order*, 69 FR 68859, November 26, 2004.

3. Consumer Protection

19. As recommended by the Joint Board, we require a carrier seeking ETC designation to demonstrate its commitment to meeting consumer protection and service quality standards in its application before the Commission. We find that an ETC applicant must make a specific commitment to objective measures to protect consumers. Consistent with the designation framework established in the *Virginia Cellular ETC Designation Order* and *Highland Cellular ETC Designation Order* and as suggested by commenters, a commitment to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement for a wireless ETC applicant seeking designation before the Commission. We will consider the sufficiency of other commitments on a case-by-case basis. We believe that requiring an ETC applicant to demonstrate that it will comply with these consumer protection requirements is consistent with section 254 of the Act, and with related Commission orders that require policies that universal service serve "the public interest, convenience and necessity" and ensure that consumers are able to receive an evolving level of universal service that "tak[es] into account advances in telecommunications, and information technologies and services." In addition, an ETC applicant, as described *infra*, must report information on consumer complaints per 1,000 handsets or lines on an annual basis.

20. We also believe that adopting state specific requirements as part of our ETC designation process might require the Commission to interpret state statutes and rules. An ETC applicant must commit to serve the entire service area and must provide five-year network improvement plans addressing each wire center for which it expects to receive support. We therefore conclude, given the consumer protection measures and other requirements adopted above and the provision in section 214(e)(4) of the Act that protects customers in the event that another ETC relinquishes designation, that it is unnecessary to impose additional obligations as a condition of granting ETC status to a competitive carrier.

21. As with the other requirements adopted in this *Report and Order*, state commissions that exercise jurisdiction over ETC designations may either follow the Commission's framework or impose other requirements consistent with federal law to ensure that supported services are offered in a manner that protects consumers. Several commenters argue that an ETC should be required to submit to the same state laws concerning consumer protection that the incumbent LEC must follow. These include, for example, billing, collection, and mediation obligations. In determining whether any additional consumer protection requirement should apply as a prerequisite for obtaining ETC designation from the state—*i.e.*, where such a requirement would not otherwise apply to the ETC applicant—we encourage states to consider, among other things, the extent to which a particular regulation is necessary to protect consumers in the ETC context, as well as the extent to which it may disadvantage an ETC specifically because it is not the incumbent LEC. We agree with the Joint Board's assertion that "states should not require regulatory parity for parity's sake." We therefore encourage states that impose requirements on an ETC to do so only to the extent necessary to further universal service goals.

22. We also reject commenters' arguments that consumer protection requirements imposed on wireless carriers as a condition for ETC designation are necessarily inconsistent with section 332 of the Act. While section 332(c)(3) of the Act preempts states from regulating the rates and entry of CMRS providers, it specifically allows states to regulate the other terms and conditions of commercial mobile radio services. Therefore, states may extend generally applicable, competitively neutral requirements that do not regulate rates or entry and that are consistent with sections 214 and 254 of the Act to all ETCs in order to preserve and advance universal service.

4. Local Usage

23. We adopt the Joint Board's recommendation that we establish a local usage requirement as a condition of receiving ETC designation. Specifically, we require an ETC applicant to demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which the applicant seeks designation. As in past orders, however, we decline to adopt a specific local usage threshold.

24. The Commission requires an ETC to provide local usage in order to receive universal service high-cost support. In the *First Report and Order*,

62 FR 32862, June 17, 1997, the Commission determined that an ETC should provide some minimum amount of local usage as part of its "basic service" package of supported services, but declined to specify the exact amount of local usage required. We believe the Commission should review an ETC applicant's local usage plans on a case-by-case basis. For example, an ETC applicant may offer a local calling plan that has a different calling area than the local exchange area provided by the LECs in the same region, or the applicant may propose a local calling plan that offers a specified number of free minutes of service within the local service area. We also can envision circumstances in which an ETC is offering an unlimited calling plan that bundles local minutes with long distance minutes. The applicant may also plan to provide unlimited free calls to government, social service, health facilities, educational institutions, and emergency numbers. Case-by-case consideration of these factors is necessary to ensure that each ETC provides a local usage component in its universal service offerings that is comparable to the plan offered by the incumbent LEC in the area.

25. We encourage state commissions to consider whether an ETC offers a local usage plan comparable to those offered by the incumbent in examining whether the ETC applicant provides adequate local usage to receive designation as an ETC. In addition, although the Commission has not set a minimum local usage requirement, there is nothing in the Act, Commission's rules, or orders that would limit state commissions from prescribing some amount of local usage as a condition of ETC status.

5. Equal Access

26. The Joint Board recommended that the Commission adopt guidelines that would encourage states to require an ETC be prepared to provide equal access if all other ETCs in that service area relinquish their designations pursuant to section 214(e)(4) of the Act. Although we do not impose a general equal access requirement on ETC applicants at this time, ETC applicants should acknowledge that we may require them to provide equal access to long distance carriers in their designated service area in the event that no other ETC is providing equal access within the service area. Specifically, we find that if such circumstances arise, the Commission should consider whether to impose an equal access or similar requirement under the Act. Accordingly, we will decide whether to impose any equal access requirements on a case-by-case basis.

27. Under section 214(e)(4) of the Act, if an ETC relinquishes its ETC designation, the Commission must examine whether the customers that are being served by the relinquishing carrier will be served by the remaining ETC or ETCs. As part of that process, the Commission might also examine whether it is necessary to require the remaining ETC to provide equal access. Furthermore, under section 251(h)(2) of the Act, the Commission may treat another carrier as the incumbent LEC if that carrier occupies a position in the market that is comparable to the position occupied by the incumbent LEC, if such carrier has substantially replaced an incumbent LEC, and if such treatment is consistent with the public interest, convenience and necessity. One obligation imposed on incumbent LECs is the requirement to offer equal access in connection with their wireline services.

6. Adequate Financial Resources

28. We decline to adopt the Joint Board's recommendation that an ETC applicant demonstrate that it has the financial resources and ability to provide quality services throughout the designated service area. We believe that compliance with the existing requirements for ETC designation, along with the criteria adopted above, will require an ETC applicant to show that it has significant financial resources. Specifically, an applicant must demonstrate the ability to offer all the supported services in the designated area by submitting detailed commitments to build-out facilities, abide by service quality standards, and provide services throughout its designated service area upon request. And in its annual certification and reporting requirements, an ETC must demonstrate that it has used universal service support to provide quality service throughout the designated area. In addition, most wireless carriers, the largest group of competitive ETCs that the Commission designates, are already operating systems within their licensed market areas, thereby demonstrating in practice their ability to provide such services. Since 1994, moreover, wireless licensees have purchased their licenses at auction, which evinces that they have sufficient resources to provide service. After obtaining a license, whether by auction or other means, wireless carriers must further comply with the Commission's rules by meeting build-out or substantial service requirements for the particular service. Therefore, we find additional financial requirements are unwarranted to demonstrate that an ETC applicant is capable of sustaining operations and supported services.

29. We further disagree with commenters that argue that an ETC should be required to demonstrate that it has the financial capability to sustain operations and supported services if an incumbent LEC relinquishes its designation. As discussed *infra*, section 214(e)(4) of the Act already contemplates safeguards for protecting customers served by an ETC that relinquishes its designation.

30. In sum, we do not believe that additional requirements concerning financial qualifications are necessary when determining whether to designate an ETC applicant. We believe that existing ETC obligations adequately ensure financial stability. In the event that state commissions do consider financial qualification factors in their ETC designations, we encourage them to do so in a manner that is consistent with the principle that universal service support mechanisms and rules be competitively neutral.

B. Public Interest Determinations

31. Under section 214 of the Act, the Commission and state commissions must determine that an ETC designation is consistent with the public interest, convenience and necessity. The Commission also must consider whether an ETC designation serves the public interest consistent with section 254 of the Act. Congress did not establish specific criteria to be applied under the public interest tests in section 214 or section 254. The public interest benefits of a particular ETC designation must be analyzed in a manner that is consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service; ensuring the availability of quality telecommunications services at just, reasonable, and affordable rates; and promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high-cost areas. Beyond the principles detailed in the Act, the Commission and state commissions have used additional factors to analyze whether the designation of an additional ETC is in the public interest.

32. In instances where the Commission has jurisdiction over an ETC applicant, the Commission in this *Report and Order* adopts the fact-specific public interest analysis it has developed in prior orders. First, the Commission will consider a variety of factors in the overall ETC determination, including the benefits of

increased consumer choice, and the unique advantages and disadvantages of the competitor's service offering. Second, in areas where an ETC applicant seeks designation below the study area level of a rural telephone company, the Commission also will conduct a creamskimming analysis that compares the population density of each wire center in which the ETC applicant seeks designation against that of the wire centers in the study area in which the ETC applicant does not seek designation. Based on this analysis, the Commission will deny designation if it concludes that the potential for creamskimming is contrary to the public interest. The Commission plans to use this analysis to review future ETC applications and strongly encourages state commissions to consider the same factors in their public interest reviews.

33. We find that before designating an ETC, we must make an affirmative determination that such designation is in the public interest, regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier. In the *Virginia Cellular ETC Designation Order*, the Commission determined that merely showing that a requesting carrier in a non-rural study area complies with the eligibility requirements outlined in section 214(e)(1) of the Act would not necessarily show that an ETC designation would be consistent with the public interest in every instance. We find the public interest concerns that exist for carriers seeking ETC designation in areas served by rural carriers also exist in study areas served by non-rural carriers. Accordingly, we find that many of the same factors should be considered in evaluating the public interest for both rural and non-rural designations, except that creamskimming effects will be analyzed only in rural study areas because the same potential for creamskimming does not exist in areas served by non-rural incumbent LECs.

34. We note that section 214 of the statute provides that, for areas served by a rural incumbent LEC, more than one ETC *may* be designated if doing so would serve the public interest. In addition, "[b]efore designating an additional [ETC] for an area served by a rural telephone company, the [state Commission under section 214(e)(2) or Commission under section 214(e)(6)] shall find that the designation is in the public interest." In contrast, section 214 provides that additional ETCs *shall* be designated in an area served by a non-rural incumbent LEC. Therefore, although we adopt one set of criteria for evaluating the public interest for ETC designations in rural and non-rural areas, in performing the public interest analysis, the Commission and state commissions may conduct the analysis differently, or reach a different outcome, depending upon the area served. For example, the Commission and state commissions may give more weight to certain factors in the rural context than in the non-rural context and the same or similar factors could result in divergent public interest determinations, depending on the specific characteristics of the proposed service area, or whether the area is served by a rural or non-rural carrier.

1. Cost-Benefit Analysis

35. We conclude that we will continue to consider and balance the factors listed below as part of our overall analysis regarding whether the designation of an ETC will serve the public interest. In determining whether an ETC has satisfied these criteria, the Commission places the burden of proof upon the ETC applicant.

(1) *Consumer Choice:* The Commission takes into account the benefits of increased consumer choice when conducting its public interest analysis. In particular, granting an ETC designation may serve the public interest by providing a choice of service offerings in rural and high-cost areas. The Commission has determined that, in light of the numerous factors it considers in its public interest analysis, the value of increased competition, by itself, is unlikely to satisfy the public interest test.

(2) *Advantages and Disadvantages of Particular Service Offering:* The Commission also considers the particular advantages and disadvantages of an ETC's service offering. For instance, the Commission has examined the benefits of mobility that wireless carriers provide in geographically isolated areas, the possibility that an ETC designation will allow customers to be subject to fewer toll charges, and the potential for customers to obtain services comparable to those provided in urban areas, such as voicemail, numeric paging, call forwarding, three-way calling, call waiting, and other premium services. The Commission also examines disadvantages such as dropped call rates and poor coverage.

36. In addition, we believe that the requirements we have established in this *Report and Order* for becoming an ETC will help ensure that each ETC designation will serve the public interest. For example, the requirements to demonstrate compliance with a service quality improvement plan and to respond to any reasonable request for service will ensure designation of ETC applicants that are committed to using high-cost support to alleviate poor service quality in the ETC's service area.

37. We disagree with commenters who contend that we should adopt a more precise cost-benefit test for the purpose of making public interest determinations. While we believe that a consideration of both benefits and costs is inherent in conducting a public interest analysis, we agree with the Joint Board's recommendation and decline to provide more specific guidance at this time on how this balancing should be performed. The specific determination, and the relative weight of the relevant considerations, must be evaluated on a case-by-case basis.

38. We also reject the assertions of several commenters that a more stringent analysis is necessary to determine whether an ETC designation is in the public interest. These commenters argue that the current ETC application process is not rigorous enough to meet section 214(e)(2) of the Act and that ETC applicants should be required to demonstrate the public benefit they will confer as a result of the ETC designation. We believe that the factors set out in the *Virginia Cellular ETC Designation Order*, as expanded in this *Report and Order*, allow for an appropriate public interest determination.

2. Potential for Creamskimming Effects

39. As part of the public interest analysis for ETC applicants that seek designation below the service area level of a rural incumbent LEC, we will perform an examination to detect the potential for creamskimming effects that is similar to the analysis employed in the *Virginia Cellular ETC Designation Order* and the *Highland Cellular ETC Designation Order*. As discussed below, the state commissions that apply a creamskimming analysis similar to the Commission's will facilitate the Commission's review of petitions seeking redefinition of incumbent LEC service areas filed pursuant to section 214(e)(5) of the Act.

40. When a competitive carrier requests ETC designation for an entire rural service area, it does not create creamskimming concerns because the affected ETC is required to serve all wire centers in the designated service area. The potential for creamskimming, however, arises when an ETC seeks designation in a disproportionate share of the higher-density wire centers in an incumbent LEC's service area. By serving a disproportionate share of the high-density portion of a service area, an ETC may receive more support than

is reflective of the rural incumbent LEC's costs of serving that wire center because support for each line is based on the rural telephone company's average costs for serving the entire service area unless the incumbent LEC has disaggregated its support. Because line density is a significant cost driver, it is reasonable to assume that the highest-density wire centers are the least costly to serve, on a per-subscriber basis. The effects of creamskimming also would unfairly affect the incumbent LEC's ability to provide service throughout the area since it would be obligated to serve the remaining high-cost wire centers in the rural service area while ETCs could target the rural incumbent LEC's customers in the lowest cost areas and also receive support for serving the customers in these areas. In order to avoid disproportionately burdening the universal service fund and ensure that incumbent LECs are not harmed by the effects of creamskimming, the Commission strongly encourages states to examine the potential for creamskimming in wire centers served by rural incumbent LECs. This would include examining the degree of population density disparities among wire centers within rural service areas, the extent to which an ETC applicant would be serving only the most densely concentrated areas within a rural service area, and whether the incumbent LEC has disaggregated its support at a smaller level than the service area (*e.g.*, at the wire center level).

41. Because a low population density typically indicates a high-cost area, analyzing the disparities in densities can reveal when an ETC would serve only the lower cost wire centers to the exclusion of other less profitable areas. For instance, the Commission found in the *Virginia Cellular ETC Designation Order* that designating a wireless carrier as an ETC in a particular service area was not in the public interest due to the disparity in density between the high-density wire center in the area that the applicant was proposing to serve and the wire centers within the service area that the wireless carrier was not proposing to serve. Even if a carrier seeks to serve both high and low density wire centers, the potential for creamskimming still exists if the vast majority of customers that the carrier is proposing to serve are located in the low-cost, high-density wire centers.

42. The Commission has also determined that creamskimming concerns may be lessened when a rural incumbent LEC has disaggregated support to the higher-cost portions of the incumbent's service area. Specifically, under the Commission's rules, rural incumbent LECs are permitted to depart from service area averaging and instead disaggregate and target per-line high-cost support into geographic areas below the service area level. By doing so, per-line support varies to reflect the cost of service in a particular geographic area, such as a wire center, within the service area. By reducing per-line support in high density areas, disaggregation may create less incentive in certain circumstances for an ETC to enter only those areas. Nevertheless, although disaggregation may alleviate some concerns regarding creamskimming by ETCs, because an incumbent's service area may include wire centers with widely disparate population densities, and therefore highly disparate cost characteristics, disaggregation may be a less viable alternative for reducing creamskimming opportunities. This problem may be compounded where the cost characteristics of the rural incumbent LEC and competitive ETC applicant differ substantially. Thus, creamskimming may remain a concern where a competitive ETC seeks designation in a service area where the incumbent rural LEC has disaggregated high-cost support to the higher-cost portions of its service area.

43. We find that a creamskimming analysis is unnecessary for ETC applicants seeking designation below the service area level of non-rural incumbent LECs. Unlike the rural mechanism, which uses embedded costs to distribute support on a service area-wide basis, the non-rural mechanism uses a forward-looking cost model to distribute support to individual wire centers where costs exceed the national average by a certain amount. Therefore, under the non-rural methodology, high-density, low-cost wire centers receive little or no high-cost support, thereby protecting against the potential for creamskimming.

44. We urge state commissions to apply the Commission's creamskimming analysis when determining whether to designate an ETC in a rural service area. We reject assertions that a bright-line test is needed to determine whether creamskimming concerns are present. As demonstrated in the *Virginia Cellular ETC Designation Order* and *Highland Cellular ETC Designation Order*, we believe that a rigid standard would fail to take into account variations in population distributions, geographic characteristics, and other individual factors that could affect the outcome of a rural service area creamskimming effects analysis. We believe that the factors indicated above provide states adequate guidance in determining whether an ETC application presents creamskimming concerns.

3. Impact on the Fund

45. We decline to adopt a specific test to use when considering if the designation of an ETC will affect the size and sustainability of the high-cost fund. As the Commission has found in the past, analyzing the impact of one ETC on the overall fund may be inconclusive. Indeed, given the size of the total high-cost fund—approximately $3.8 billion a year—it is unlikely that any individual ETC designation would have a substantial impact on the overall size of the fund. In addition, the Commission is considering in other proceedings, such as the *Rural Referral Proceeding*, 69 FR 48232, August 9, 2004, how support is calculated for both rural incumbent LECs and ETCs. We also find, as discussed below, that certain proposals examining the effect on the fund as part of an ETC public interest analysis may be inconsistent with sections 214 and 254 of the Act and related Commission orders.

46. We find that per-line support received by the incumbent LEC should be one of many considerations in our ETC designation analysis. We believe that states making public interest determinations may properly consider the level of federal high-cost per-line support to be received by ETCs. High-cost support is an explicit subsidy that flows to areas with demonstrated levels of costs above various national averages. Thus, one relevant factor in considering whether or not it is in the public interest to have additional ETCs designated in any area may be the level of per-line support provided to the area. If the per-line support level is high enough, the state may be justified in limiting the number of ETCs in that study area, because funding multiple ETCs in such areas could impose strains on the universal service fund.

47. We decline, however, based on the record before us to adopt a specific national per-line support benchmark for designating ETCs. As the Joint Board noted, "[m]any factors mentioned by commenters as relevant to the public interest determination—such as topography, population density, line density, distance between wire centers, loop lengths and levels of investment—may all affect the level of high-cost support received in an individual service area." Many commenters have argued that a per-line benchmark that denies entry to competitive ETCs in high-cost areas may prevent consumers in high-cost areas from receiving the benefit of competitive service offerings.

Although giving support to ETCs in particularly high-cost areas may increase the size of the fund, we must balance that concern against other objectives, including giving consumers throughout the country access to services comparable to services in urban areas and ensuring competitive neutrality. In addition, as a practical matter, we do not believe we currently have an adequate record to determine what specific benchmark or benchmark should be set.

48. For similar reasons, we also decline to adopt a proposal that would allow only one wireline ETC and one wireless ETC in each service area. Such a proposal that limits the number of ETCs in each service area creates a practical problem of determining which wireless and wireline provider would be selected. We also reject the application of a rebuttable presumption that it is not in the public interest to have more than one ETC in each rural high-cost area. We believe that a more comprehensive public interest analysis, which considers the specific facts of the application, is a better approach and is consistent with congressional intent. We also reject arguments that we should treat smaller wireless rural carriers differently than larger carriers. We do not believe that subjecting smaller wireless carriers to an expedited ETC application process or a lower level of scrutiny would serve the public interest, and we further believe that it may be contrary to the principle of competitive neutrality.

C. Permissive Guidelines for State ETC Designation Proceedings

49. We encourage state commissions to require all ETC applicants over which they have jurisdiction to meet the same conditions and to conduct the same public interest analysis outlined in this *Report and Order*. We also encourage states to impose the annual certification and reporting requirements uniformly on all ETCs they have previously designated. In doing so, we encourage states to conform these guidelines with any similar conditions imposed on previously designated ETCs in order to avoid duplicative or inapplicable eligibility criteria and reporting requirements. We agree with the Joint Board's recommendation that a rigorous ETC designation process ensures that only fully qualified applicants receive designation as ETCs and that all ETC designees are prepared to serve all customers within the designated service area. Additionally, a set of guidelines allows for a more predictable application process among the states. We believe that these guidelines will assist states in determining whether the public interest would be served by a carrier's designation as an ETC. We also believe that these guidelines will improve the long-term sustainability of the fund, because, if the guidelines are followed, only fully qualified carriers that are capable of and committed to providing universal service will be able to receive support.

50. As suggested by commenters and the Joint Board, we encourage state commissions to consider the requirements adopted in this *Report and Order* when examining whether the state should designate a carrier as an ETC. An ETC designation by a state commission can ultimately impact the amount of high-cost and low income monies distributed to an area served by a non-rural carrier, an area served by one or more rural carriers, or both. A single set of guidelines will encourage states to develop a single, consistent body of eligibility standards to be applied in all cases, regardless of the characteristics of the incumbent carrier. As noted above, however, the public interest analysis for ETC applications for areas served by rural carriers should be more rigorous than the analysis of applications for areas served by non-rural carriers.

51. We also find that states that exercise jurisdiction over ETC proceedings should apply these requirements in a manner that will best promote the universal service goals found in §254(b). While Congress delegated to individual states the right to make ETC decisions, collectively these decisions have national implications that affect the dynamics of competition, the national strategies of new entrants, and the overall size of the federal universal service fund. In addition, these guidelines are designed to ensure designation of carriers that are financially viable, likely to remain in the market, willing and able to provide the supported services throughout the designated service area, and able to provide consumers an evolving level of universal service. Moreover, state commissions that apply these guidelines will facilitate the Commission's review of petitions seeking redefinition of incumbent LEC service areas filed pursuant to section 214(e)(5) of the Act.

52. We decline to mandate that state commissions adopt our requirements for ETC designations. Section 214(e)(2) of the Act gives states the primary responsibility to designate ETCs and prescribes that all state designation decisions must be consistent with the public interest, convenience, and necessity. We believe that § 214(e)(2) demonstrates Congress's intent that state commissions evaluate local factual situations in ETC cases and exercise discretion in reaching their conclusions regarding the public interest, convenience and necessity, as long as such determinations are consistent with Federal and other State law. States that exercise jurisdiction over ETCs should apply these requirements in a manner that is consistent with section 214(e)(2) of the Act. Furthermore, state commissions, as the entities most familiar with the service area for which ETC designation is sought, are particularly well-equipped to determine their own ETC eligibility requirements. Because the guidelines we establish in this *Report and Order* are not binding upon the states, we reject arguments suggesting that such guidelines would restrict the lawful rights of states to make ETC designations. We also find that federal guidelines are consistent with the holding of United States Court of Appeals for the Fifth Circuit that nothing in section 214(e) of the Act prohibits the States from imposing their own eligibility requirements in addition to those described in § 214(e)(1). Consistent with our adoption of permissive federal guidelines for ETC designation, state commissions will continue to maintain the flexibility to impose additional eligibility requirements in state ETC proceedings, if they so choose.

53. We reject the argument that mandatory requirements are necessary to prevent waste, fraud, and abuse in the distribution of high-cost support. We note that safeguards already exist to protect against the misuse of high-cost support. For example, if a state commission believes that high-cost support is being used by an ETC in a manner that is inconsistent with section 254 of the Act, the state commission may decline to file an annual certification or may withdraw an ETC's designation, which would ensure that funds are no longer distributed to the ETC.

54. We also note that the Commission may institute an inquiry on its own motion to ensure that high-cost support is used "only for the provision, maintenance, and upgrading of facilities and services" for the areas in which ETCs are designated. In addition, if an ETC designated by the Commission fails to fulfill the requirements of sections 214 and 254 of the Act, the Commission has the authority to revoke a carrier's ETC designation. The Commission also may assess forfeitures for violations of Commission rules and orders. Consequently, we find that adequate measures exist to prevent waste, fraud and abuse of high-cost support by ETCs.

Nevertheless, the Commission will continue to monitor use of universal service funds by ETCs and develop rules as necessary to continue to ensure that funds are used in a manner consistent with section 254 of the Act.

55. Commenters further argue that mandatory requirements are necessary to prevent growth of the universal service fund. As discussed above, the Joint Board is currently contemplating in the *Rural Referral Proceeding* how universal service support can be effectively targeted to rural incumbent LECs and ETCs serving high-cost areas, while protecting against excessive fund growth. We believe that proceeding is a more appropriate forum for determining ways to limit fund growth.

D. Administrative Requirements for ETC Designation Proceedings

56. Consistent with USAC's request, we note that all future ETC designation orders adopted by the Commission will include: (1) The name of each incumbent LEC study area in which an ETC has been designated; (2) a clear statement of whether the ETC has been designated in all or part of each incumbent LEC's study area; and (3) a list of all wire centers in which the ETC has been designated, using either the wire center's common name or the Common Language Location Identification (CLLI) code. In addition, in instances where follow-up filings or other conditions have been imposed before the ETC designation is final, the Commission will notify USAC when the conditions have been fulfilled. We also encourage state commissions to follow these procedures in ETC orders they adopt. USAC contends, and we agree, that inclusion of this information in ETC designation orders will greatly facilitate USAC's data validation and other efforts to ensure that all carriers receive high-cost universal service support only in the areas in which they have been deemed eligible.

57. In addition, for carriers that file ETC petitions with the Commission seeking designation on tribal lands, we establish procedures to ensure that the appropriate tribal governments and tribal regulatory authorities are notified and provided with an opportunity to engage in consultation with the Commission and to comment in the ETC designation proceeding. We find these procedures are consistent with the Commission's *Tribal Policy Statement*, released in June 2000, which commits the Commission "to consult with tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect tribal governments, their land and resources." Through consultation, the Commission and the tribal government have an opportunity to discuss how the ETC petition affects public interests of the particular tribal community, for example, the effects of the ETC designation on tribal self-determination efforts and potential economic opportunities, and on the tribal government's own communications priorities and goals, which the Commission recognizes as the sovereign right of tribal governments.

58. Specifically, the Commission requires that any applicant seeking ETC designation on tribal lands before the Commission provide copies of its petition to the affected tribal governments and tribal regulatory authorities at the time of filing. In addition, the Commission will send the relevant public notice seeking comment on those petitions to the affected tribal governments and tribal regulatory authorities by overnight express mail. As with the other guidelines adopted herein, we encourage state commissions to follow these guidelines for ETC designation proceedings affecting tribal lands so that the appropriate tribal governments and tribal regulatory authorities are notified of any tribal ETC petitions, related comment cycles or other opportunities to consult with the state commission and participate in the specific ETC designation proceeding.

IV. Annual Certification and Reporting Requirements

59. Our rules currently require all ETCs to make an annual certification, on or before October 1, that universal service support will be used for its intended purposes. As recommended by the Joint Board, we maintain and augment this requirement. Specifically, in order to continue to receive universal service support each year, we require each ETC over which we have jurisdiction, including an ETC designated by the Commission prior to this *Report and Order*, to submit annually certain information regarding its network and its use of universal service funds. These reporting requirements will ensure that ETCs continue to comply with the conditions of the ETC designation and that universal service funds are used for their intended purposes. This information will initially be due on October 1, 2006, and thereafter annually on October 1 of each year, at the same time as the carrier's certification that the universal service funds are being used consistent with the Act. In addition, following the effective date of this *Report and Order*, we anticipate initiating a proceeding to develop procedures for review of these annual reports. Moreover, we anticipate initiating a separate proceeding on or before February 25, 2008, to examine whether the requirements adopted herein are promoting the use of high-cost support by ETCs in a manner that is consistent with section 254 of the Act. We further clarify that a carrier that has been previously designated as an ETC under § 214(e)(6) does not have to reapply for designation, but must comply with the annual certification and reporting requirements on a going-forward basis.

60. Every ETC designated by the Commission must submit the following information on an annual basis:

(1) Progress reports on the ETC's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets, an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled. The information should be submitted at the wire center level;

(2) Detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a 911 special facility (as defined in subsection (e) of section 4.5 of the *Outage Reporting Order*). An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network. Specifically, the ETC's annual report must include: (1) The date and time of onset of the outage; (2) a brief description of the outage and its resolution; (3) the particular services affected; (4) the geographic areas affected by the outage; (5) steps taken to prevent a similar situation in the future; and (6) the number of customers affected;

(3) The number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail how it attempted to provide service to those potential customers;

(4) The number of complaints per 1,000 handsets or lines;

(5) Certification that the ETC is complying with applicable service quality standards and consumer

protection rules, *e.g.*, the CTIA Consumer Code for Wireless Service;

(6) Certification that the ETC is able to function in emergency situations;

(7) Certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and

(8) Certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

61. We conclude that these reporting regulations are reasonable and consistent with the public interest and the Act. These reporting requirements will further the Commission's goal of ensuring that ETCs satisfy their obligation under section 214(e) of the Act to provide supported services throughout their designated service areas. The administrative burden placed on carriers is outweighed by strengthening the requirements and certification guidelines to help ensure that high-cost support is used in the manner that it is intended. These reporting requirements also will help prevent carriers from seeking ETC status for purposes unrelated to providing rural and high-cost consumers with access to affordable telecommunications and information services.

62. We encourage state commissions to adopt these annual reporting requirements. To the extent that they do so, we urge state commissions to apply the reporting requirements to all ETCs, not just competitive ETCs. In addition, state commissions may require the submission of any other information that they believe is necessary to ensure that ETCs are operating in accordance with applicable state and federal requirements. In doing so, states should conform these requirements with any similar conditions imposed on previously designated ETCs in order to avoid duplicative or inapplicable reporting requirements. Individual state commissions are uniquely qualified to determine what information is necessary to ensure that ETCs are complying with all applicable requirements, including state-specific ETC eligibility requirements.

63. If a review of the data submitted by an ETC indicates that the ETC is no longer in compliance with the Commission's criteria for ETC designation, the Commission may suspend support disbursements to that carrier or revoke the carrier's designation as an ETC. Likewise, as the Joint Board noted, state commissions possess the authority to rescind ETC designations for failure of an ETC to comply with the requirements of section 214(e) of the Act or any other conditions imposed by the state.

V. Other Issues

A. Service Area Redefinition Process

64. Section 214(e)(5) of the Act provides that states may establish geographic service areas within which competitive ETCs are required to comply with universal service obligations and are eligible to receive universal service support. For an area served by a rural incumbent LEC, however, the Act states that a company's service area for the purposes of ETC designation will be the rural incumbent LEC's study area "unless and until the Commission and the States, after taking into account the recommendations of a Federal-State Joint Board instituted under § 410(c), establish a different definition of service area for such company." This process of changing the incumbent LEC's study area—and therefore the competitive ETC's service area—is known as the redefinition of a service area. The Commission adopted § 54.207(c) of its rules to implement this requirement.

65. In its *Recommended Decision*, the Joint Board recommended that the Commission retain procedures established by the Commission in 1997 for the redefinition of rural service areas. We agree with that recommendation, and do not believe that changes are necessary at this time to our procedures for redefining rural service areas. We agree with the Joint Board that in redefining an incumbent LEC's study area so as to conform with the service area of a new ETC, the states and Commission should continue to work in concert to decide whether a different service area definition would better serve the public interest. First, under the current redefinition procedures for new ETCs, both state commissions and the Commission employ rigorous and fact-intensive analyses of requests for service area redefinitions that examine the impact of any redefinition on the affected rural incumbent LEC's ability to serve the entire study area, including the potential for creamskimming that may result from the redefinition. In addition, public comment is invited during every step in the process to ensure that the states and Commission are fully apprised of any impact the redefinition may have on the rural incumbent LEC.

66. We disagree with commenters that argue that the Commission should adopt rules prohibiting redefinition below the study area level when new ETCs are designated in an incumbent LEC's service area. In particular, we find that this proposal ignores the provision in § 214(e)(5) that allows redefinition to occur. In any event, the process described above adequately protects against harm to the rural incumbent LEC that may result from redefinition. We also reject the argument posed by certain commenters that contend that the Commission should require redefinition of all study areas for which competitive ETCs seek designation or have been designated instead of redefining service areas on a case-by-case basis. At this time, we believe that the existing case-specific analysis adequately protects the interests of incumbent LECs.

B. Pending Redefinition Petitions

67. The Commission has before it several petitions seeking redefinition of incumbent LEC study areas. We grant these petitions as described below. These petitions, which were filed by either a competitive ETC or a state commission, fall into three categories. One category involves petitions seeking to redefine a rural incumbent LEC's service area into multiple smaller service areas at the wire center level. The second category of petitions involves ETCs that were designated for service areas that included portions of the incumbent LEC's wire centers instead of entire wire centers. These petitions seek to redefine the rural incumbent LEC study area for the same areas, including some partial wire centers, such that the ETC's designated service area and the incumbent LEC's redefined service area would be the same. The third category involves two petitions that seek to redefine the incumbent LEC's service area into multiple smaller service areas at the wire center level. However, the state commissions had designated these carriers' service areas to include some areas smaller than the incumbent LEC's wire centers. As a result, the designated service areas and the proposed redefined areas are not the same.

68. Since these petitions were filed, the Commission released the *Highland Cellular ETC Designation Order*, in which the Commission rejected Highland's petition for designation in only a portion of a rural incumbent LEC's service area. Specifically, Highland requested that it be allowed to serve parts of the rural incumbent LEC's wire centers. We concluded that designating an ETC for only a portion of a wire center served by a rural incumbent LEC would be inconsistent with the public interest. We also found that the competitive ETC applicant must

commit to provide the supported services to customers throughout a minimum geographic area. We concluded that a rural telephone company's wire center is the appropriate minimum geographic area for ETC designation because rural carrier wire centers typically correspond with county or town boundary lines. We continue to believe, as we stated in the *Highland Cellular ETC Designation Order*, that requiring a competitive ETC to serve an entire wire center will make it less likely that the competitor will relinquish its ETC designation at a later date and will best address creamskimming concerns in an administratively feasible manner.

69. In this *Report and Order*, we conclude that the same principles that we apply to ETC designation requests also apply when we are considering whether to grant a petition for redefinition. We recognize, however, that because of the timing of the underlying state ETC designation decisions, many of these pending petitions could not be in full compliance with the factors considered in the *Highland Cellular ETC Designation Order*. For example, some petitions follow the ETC designation and redefinition framework that was applied by the Commission prior to the *Highland Cellular ETC Designation Order*. Other petitions have not presented a creamskimming analysis that examines population density data to determine whether the ETC is seeking designation only in high-density wire centers of the affected study area, which could undercut the rural incumbent LEC's ability to provide service throughout its entire study area, as detailed in the *Virginia Cellular ETC Designation Order*. As a result, because the Commission had not fully elaborated on its creamskimming analysis based on population density or adopted the policy that competitive LEC service areas should not be defined below the wire center level, these state commissions granting ETC designation and seeking redefinition could not have applied the requirements set forth in the *Highland Cellular ETC Designation Order*.

70. Because the states complied with applicable federal rules and guidelines at the time the redefinition petitions were filed, we decline to upset those determinations. We therefore find that granting these redefinition petitions would serve the public interest. Accordingly, we grant these redefinition petitions pursuant to section 214(e)(5) of the Act. On a going forward basis, however, we intend to rigorously apply the standards set forth in the *Highland Cellular ETC Designation Order* and *Virginia Cellular ETC Designation Order*.

C. Identification of Wireless Customer Locations

71. *Background.* In the *Rural Task Force Order*, 66 FR 30080, June 5, 2001, the Commission required wireless competitive ETCs to use the customer's billing address to identify the location of a mobile wireless customer. The Commission concluded that this approach was reasonable and the most administratively simple solution to the problem of determining the location of a wireless customer for universal service purposes. The Commission recognized, however, that the use of a customer's billing address might allow carriers to identify a customer in a high-cost zone when service is primarily taken in a low-cost zone for the purpose of receiving a higher level of per-line support. The Commission stated that it would take appropriate enforcement action if an ETC were to engage in such arbitrage, and that it might revisit the use of a customer's billing address as more mobile wireless carriers become eligible to receive support.

72. In the *Rural Task Force Order*, the Commission declined to use the Mobile Telecommunications Sourcing Act (MTSA) definition of "place of primary use" to determine a mobile wireless customer's location. In declining to adopt the MTSA definition to determine wireless customer location for universal service purposes, the Commission expressed concern that states might not have established databases pursuant to the Act, and that use of the MTSA definition might impose undue administrative burdens on mobile wireless ETCs. In its *Recommended Decision*, the Joint Board determined that the Commission should further develop the record on defining mobile wireless customer location in terms of place of primary use, as defined by the MTSA, for universal service purposes. In particular, the Joint Board concluded that the place of primary use represents the preferred definition of wireless customer location for universal service purposes because it reflects whether a customer actually uses mobile wireless phone service in a high-cost area. The Joint Board therefore recommended that the Commission develop the record on: (1) Whether the MTSA's place of primary use approach is an efficient method for determining the location of mobile service lines; (2) whether a "place of primary use" definition should be optional or mandatory; (3) whether a definition based on place of primary use would alleviate concerns about fraudulent billing addresses, and; (4) if the place of primary use definition is adopted, how it should work in conjunction with virtual NXX.

73. *Discussion.* We are not convinced that there is a significant difference between our current definition, which relies on a customer's billing address, and the MTSA definition, which relies on the customer's residential street address or primary business street address. In a large percentage of cases, the two will be the same. In both cases, the underlying address information will be provided by the customer, who is unlikely to be providing false information in order to increase universal service payments to its service provider. If anything, customers have a greater incentive to provide false or misleading information under the MTSA, which will govern applicable taxes imposed on the customer. Further, as noted in the *Rural Task Force Order*, if a competitive ETC misuses a customer's billing address by identifying a customer in a high-cost zone when service is primarily provided in a low-cost zone for the purpose of receiving a higher level of per-line support, the Commission may take appropriate enforcement action. We further note that, to date, we are not aware of any carriers filing petitions before the Commission contending that a wireless ETC is misusing customer billing addresses for arbitrage purposes.

74. As a result, we decline to change our method for identifying the location of mobile wireless customers. We, therefore, do not adopt the place of primary use definition at this time. Moreover, we note that few commenters provided responses to the specific questions from the Joint Board. The Iowa Utilities Board, one of the few commenters responding to the Joint Board's questions, submitted an analysis concerning the billing address methodology that found that only a small number of customers have billing addresses in locations other than where service is located. Given the limited data we currently have, we see no reason to modify our method of determining wireless customer locations.

D. Accurate, Legible, and Consistent Maps

75. *Background.* Under the Commission's rules, a rural incumbent LEC electing to disaggregate and target high-cost support must submit to USAC "maps which precisely identify the boundaries of the designated disaggregation zones of support within the incumbent LEC's study area." In the *Rural Task Force Order*, the

Commission explained that "the integrity and flow of information to competitors is central to ensuring that support is distributed in a competitively neutral manner." The Commission further stated that, "in order to ensure portability and predictability in the delivery of support," it would require rural incumbent LECs to "submit to USAC maps in which the boundaries of the designated disaggregation zones of support are clearly specified." USAC was directed to make those maps available for public inspection by competitors and other interested parties. Some commenters indicate that the maps filed by rural incumbent LECs pursuant to § 54.315(f)(1) and the information available through USAC are of varying quality and utility. Others suggest that improved quality and reliability of maps submitted by incumbent LECs would allow for better targeting of support.

76. In response to the concerns raised by commenters, the Joint Board recommended that the Commission direct USAC to develop standards for the submission of any maps that ETCs are required to submit to USAC under the Commission's rules in a uniform, electronic format. The Joint Board contended that the development of such standards would promote the integrity and flow of information to competitive ETCs by increasing the accuracy, consistency, and usefulness of maps submitted to USAC and that, as the universal service administrator, USAC is the appropriate entity to develop such standards.

77. *Discussion.* We agree with the Joint Board and commenters and find that accurate, legible and consistent maps would promote the integrity and flow of information to competitive ETCs by increasing the accuracy, consistency, and usefulness of maps submitted to USAC. Among other things, accurate and legible maps will assist in the ETC designation process and ensure that high-cost support is targeted to the appropriate service areas. Accordingly, we direct USAC, in accordance with direction from the Wireline Competition Bureau, to develop standards as necessary for the submission of any maps that ETCs are required to submit to USAC under the Commission's rules.

E. Support to Newly Designated ETCs

78. *Background.* Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support." Once a carrier is designated as an ETC, additional requirements also must be satisfied before a carrier can begin receiving high-cost universal service support. In particular, § 254(e) requires that support shall be used "only for the provision, maintenance, and upgrading of facilities and services for which support is intended."

79. To implement this statutory provision, the Commission adopted an annual certification requirement. Specifically, §§ 54.313 and 54.314 of the Commission's rules provide that state commissions must file an annual certification with USAC and with the Commission stating that all high-cost support received by carriers within the state will be used "only for the provision, maintenance, and upgrading of facilities and services for which support is intended." In instances where carriers are not subject to the jurisdiction of a state, the Commission allows an ETC to certify directly to the Commission and to USAC that federal high-cost support will be used in a manner consistent with § 254(e). Sections 54.313 and 54.314 also provide that certifications must be filed by October 1 of the preceding calendar year to receive support beginning in the first quarter of a subsequent calendar year. If the October 1 deadline for first quarter support is missed, the certification must be filed by January 1 for support to begin in the second quarter, by April 1 for support to begin in the third quarter, and by July 1 for support to begin in the fourth quarter. The Commission established this schedule to allow USAC sufficient time to process § 254(e) certifications and to calculate estimated high-cost demand amounts for submission to the Commission.

80. Under the Commission's current certification rules, the timing of a carrier's ETC designation may cause it to miss a certification filing deadline. As a result, a recently designated ETC's support may not begin to be disbursed until well after the ETC's designation date. For example, if a carrier is designated as an ETC on December 20, and the state commission with jurisdiction over the carrier files a certification on behalf of the ETC on January 15, that carrier will not begin to receive support until the third quarter of that year—more than six months after the carrier was designated an ETC. Therefore, although the Commission's rules provide a mechanism for certifications to be filed on a quarterly basis, payment of high-cost support for recently designated ETCs under this schedule may be delayed until well after the initial certification is made. Consequently, newly designated ETCs that have missed the Commission's certification filing deadlines due to the timing of their ETC designation date have been granted waivers of the certification filing deadlines.

81. Under § 54.307(d) of the Commission's rules, as a prerequisite for universal service high-cost support, ETCs serving both rural and non-rural service areas must also file the number of working loops and other related data for the customers they serve in the incumbent's service area. To ensure that the interval between the submission of data and receipt of support is as short as possible in rural carrier study areas, the Commission requires that ETCs submit such line count data on a quarterly basis. Therefore, under the quarterly schedule established by the Commission, line count data are due on July 31, September 30, December 30, and March 30 of each year. Consistent with § 54.307(c) of the Commission's rules, under its administration of the high-cost program, USAC bases its quarterly support payments on these quarterly line count data submissions. For ETCs designated in areas served by rural incumbent LECs, line count data submitted on March 30 are used to target support for the third and fourth quarters of each year, line count data filed on September 30 are used to target support for the first quarter of the filing year, and line count data filed on December 30 are used to target support for the second quarter of the filing year. For ETCs designated in areas served by non-rural incumbent LECs, line counts filed on March 30 are used for third quarter support, line counts filed on July 31 are used for fourth quarter support, line counts filed on September 30 are used for first quarter support, and line counts filed on December 30 are used for second quarter support.

82. Under the filing schedules described above, carriers that receive a late ETC designation may miss quarterly filing deadlines that could affect USAC's cost estimates for the relevant quarter. Also, an ETC receiving a late designation that did not file quarterly line counts in anticipation of its ETC designation could suffer significant delay in receipt of support. In light of the delay in support that can be caused by ETC designations occurring after line count certification filing deadlines, we sought comment in the *ETC Designation NPRM*, 69 FR 40839, July 7, 2004, on whether to amend our rules to allow newly designated ETCs to begin receiving high-cost support as of their ETC designation date, provided that the required certifications and line-count data are filed within 60 days of the carrier's ETC designation date.

83. *Discussion.* We conclude that in order to provide universal service

support to newly designated ETCs on a timely basis, ETCs shall be eligible for support as of their ETC designation date, provided that the required certifications and line-count data are filed within 60 days of the carrier's ETC designation date. As suggested by commenters, including USAC, revising the certification and line count deadline rules will enable customers of newly designated ETCs to begin to receive the benefits of universal service support as of the ETC's designation date. Additionally, this modification will eliminate the need for carriers to seek waivers of filing deadline rules in order to receive support on a timely basis. At the same time, for administrative efficiency and predictability, we must impose some time limits so that USAC can accurately calculate total high-cost support payments. Therefore, a newly-designated ETC's certification and line-count data must be filed within 60 days of its initial ETC designation from the state commission or Commission. If the newly designated ETC does not file within 60 days of the carrier's ETC designation date, the ETC will not receive support retroactively to its ETC designation date, but only on a going-forward basis. We note that although USAC supports this revision, it has indicated that such funding should not flow to a newly designated ETC until its line count data are included in USAC's quarterly demand projections. In order to avoid any administrative burdens associated with processing payments to a newly designated ETC, we agree that USAC shall distribute support only after the required line count data are available in USAC's quarterly demand projections. As a result, unless a carrier has filed its data with USAC in advance of its ETC designation date, a carrier might have to wait an additional quarter before it begins receiving support.

F. Accepting Untimely Filed Certifications for Interstate Access Support

84. *Background.* Section 54.809(c) of the Commission's rules states that in order for an ETC to receive Interstate Access Support (IAS), the ETC must file an annual certification on the date that it first files line count information and thereafter on June 30 of each year. As a result, the current rule prohibits an otherwise eligible carrier from receiving IAS for as much as a year if it misses the annual certification deadline. In the *MAG Order*, 66 FR 59719, November 30, 2001, the Commission determined that a carrier that untimely files its annual certification for Interstate Common Line Support (ICLS) would not be eligible for support until the second calendar quarter after the certification is filed. For example, if a carrier untimely files its required annual June 30 certification on July 15, it will be eligible to receive ICLS support beginning January 1 of the following year. Therefore, the *MAG Order* establishes a supplemental certified filing process that prevents an ETC from losing ICLS for an entire year if it misses the June 30 certification deadline. In the *ETC Designation NPRM*, the Commission proposed adopting a similar supplemental process for accepting untimely certifications for the receipt of IAS.

85. *Discussion.* We adopt the proposal in the *ETC Designation NPRM* that establishes a procedure for accepting untimely filed certifications for IAS. We conclude that allowing an ETC that misses the June 30 certification deadline to receive IAS support following the filing of the untimely certification will not unduly harm a carrier that files an annual certification late and will eliminate the need for a carrier to seek a waiver of the filing certification deadlines rules. At the same time, by not allowing a carrier to receive IAS support for the entire year, the carrier still has the incentive to file the certification on a timely basis in order to not interrupt its receipt of IAS support. We, therefore, adopt a quarterly certification schedule to accommodate late filings. Specifically, a price cap LEC or competitive ETC that misses the June 30 annual IAS certification deadline shall receive support pursuant to the following schedule: (1) carriers that file no later than September 30 shall receive support for the fourth quarter of that year and the first and second quarters of the subsequent year; (2) carriers that file no later than December 31 shall receive support for the first and second quarters of the subsequent year; and (3) carriers that file no later than March 31 of the subsequent year shall receive support for the second quarter of the subsequent year.

II. Procedural Matters

A. Regulatory Flexibility Analysis

86. As required by the Regulatory Flexibility Act, 5 U.S.C. 604, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) for the *Report and Order*, set forth at Appendix C.

B. Congressional Review Act

87. The Commission will send a copy of the *Report and Order* in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Report and Order* to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* (or summaries thereof) will also be published in the **Federal Register**.

C. Paperwork Reduction Act

88. This document contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under § 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding.

D. Filing Procedures

89. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments not later than 60 days after publication of this *Report and Order* in the **Federal Register** and may file reply comments not later than 90 days after publication of this *Report and Order* in the **Federal Register**. In order to facilitate review of comments and reply comments, parties should include the name of the filing party and the date of the filing on all pleadings. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

90. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Or you may obtain a copy of the ASCII Electronic Transmittal Form (FORM–ET) at *http://www.fcc.gov/e-file/email.html*.

91. Parties that choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or

overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at a new location in downtown Washington, DC. The address is 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location will be 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

92. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

If you are sending this type of document or using this delivery method . . .	It should be addressed for delivery to . . .
Hand-delivered or messenger-delivered paper filings for the Commission's Secretary.	236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002 (8 a.m. to 7 p.m.).
Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail).	9300 East Hampton Drive, Capitol Heights, MD 20743 (8 a.m. to 5:30 p.m.).
United States Postal Service first-class mail, Express Mail, and Priority Mail.	445 12th Street, SW., Washington, DC 20554.

93. Parties who choose to file by paper should also submit their comments on diskette. These diskettes, plus one paper copy, should be submitted to: Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications, at the filing window at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case WC Docket No. 02–60, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CYB402, Washington, DC 20554 (*see* alternative addresses above for delivery by hand or messenger).

94. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, BCPI, Portals II, 445 12th Street SW., CY-B402, Washington, DC 20554 (see alternative addresses above for delivery by hand or messenger) (telephone 202–488–5300; facsimile 202–488–5563) or via e-mail at *FCC@BCPIweb.com*.

95. Written comments by the public on the proposed and/or modified information collections are due on the same day as comments on this *Report and Order, i.e.*, on or before July 25, 2005. Written comments must be submitted by OMB on the proposed and/or modified information collections on or before July 25, 2005. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *jbherman@fcc.gov*, and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *JThornto@omb.eop.gov*.

96. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, BCPI, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone (202) 488–5300, facsimile (202) 488–5563, or via e-mail *FCC@BCPIweb.com*.

E. Further Information

97. Alternative formats (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 voice, (202) 418–7365 TTY, or *bmillin@fcc.gov*. This *Report and Order* can also be downloaded in Microsoft Word and ASCII formats at *http://www.fcc.gov/ccb/universalservice/highcost*.

Final Regulatory Flexibility Analysis (FRFA)

98. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the notice of proposed rulemaking to which this *Report and Order* responds. The Commission sought written public comment on the Federal-State Joint Board's (Joint Board) recommendations in the *Recommended Decision*, including comment on the IRFA incorporated in that proceeding. The comments we have received discuss only the general recommendations, not the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

F. Need for, and Objective of, This Report and Order

99. This *Report and Order* addresses the minimum requirements that a telecommunications carrier must meet in order to be designated as an "eligible telecommunications carrier" or "ETC," and thus eligible to receive federal universal service support. Specifically, consistent with the recommendations of the Joint Board, this *Report and Order* adopts additional requirements for ETC designation proceedings in which the Commission acts pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act). In addition, for states that exercise jurisdiction over ETC designations pursuant to section 214(e)(2) of the Act, as recommended by the Joint Board, this *Report and Order* encourages such state commissions to consider these requirements when examining whether an ETC should be designated. The application of these additional requirements by the Commission and state commissions should allow for a more predictable ETC

designation process. In addition, because the additional requirements in this *Report and Order* create a more rigorous ETC designation process, their application by the Commission and state commissions will support the long-term sustainability of the universal service fund.

100. In considering whether carriers have satisfied their burden of proof necessary for ETC designation, this *Report and Order* now requires that applicants: (1) Provide five-year plans demonstrating how high-cost universal service support will be used to improve coverage, service quality or capacity on a wire center-by-wire center basis throughout their proposed designated service areas; (2) demonstrate their ability to remain functional in emergency situations; (3) abide by service quality standards, such as the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service; (4) offer local usage plans comparable to those offered by the incumbent LEC in the areas for which they seek designation; and (5) acknowledge that the Commission may require them to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area. In addition, these additional requirements are made applicable to all ETCs previously designated by the Commission and therefore, such ETCs are required to submit evidence demonstrating how they comply with this new ETC designation framework by October 1, 2006. This *Report and Order*, however, does not adopt the Joint Board's recommendation to evaluate whether ETC applicants have the financial resources and ability to provide quality services throughout the designated service area because the Commission concludes the objective of these criterion will be achieved through the other requirements adopted in this Report and Order.

101. In this *Report and Order*, the Commission also sets forth its analytical framework for determining whether or not the public interest would be served by an applicant's designation as an ETC. The Commission finds that, under the statute, an applicant should only be designated as an ETC where such designation serves the public interest, regardless of whether the area where designation is sought is served by a rural or non-rural carrier. The Commission clarifies that its public interest analysis for ETC designations for which it has jurisdiction pursuant to section 214(e)(6) of the Act will review many of the same factors in areas served by non-rural and rural incumbent LECs, although the Commission recognizes that the outcome of the analysis might vary depending on whether the area is served by a rural or non-rural carrier. In addition, as part of its public interest analysis, the Commission will examine the potential for creamskimming effects in instances where an ETC applicant seeks designation below the study area level of a rural incumbent LEC. The Commission also encourages states to apply the Commission's analysis because it believes such application will assist them in determining whether or not the public interest would be served by designating a carrier as an ETC.

102. In addition, in this *Report and Order*, the Commission strengthens its reporting requirements for ETCs in order to ensure that high-cost universal service support continues to be used for its intended purposes. Specifically, each ETC designated by the Commission must provide on an annual basis: (1) Progress updates on its five-year service quality improvement plan, including maps detailing progress towards meeting its five-year improvement plan in every wire center for which designation was received, explanations of how much universal service support was received and how the support was used to improve service quality in each wire center for which designation was obtained, and an explanation of why any network improvement targets have not been met; (2) detailed information on outages in the ETC's network caused by emergencies, including the date and time of onset of the outage, a brief description of the outage, the particular services affected by the outage, the geographic areas affected by the outage, and steps taken to prevent a similar outage situation in the future; and (3) how many requests for service from potential customers were unfulfilled for the past year and the number of complaints per 1,000 handsets or lines. These annual reporting requirements are required for all ETCs designated by the Commission. Similar to the ETC designation requirements adopted above, the Commission, in this *Report and Order*, encourages states to require these reports to be filed by all ETCs over which they possess jurisdiction.

103. The Commission, however, does not adopt the recommendation of the Joint Board to control growth of the high-cost universal service fund by limiting the scope of high-cost support to a single connection that provides access to the public telephone network. Section 634 of the 2005 Consolidated Appropriations Act prohibits the Commission from utilizing appropriated funds to "modify, amend, or change" its rules or regulations to implement this recommendation.

104. In this *Report and Order*, the Commission also agrees with the Joint Board's recommendation that changes are not warranted in its rules concerning procedures for redefinition of service areas served by rural incumbent LECs. In addition, in this *Report and Order*, the Commission grants several petitions for redefinition of rural incumbent LEC service areas. Moreover, the Commission directs the Universal Service Administrative Company (USAC) to develop standards as necessary for the submission of any maps that ETCs are required to submit to USAC under the Commission's rules. The Commission also modifies its annual certification and line count filing deadlines so that newly designated ETCs are permitted to file that data within sixty days of their ETC designation date in order to allow high-cost support to be distributed as of the date of ETC designation. In addition, the Commission modifies the quarterly certification schedule for the receipt of interstate access support (IAS) so that price cap local exchange carriers and/or competitive ETCs that miss the June 30 annual IAS certification deadline may file their certification thereafter in order to receive IAS support in the second calendar quarter after the certification is filed. Finally, the Commission declines to define mobile wireless customer location in terms of "place of primary use," as defined by the Mobile Telecommunications Sourcing Act (MTSA), for universal service purposes.

G. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

105. No comments were filed directly in response to the IRFA in this proceeding. The Commission has nonetheless considered the potential significant economic impact of the rules on small entities and, as discussed below, has concluded that the rules adopted may impose some economic burden on small entities that are designated as ETCs.

H. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

106. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business"

has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities. Under the Small Business Act, a "small business concern: is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).

107. We have included ETCs that may meet the definition of "small business" in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and is not dominant in its field of operation."

108. *Incumbent Local Exchange Carriers* (Incumbent LECs). The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent local exchange carriers in this FRFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

109. *Wireline Carriers and Service Providers* (Wired Telecommunications Carriers). The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1500 or fewer employees. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small.

110. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, Payphone Providers, and Resellers.* Neither the Commission nor SBA has developed a definition particular to small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), payphone providers or resellers. The closest applicable definition for these carrier-types under SBA rules is for Wired Telecommunications Carriers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to recent data, there are 1,310 incumbent LECs, 563 CAPs, 281 IXCs, 21 OSPs, 613 payphone providers and 772 resellers. Of these, an estimated 1,025 incumbent LECs, 472 CAPs, 254 IXCs, 20 OSPs, 609 payphone providers, and 740 resellers have 1,500 or fewer employees. In addition, an estimated 285 incumbent LECs, 91 CAPs, 27 IXCs, 1 OSP, 4 payphone providers, and 32 resellers, alone or in combination with affiliates, have more than 1,500 employees. We do not have data specifying the number of these carriers that are not independently owned and operated, and therefore we are unable to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, most incumbent LECs, IXCs, CAPs, OSPs, payphone providers and resellers are small entities that may be affected by the decisions and rules adopted in this *Report and Order*.

111. *Wireless Service Providers.* The SBA has size standards for wireless small businesses within the two separate Economic Census categories of Paging and of Cellular and Other Wireless Telecommunications. For both of those categories, the SBA considers a business to be small if it has 1,500 or fewer employees. According to *Trends in Telephone Report* data, 1,387 companies reported that they were engaged in the provision of wireless service. Of these 1,387 companies, an estimated 945 reported that they have 1,500 or fewer employees and 442 reported that, alone or in combination with affiliates, they have more than 1,500 employees. Consequently, we estimate that most wireless service providers are small entities that may be affected by the rules adopted herein.

112. *Cellular Radio Telephone Service.* The Commission has not developed a definition of small entities specifically applicable to cellular licensees. Therefore, the applicable definition of a small entity is the SBA definition applicable to radiotelephone companies, which provides that a small entity is a radiotelephone company employing no more than 1,500 persons. The size data provided by SBA do not enable us to make a meaningful estimate of the number of cellular providers that are small entities because it combines all radiotelephone companies with 500 or more employees. We therefore have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. That census shows that only 12 radiotelephone firms out of a total of 1,178 such firms operating during 1992 had 1,000 or more employees. Therefore, even if all 12 of these large firms were cellular telephone companies, all of the remainder would be small businesses under the SBA definition.

113. There are presently 1,758 cellular licenses. However, the number of cellular licensees is not known, since a single cellular licensee may own several licenses. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent Telecommunications Industry Revenue data, 732 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 732 or fewer small cellular service carriers that may be affected by the rules, herein adopted.

114. *Broadband Personal Communications Service* (PCS). The broadband PCS spectrum is divided into six frequencies designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses; there were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small businesses." Based on this information, we conclude

that the number of small broadband PCS licensees will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F blocks, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. Consequently, we estimate that 260 broadband PCS providers are small entities that may be affected by the rules and policies adopted herein.

115. *Narrowband PCS.* The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order*, 65 FR 35875, June 6, 2000. A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

116. *Specialized Mobile Radio* (SMR). The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the three previous calendar years, respectively. In the context of both the 800 MHz and 900 MHz SMR service, the definitions of "small entity" and "very small entity" have been approved by the SBA. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. We assume, for our purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small and very small entities in the 900 MHz auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small and very small entities won 263 licenses. In the 800 MHz SMR auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, we estimate that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies adopted herein.

117. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). For purposes of this IRFA, we will use the SBA's size standard applicable to wireless service providers, *supra*—an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA's size standard. Consequently, we estimate that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

118. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service. For purposes of this FRFA, we will use the SBA's size standard applicable to wireless service providers, *supra*—an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA definition.

I. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

119. *Reporting and Recordkeeping.* The Commission requires all ETCs over which it possesses jurisdiction, including ETCs designated by the Commission prior to this *Report and Order*, to submit annually certain information regarding their networks and their use of universal service funds. These reporting requirements will ensure that ETCs continue to comply with the conditions of the ETC designation so that universal service funds are used for their intended purposes. This information will initially be due on October 1, 2006, and thereafter annually on October 1 of each year, as part of the carrier's certification that the universal service funds are being used consistent with the Act.

120. Every ETC designated by the Commission must submit the following information on an annual basis: progress reports on the ETC's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets; an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled. The information should be submitted at the wire center level;

(1) Detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a 911 special facility (as defined in subsection (e) of § 4.5 of the *Outage Reporting Order*). An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network. Specifically, the ETC's annual report must include: (1) The date and time of onset of the outage; (2) a brief description of the outage and its resolution; (3) the particular services affected; (4) the geographic areas affected by the outage; (5) steps taken to prevent a similar situation in the future; and (6) the number of customers affected;

(2) The number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail

how it attempted to provide service to those potential customers;

(3) The number of complaints per 1,000 handsets or lines;

(4) Certification that the ETC is complying with applicable service quality standards and consumer protection rules, *e.g.*, the CTIA Consumer Code for Wireless Service;

(5) Certification that the ETC is able to function in emergency situations;

(6) Certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and

(7) Certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

J. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

121. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

122. The Commission concludes in this *Report and Order* that the above reporting regulations are reasonable and consistent with the public interest and the Act. In particular, these reporting requirements will further the Commission's goal of ensuring that ETCs satisfy their obligations under section 214(e) of the Act to provide supported services throughout their designated service areas. In addition, the Commission concludes that any administrative burdens placed on carriers as a result of this *Report and Order* are outweighed by strengthening the requirements and certification guidelines to help ensure that high-cost support is used in the manner that it is intended. These reporting requirements also will help prevent carriers from seeking ETC status for purposes unrelated to providing rural and high-cost consumers with access to affordable telecommunications and information services.

123. The Commission has considered the above alternatives when establishing these reporting requirements. For example, to simplify and consolidate the administrative burdens that may be associated with annual reports concerning outages, the Commission modeled its outage reporting requirements after the Commission's reporting requirements concerning outages adopted in the *Outage Reporting Order*. As a result, many ETCs may be able to file the same or similar information instead of having to compile and submit new outage data. In addition, the Commission has not imposed financial reporting requirements on ETCs because it believes any such requirements are unwarranted in light of the other commitments and reporting requirements adopted in this *Report and Order*. Moreover, the Commission has only required annual certifications, instead of actual data submissions, for certain of its reporting requirements, such as local usage plans, functionality in emergency situations, and compliance with consumer protection standards. Such certifications ensure compliance with section 254 of the Act without imposing data submissions that would impose significant administrative burdens on small entities that may not possess the resources to compile and submit such information on an annual basis.

K. Report to Congress

124. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

VI. Ordering Clauses

125. Pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 214, 254, and 403, this *Report and Order* is adopted.

126. Part 54 of the Commission's rules, 47 CFR part 54, is amended as set forth effective June 24, 2005, except that the requirements subject to the Paperwork Reduction Act are not effective until approved by Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date of the requirements.

127. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

128. The Universal Service Administrative Company shall to develop standards for the submission of any maps that eligible telecommunications carriers are required to submit to the Universal Service Administrative Company under the Commission's rules, to the extent discussed herein.

129. The petition for redefinition filed by the Colorado Public Utilities Commission, on August 12, 2002, is granted, to the extent discussed herein.

130. The petition for redefinition filed by the Colorado Public Utilities Commission, on May 30, 2003, is granted, to the extent discussed herein.

131. The petition for redefinition filed by RCC Minnesota, Inc, on June 24, 2003, is granted, to the extent discussed herein.

132. The petition for redefinition filed by the Minnesota Public Utilities Commission, on August 7, 2003, is granted, to the extent discussed herein.

133. The petition for redefinition filed by ALLTEL Communications, Inc., on November 21, 2003, is granted, to the extent discussed herein.

134. The petition for redefinition filed by ALLTEL Communications, Inc., on December 17, 2003, is granted, to the extent discussed herein.

135. The petition for redefinition filed by CTC Telecom, Inc., on June 30, 2004, is granted, to the extent discussed herein.

136. The petition for redefinition filed by American Cellular Corporation, on July 16, 2004, is granted, to the extent discussed herein.

137. The petition for redefinition filed by RCC Minnesota, Inc. and Wireless Alliance, LLC, on August 27, 2004, is granted, to the extent discussed herein.

List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ Part 54 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 54—UNIVERSAL SERVICE

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

Authority: 47 U.S.C. 1, 4(i), 4(j), 201–205, 214, 245 and 403 unless otherwise noted.

■ 2. Section 54.202 is added to read as follows:

§ 54.202 Additional requirements for Commission designation of eligible telecommunications carriers.

(a) In order to be designated an eligible telecommunications carrier under section 214(e)(6), any common carrier in its application must:

(1) (i) Commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it will:

(A) Provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and

(B) Provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by:

(1) Modifying or replacing the requesting customer's equipment;

(2) Deploying a roof-mounted antenna or other equipment;

(3) Adjusting the nearest cell tower;

(4) Adjusting network or customer facilities;

(5) Reselling services from another carrier's facilities to provide service; or

(6) Employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment.

(ii) Submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. Each applicant shall demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support; the projected start date and completion date for each improvement and the estimated amount of investment for each project that is funded by high-cost support; the specific geographic areas where the improvements will be made; and the estimated population that will be served as a result of the improvements. If an applicant believes that service improvements in a particular wire center are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area.

(2) Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.

(3) Demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.

(4) Demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation.

(5) Certify that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

(b) Any common carrier that has been designated under section 214(e)(6) as an eligible telecommunications carrier or that has submitted its application for designation under section 214(e)(6) before the effective date of these rules must submit the information required by paragraph (a) of this section no later than October 1, 2006, as part of its annual reporting requirements under § 54.209.

(c) *Public Interest Standard.* Prior to designating an eligible telecommunications carrier pursuant to section 214(e)(6), the Commission determines that such designation is in the public interest. In doing so, the Commission shall consider the benefits of increased consumer choice, and the unique advantages and disadvantages of the applicant's service offering. In instances where an eligible telecommunications carrier applicant seeks designation below the study area level of a rural telephone company, the Commission shall also conduct a creamskimming analysis that compares the population density of each wire center in which the eligible telecommunications carrier applicant seeks designation against that of the wire centers in the study area in which the eligible telecommunications carrier applicant does not seek designation. In its creamskimming analysis, the Commission shall consider other factors, such as disaggregation of support pursuant to § 54.315 by the incumbent local exchange carrier.

(d) A common carrier seeking designation as an eligible telecommunications carrier under section 214(e)(6) for any part of tribal lands shall provide a copy of its petition to the affected tribal government and tribal regulatory authority, as applicable, at the time it files its petition with the Federal Communications Commission. In addition, the Commission shall send the relevant public notice seeking comment on any petition for designation as an eligible telecommunications carrier on tribal lands, at the time it is released, to the affected tribal government and tribal regulatory authority, as applicable, by overnight express mail.

■ 3. Section 54.209 is added to read as follows:

§ 54.209 Annual reporting requirements for designated eligible telecommunications carriers.

(a) A common carrier designated under section 214(e)(6) as an eligible telecommunications carrier shall provide:

(1) A progress report on its five-year service quality improvement plan, including maps detailing its progress towards meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve signal quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled. The information shall be submitted at the wire center level;

(2) Detailed information on any outage, as that term is defined in 47 CFR 4.5, of at least 30 minutes in duration for each service area in which an eligible telecommunications carrier is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect

(i) At least ten percent of the end users served in a designated service area; or

(ii) A 911 special facility, as defined in 47 CFR 4.5(e).

(iii) Specifically, the eligible telecommunications carrier's annual report must include information detailing:

(A) The date and time of onset of the outage;

(B) A brief description of the outage and its resolution;

(C) The particular services affected;

(D) The geographic areas affected by the outage;

(E) Steps taken to prevent a similar situation in the future; and

(F) The number of customers affected.

(3) The number of requests for service from potential customers within the eligible telecommunications carrier's service areas that were unfulfilled during the past year. The carrier shall also detail how it attempted to provide service to those potential customers, as set forth in § 54.202(a)(1)(i);

(4) The number of complaints per 1,000 handsets or lines;

(5) Certification that it is complying with applicable service quality standards and consumer protection rules;

(6) Certification that the carrier is able to function in emergency situations as set forth in § 54.201(a)(2);

(7) Certification that the carrier is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and

(8) Certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

(b) *Filing deadlines.* In order for a common carrier designated under section 214(e)(6) to continue to receive support for the following calendar year, or retain its eligible telecommunications carrier designation, it must submit the annual reporting information in paragraph (a) no later than October 1, 2006, and thereafter annually by October 1 of each year. Eligible telecommunications carriers that file their reports after the October 1 deadline shall receive support pursuant to the following schedule:

(1) Eligible telecommunication carriers that file no later than January 1 of the subsequent year shall receive support for the second, third and fourth quarters of the subsequent year.

(2) Eligible telecommunication carriers that file no later than April 1 of the subsequent year shall receive support for the third and fourth quarters of the subsequent year.

(3) Eligible telecommunication carriers that file no later than July 1 of the subsequent year shall receive support for the fourth quarter of the subsequent year.

■ 4. Section 54.307 is amended by adding paragraph (d) to read as follows:

§ 54.307 Support to a competitive eligible telecommunications carrier.

* * * * *

(d) *Newly designated eligible telecommunications carriers.* Notwithstanding the deadlines in paragraph (c) of this section, a carrier shall be eligible to receive support as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6), provided that it submits the data required pursuant to paragraph (b) of this section within 60 days of that effective date. Thereafter, the eligible telecommunications carrier must submit the data required in paragraph (b) of this section pursuant to the schedule in paragraph (c) of this section.

■ 5. Section 54.313 is amended by adding paragraph (d)(3)(vi) to read as follows:

§ 54.313 State certification of support for non-rural carriers.

* * * * *

(d) * * *

(3) * * *

(vi) *Newly designated eligible telecommunications carriers.* Notwithstanding the deadlines in paragraph (d) of this section, a carrier shall be eligible to receive support pursuant to § 54.309 or § 54.311, whichever is applicable, as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6), provided that it files the certification described in paragraph (b) of this section or the state commission files the certification described in paragraph (a) of this section within 60 days of the effective date of the carrier's designation as an eligible telecommunications carrier. Thereafter, the certification required by paragraphs (a) or (b) of this section must be submitted pursuant to the schedule in paragraph (d) of this section.

■ 6. Section 54.314 is amended by adding paragraph (d)(6) to read as follows:

§ 54.314 State certification of support for rural carriers.

* * * * *

(d) * * *

(6) *Newly designated eligible telecommunications carriers.* Notwithstanding the deadlines in paragraph (d) of this section, a carrier shall be eligible to receive support pursuant to §§ 54.301, 54.305, or § 54.307 or part 36 subpart F of this chapter, whichever is applicable, as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6), provided that it files the certification described in paragraph (b) of this section or the state commission files the certification described in paragraph (a) of this section within 60 days of the effective date of the carrier's designation as an eligible telecommunications carrier. Thereafter, the certification required by paragraphs (a) or (b) of this section must be submitted pursuant to the schedule in paragraph (d) of this section.

■ 7. Section 54.809 is amended by revising paragraph (c) to read as follows:

§ 54.809 Carrier certification.

* * * * *

(c) *Filing deadlines.* In order for a price cap local exchange carrier or an eligible telecommunications carrier serving lines in the service area of a price cap local exchange carrier to receive interstate access universal service support, such carrier shall file an annual certification, as described in paragraph (b) of this section, on the date that it first files its line count information pursuant to § 54.802, and thereafter on June 30 of each year. Such carrier that files its line count information after the June 30 deadline shall receive support pursuant to the following schedule:

(1) Carriers that file no later than September 30 shall receive support for the fourth quarter of that year and the first and second quarters of the subsequent year.

(2) Carriers that file no later than December 31 shall receive support for the first and second quarters of the subsequent year.

(3) Carriers that file no later than March 31 of the subsequent year shall receive support for the second quarter of the subsequent year.

[FR Doc. 05–10231 Filed 5–24–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98–170 and CG Docket No. 04–208; FCC 05–55]

Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission concludes that Commercial Mobile Radio Service (CMRS) carriers should no longer be exempt from the Commission's rule requiring that billing descriptions be brief, clear, non-misleading and in plain language. In addition, the Commission puts CMRS carriers on notice that it intends to review complaints regarding unclear or misleading billing descriptions, and

may take enforcement action under this rule, as appropriate, based on such complaints or other evidence of non-compliance.

DATES: Effective August 23, 2005 except § 64.2400 (b) which contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). Written comments by the public on the modified information collections are due June 24, 2005. The Commission will publish a document in the **Federal Register** announcing the effective date for that rule.

FOR FURTHER INFORMATION CONTACT: Michael Jacobs, Consumer & Governmental Affairs Bureau at (202) 418–2512 (voice), or e-mail *Michael.Jacobs@fcc.gov*. For additional information concerning the PRA information collection requirements contained in this document, contact Leslie Smith at (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION: On June 25, 1999, the Commission included in its *Further Notice of Proposed Rulemaking, Truth-in-Billing and Billing Format,* published at 64 FR 34499, June 25, 1999, the 60 day **Federal Register** PRA notice that sought comment on whether the remaining truth-in-billing rules that the Commission adopted in the wireline context should apply to CMRS carriers, in order to protect consumers. On March 18, 2005, the Commission released a Second Report and Order, and Declaratory Ruling (*Second Report and Order*), *Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing,* in which the Commission determined that CMRS carriers should no longer be exempt from 47 CFR 64.2401(b), which requires that billing descriptions be brief, clear, non-misleading and in plain language. To the extent that any CMRS carrier is not currently in compliance with this requirement, certain modifications to the carrier's billing practice may be required. This *Second Report and Order* contains modified information collection requirements subject to the PRA of 1995, Public Law 104–13. These will be submitted to the Office of Management and Budget (OMB) for review under § 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirement contained in this proceeding. This *Second Report and Order* addresses issues arising from *Truth-in-Billing and Billing Format, First Report and Order and Further Notice of Proposed Rulemaking,* CC Docket No. 98–170 and CG Docket No. 04–208, FCC 99–72; published at 64 FR 34488 and 64 FR 34499, June 25, 1999. Copies of this document and any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. at their Web site: *www.bcpiweb.com* or call 1–800–378–3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). This *Second Report and Order* can also be downloaded in Word and Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/pol.*

Paperwork Reduction Act of 1995 Analysis

This *Second Report and Order* contains modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in the *Second Report and Order* as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. Public and agency comments are due June 24, 2005. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees." In the present document, we have assessed the effects of adopting these rules, and find that there may be an administrative burden on businesses with fewer than 25 employees. However, to the extent that many businesses with fewer than 25 employees also are consumers of wireless telecommunications services, we believe they also will benefit from applying these requirements to wireless carriers in that they too will receive the information they need to understand their bills and to make informed decisions in a competitive marketplace. In addition, the Commission notes that pursuant to the Regulatory Flexibility Act of 1980, as amended, and the Paperwork Reduction Act of 1995, Public Law 104–13, the Commission previously sought specific comment on how applying these requirements to CMRS carriers may have an impact on information collection requirements applicable to small businesses. Indeed, the Commission received comment on its previous Regulatory Flexibility Analysis in this docket, and found that the Commission appropriately considered and balanced the concerns of carriers that detailed rules may increase costs against the Commission's goals of protecting consumers from fraud. Finally, many CMRS carriers have indicated in this proceeding that they already comply with the new requirements, and the principles underlying these requirements always have applied to these carriers. Therefore, the Commission believes that the burden on CMRS carriers, including those with fewer than 25 employees, in complying with these requirements will be negligible.

Synopsis

In this *Second Report and Order,* the Commission addresses a Petition for Declaratory Ruling filed by the National Association of State Utility Consumer Advocates (NASUCA) seeking to prohibit telecommunications carriers from imposing any separate line item or surcharge on a customer's bill that is not mandated or authorized by federal, state or local law. In light of the significant consumer concerns with the billing practices of wireless and other interstate providers raised in this proceeding and outstanding issues from the *1999 Truth-in-Billing Order and Further Notice,* published at 64 FR 34488 and 64 FR 34499, June 25, 1999, the Commission also takes this opportunity to reiterate certain aspects of its existing rules and policies affecting billing for telecommunications services. Specifically, the Commission: (1) Removes the existing exemption for CMRS carriers from 47 CFR 64.2401(b)—requiring that billing descriptions be brief, clear, non-misleading and in plain language; (2) reiterates that non-misleading line items are permissible under the Commission's rules; (3) reiterates that it is misleading to represent discretionary line item charges in any manner that suggests such line items are taxes or charges required by the government; (4) clarifies that the burden rests upon the carrier to demonstrate that any line item that purports to recover a specific governmental or regulatory program fee

conforms to the amount authorized by the government to be collected; and (5) clarifies that state regulations requiring or prohibiting the use of line items for CMRS constitute rate regulation and are preempted under section 332(c)(3)(A) of the Communications Act of 1934 ("the Act").

Supplemental Final Regulatory Flexibility Certification (FRFA)

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), (*see* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, Title II, 110 Statute 857 (1996)) an Initial Regulatory Flexibility Analysis (*IRFA*) was incorporated in the *Further Notice of Proposed Rulemaking* released by the Federal Communications Commission (Commission) on May 11, 1999. (*See Truth-in-Billing and Billing Format,* CC Docket No. 98–170, *First Report and Order and Further Notice of Proposed Rulemaking,* 14 FCC Rcd at 7550–52 at paragraphs 105–111). The Commission sought written public comments on the proposals contained in the *FNPRM,* including comments on the *IRFA.* Comments filed in this proceeding specifically identified as comments addressing the *IRFA* and comments that address the impact of the proposed rules and policies on small entities are discussed below. The *1999 Truth-in-Billing Order and Further Notice* included a Final Regulatory Flexibility Analysis (*FRFA*) that conformed to the RFA. (*See Truth-in-Billing Order,* 14 FCC Rcd at 7537–7550, paragraphs 72–103). This present supplemental *FRFA* addresses only the modification to § 64.2400(b) of the Commission's rules adopted in this *Second Report and Order,* and conforms to the RFA. (*See* 5 U.S.C. 604. The requirements of the RFA do not extend to the issues set forth in the *Declaratory Ruling.* Thus, the Commission does not address those issues herein).

Need for, and Objectives of, the Order

In a *1999 Further Notice of Proposed Rulemaking,* the Commission sought comment on whether the truth-in-billing rules adopted in the wireline context should apply to CMRS carriers in order to protect consumers. (*See Truth-in-Billing Order,* 14 FCC Rcd at 7535–36, paragraphs 68–70). In the 1999 *Truth-in-Billing Order,* the Commission concluded that the broad principles adopted to promote truth-in-billing should apply to all telecommunications carriers, both wireline and wireless. (*See Truth-in-Billing Order,* 14 FCC Rcd at 7501, paragraph 13 ("[l]ike wireline carriers, wireless carriers also should be fair, clear, and truthful in their billing practices."). The Commission noted that these principles represent fundamental statements of fair and reasonable practices. In the wireline context, the Commission incorporated these principles and guidelines into rules for enforcement purposes "after considering an extensive record of both the nature and volume of customer complaints, as well as substantial information about wireline billing practices." (*See Truth-in-Billing Order,* 14 FCC Rcd at 7501, paragraph 15).

In the wireless context, however, the Commission found that the record at that time did not reflect the same high volume of customer complaints nor did the record indicate that CMRS billing practices failed to provide consumers with the clear and non-misleading information they need to make informed choices. (*See Truth-in-Billing Order,* 14 FCC Rcd at 7502, paragraph 16. The Commission also noted that notwithstanding the decision not to apply these guidelines to CMRS providers, that such providers remain subject to the reasonableness and nondiscrimination requirements of sections 201 and 202 of the Act, "and our decision here in no way diminishes such obligations as they may relate to billing practices of CMRS carriers." *See Truth-in-Billing Order,* 14 FCC Rcd at 7502, paragraph 19). The Commission therefore exempted CMRS carriers from the truth-in-billing rule that requires charges contained on telephone bills to be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered. (*See* 47 CFR 64.2400(b), 64.2401(b)). We believe that making the requirements of 47 CFR 64.2401(b) mandatory for CMRS will help to ensure that wireless consumers receive the information that they require to make informed decisions in a competitive marketplace.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

The Office of Advocacy filed comments specifically addressing the proposed rules and policies presented in the 1999 *Truth-in Billing Order FRFA* and *IRFA.* (*See, e.g.* Office of Advocacy, U.S. Small Business Administration 1999 Reply Comments). In general, the Office of Advocacy argued that the Commission's *FRFA* and *IRFA* were flawed due to vagueness. As the Commission has previously stated, however, the Commission believes the *Truth-in-Billing Order* and regulatory flexibility analysis contained therein appropriately balanced the concerns of carriers that detailed rules may increase costs against the Commission's goal of protecting consumers from fraud. (*See Truth-in-Billing Order on Reconsideration,* 15 FCC Rcd at 6031, paragraph 20). Moreover, the Commission notes that the scope of this *Second Report and Order* is significantly more limited than the 1999 *Truth-in-Billing Order* and the issues that the Office of Advocacy addressed in its comments. The majority of commenters addressing the limited issue presented in the *Second Report and Order,* representing primarily CMRS providers, responded that the lack of billing complaints against wireless providers along with the competitive nature of the wireless industry should indicate that it is not necessary to apply these rules to CMRS. (*See, e.g.,* Bell Atlantic Mobile 1999 Comments at 3; CTIA 1999 Comments at 5; PCIA 1999 Comments 4–5). Several state commissions, consumer organizations, and individual commenters, however, argued that many consumers were confused by their telephone bills including charges included on their CMRS bills.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of, small entities that may be affected by the rules adopted herein. (*See* 5 U.S.C. 604(a)(3)). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." (*See* 5 U.S.C. 601(6)). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. (*See* 5 U.S.C. 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comments, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."). Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the

Small Business Administration (SBA). (*See* 15 U.S.C. 632).

Wireless Service Providers. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging" (*see* 13 CFR 121.201, NAICS code 517211) and "Cellular and Other Wireless Telecommunications." (*See* 13 CFR 121.201, NAICS code 517212). Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. (*See* U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000). Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. (*See* U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."). Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. (*See* U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. (*See* U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."). Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

In this present document, the Commission concludes that CMRS carriers should no longer be exempt from 47 CFR 64.2401(b)—requiring that billing descriptions be brief, clear, non-misleading and in plain language. To the extent that any CMRS carrier is not currently in compliance with this requirement, certain modifications to the carriers' billing practices would be required. Such modifications would include reviewing existing bills and making changes as necessary to ensure that any billing descriptions are clear, non-misleading, and in plain language as required by § 64.2401(b) of the Commission's rules.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

The Commission has considered several alternatives to its decision to remove the exemption for CMRS carriers from 47 CFR 64.2400(b), including the retaining of that exemption or forbearing from that requirement under section 10 of the Act. Section 64.2401(b) requires that billing descriptions be brief, clear, non-misleading and in plain language. Although the Commission decided in 1999 to exempt CMRS carriers from the requirements of § 64.2401(b), the Commission nevertheless stated that the underlying principle (*i.e.* bills must be clear and non-misleading) should apply to wireless carriers and sought further comment on whether such requirement should be made mandatory to CMRS in the future. In addition, the Commission concluded that sections 201(b) and 202 of the Act would continue to apply to wireless billing practices.

The record in this proceeding, including comments of several states and individual consumers and the Commission's own complaint data, leads the Commission to conclude that many wireless consumers are confused by the billing practices of their CMRS provider. As a result, the Commission has decided to require CMRS providers to comply with the Commission's requirement that billing practices be clear, brief, and non-misleading. Many CMRS providers have indicated in this proceeding that they already comply with this requirement. As noted above, the identical underlying truth-in-billing principle and sections 201 and 202 of the Act have always applied to CMRS providers. Thus, the Commission believes that the burden on CMRS carriers in complying with this requirement will be negligible.

Report to Congress

The Commission will send a copy of the *Second Report and Order*, including this Final Regulatory Flexibility Analysis *(FRFA)*, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Second Report and Order*, including this *FRFA*, to the Chief Counsel for Advocacy of the SBA. A copy of the *Second Report and Order* and *FRFA* (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

Pursuant to the authority contained in sections 1–4, 201, 202, 206–208, 258, 303(r), and 332 of the Communications Act of 1934, as amended; 47 U.S.C. 151–154, 201, 202, 206–208, 258, 303(r), and 332; section 601(c) of the Telecommunications Act of 1996; and §§ 1.421, 64.2400 and 64.2401 of the Commission's Rules, 47 CFR 1.421, 64.2400, and 64.2401, the second report and order, declaratory ruling *are adopted*, and Part 64 of the Commission's rules, 47 CFR 64.2400, *is amended*.

The rules and requirements contained in this *Second Report and Order shall become effective* within 90 days of their publication in the **Federal Register**.

The Petition for Declaratory Ruling filed by the National Association of State Utility Consumer Advocates on March 30, 2004, *is denied* to the extent provided herein.

The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *Second Report and Order and Declaratory Ruling*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Telecommunications, Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Change

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

■ 2. Section 64.2400 is amended by revising paragraph (b) to read as follows:

§ 64.2400 Purpose and scope.

* * * * *

(b) These rules shall apply to all telecommunications common carriers, except that § 64.2401(a)(2) and 64.2401(c) shall not apply to providers of Commercial Mobile Radio Service as defined in § 20.9 of this chapter, or to other providers of mobile service as defined in § 20.7 of this chapter, unless the Commission determines otherwise in a further rulemaking.

* * * * *

[FR Doc. 05–10119 Filed 5–24–05; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1300; MB Docket No. 02–74, RM–10401]

Radio Broadcasting Services; Ferrysburg, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Northern Paul Bunyan Radio Company, allots Channel 226A at Ferrysburg, Michigan, as the community's first local FM service. Channel 226A can be allotted to Ferrysburg, Michigan, in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.7 km (1.7 miles) northeast of Ferrysburg. The coordinates for Channel 226A at Ferrysburg, Michigan, are 43–06–04 North Latitude and 86–11–29 West Longitude.

DATES: Effective June 20, 2005.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 02–74, adopted May 4, 2005, and released May 6, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Ferrysburg, Channel 226A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–10109 Filed 5–24–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1302; MM Docket No. 99–331, RM–9848]

Radio Broadcasting Services; Bay City, College Station, Columbus, Edna, Garwood, Giddings, Palacios, and Sheridan, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule; dismissal of petition for reconsideration.

SUMMARY: The Audio Division, at the request of Garwood Broadcasting Company, the proponent of a petition for reconsideration of the Report and Order in this proceeding, 68 FR 5584 (February 4, 2003), dismisses the petition for reconsideration and terminates the proceeding.

DATES: Effective June 20, 2005.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandun Opinion and Order,* MM Docket No. 99–331, adopted May 4, 2005, and released May 6, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* The *Memorandum Opinion and Order* is not subject to the Congressional Review Act, and therefore the Commission will not send a copy of it in a report to be sent to Congress and the Government Accountability Office, *see* U.S.C. 801(a)(1)(A).

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–10114 Filed 5–24–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1304; MB Docket No. 04–428, RM–11124]

Radio Broadcasting Services; Clatskanie, OR; Ilwaco and Long Beach, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Portmeirion Partners allots Channel 225C3 at Clatskanie, Oregon, as the community's first local service. *See* 69 FR 75016, published December 15, 2004. Channel 225C3 can be allotted to Clatskanie, consistent with the minimum distance separation requirements of the Commission's rules at a restricted site located 21.5 kilometers (13.3 miles) north of the community. The reference coordinates for Channel 225C3 at Clatskanie are 46–17–44 North Latitude and 123–14–13 West Longitude. A filing window for Channel 225C3 at Clatskanie, Oregon will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order. To accommodate the Clatskanie allotment, the Audio Division orders the substitution of Channel 259A for Channel 224A at Long Beach, California, and modification of the license for Station KAQX(FM) to reflect the channel change. Additionally, the Audio Division orders the substitution of Channel 253A for Channel 259A at Ilwaco, Washington to facilitate the Long Beach channel substitution.

DATES: Effective June 20, 2005.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 04–428, adopted May 4, 2005, and released May 6, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *www.BCPIWEB.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Clatskanie, Channel 225C3.

■ 3. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 259A and by adding Channel 253A at Ilwaco, and by removing Channel 224A and by adding Channel 259A at Long Beach.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–10235 Filed 5–24–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1307; MB Docket No. 04–299, RM–10958]

Radio Broadcasting Services; Refugio, Sinton and Taft, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of Amigo Radio, Ltd., licensee of Station KOUL(FM), Sinton, Texas, and Pacific Broadcasting of Missouri LLC, licensee of Station KTKY(FM), Taft, Texas, the Audio Division reallots Channel 279C1 from Sinton to Refugio, Texas, and modifies the license of Station KOUL(FM) to reflect the change of community. *See* 69 FR 51414, August 19, 2004. The document also modifies the operating condition for Station KTKY(FM), Taft, Texas, to read: "Operation of Station KTKY(FM) on Channel 293C2 in Taft, Texas, including program test operation pursuant to Section 73.1620, will not be commenced until such time as express authorization from the Commission has been granted. Such authorization will not be granted until operation has commenced on Station KOUL(FM) at Refugio and is subject to the continued operation by Station KOUL(FM) at Refugio." Channel 279C1 is reallotted at Refugio at Petitioners' proposed site, 33.8 kilometers (21 miles) southwest of the community at coordinates 28–02–07 NL and 97–26–11 WL. Because this site is within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence of the Mexican government has been requested for this allotment. However, notification from Mexico has not been received. Therefore, operation with the facilities specified for Refugio in this document is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement or if specifically objected to by Mexico. As a result, the Station KTKY operation in Taft would also be subject to termination or suspension.

DATES: Effective June 27, 2005.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 04–299, adopted May 11, 2005, and released May13, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW, Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ 47 CFR Part 73 is amended as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 279C1 at Sinton and by adding Channel 279C1 at Refugio.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–10238 Filed 5–24–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1301; MB Docket No. 04–436; RM–11112]

Radio Broadcasting Services; Cannelton and Tell City, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making,* 70 FR 775 (January 5, 2005) this *Report and Order* reallots Channel 275C3, Station WLME(FM) ("WLME"), Cannelton, Indiana, to Tell City, Indiana, and modifies Station WLME's license accordingly. In addition, this *Report and Order* reallots Channel 289A from Tell City to Cannelton, Indiana, and modifies Station WTCJ-FM's license accordingly. The coordinates for Channel 275C3 at Tell City, Indiana, are 37–50–52 NL and 86–36–18 WL, with a site restriction of 18.4 kilometers (11.4 miles) southeast of Tell City. The coordinates for Channel 289A at Cannelton are 37–48–13 NL and 86–48–57 WL, with a site restriction of 13.5 kilometers (8.4 miles) southwest of Cannelton.

DATES: Effective June 20, 2005.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 04–436, adopted May 4, 2005, and released May 6, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERIES

■ 1. The authority citation for Part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Indiana, is amended by removing Channel 275C3 and by adding Channel 289A at Cannelton, and by removing Channel 289A and by adding Channel 275C3 at Tell City.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–10239 Filed 5–24–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 03–15; FCC 04–192]

Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Federal Communications Commission has received Office of Management and Budget (OMB) approval for rules published at 69 FR 59500 (October 4, 2004). Therefore, the Commission announces that 47 CFR 73.1201(b)(1) and (c)(1) is effective July 1, 2005.

DATES: 47 CFR 73.1201(b)(1) and (c)(1) is effective July 1, 2005.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission has received OMB approval for the station identification rule published at 69 FR 59500 (October 4, 2004). Through this document, the Commission announces that it received this approval on April 14, 2005.

Pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, an agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Cathy Williams, Federal Communications Commission, (202) 418–2918 or via the Internet at *Cathy.Williams@fcc.gov.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–10242 Filed 5–24–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[WT Docket No. 02–146; FCC 05–45]

Allocations and Service Rules for the 71–76 GHz, 81–86 GHz, and 92–95 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Commission grants in part and otherwise denies a petition for reconsideration of the final rules concerning licensed use of the millimeter wave spectrum in the 71–76 GHz and 81–86 GHz bands. This action is intended to promote the private sector development and use of these bands.

DATES: Effective on June 24, 2005, except for the revision to 47 CFR 101.1523(b) which contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). The revision to 47 CFR 101.1523(b) will be effective upon OMB approval. The Commission will publish a document in the **Federal Register** announcing the date of OMB approval.

ADDRESSES: In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements

contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: David Hu, Esq., at (202) 418–2487.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, released on March 3, 2005, FCC 05–45. The full text of the *Memorandum Opinion and Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300 or (800) 387–3160, e-mail at *fcc@bcpiweb.com*. The complete item is also available on the Commission's Web site at *http://hraunfoss.fcc.gov/edocs_public/attachment/FCC–05–45A1.doc*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Summary of Memorandum Opinion and Order

I. Introduction

1. In this *Memorandum Opinion and Order*, we address the Petition for Reconsideration filed by the Wireless Communications Association International, Inc. (WCA) on February 23, 2004. WCA seeks reconsideration of the Federal Communications Commission's *Report and Order*, adopted on October 16, 2003, and released on November 4, 2003, 69 FR 3257, January 23, 2004, which adopted service rules to promote the private sector development and use of the spectrum in the 71–76 GHz, 81–86 GHz, and 92–95 GHz bands. The Petition and the instant *Memorandum Opinion and Order* focus exclusively on the licensed use of the 71–76 GHz and 81–86 GHz bands.

For the reasons provided herein, we grant in part and deny in part the Petition as follows:

- We require interference analyses prior to registering all (new or modified) links in the 71–76 GHz and 81–86 GHz bands.
- We eliminate the band segmentation and loading requirements and adopt an efficiency requirement of 0.125 bits per second (bps)/Hertz (Hz).
- We modify the interference protection criteria by deleting the minimum 36 dB carrier signal to interference signal (C/I) ratio, and by adopting for receivers employing analog modulation a 1.0 dB degradation limit for the baseband signal-to-noise (S/N) ratio required to produce an acceptable signal in the receiver. Also, we reaffirm that the 1.0 dB receiver threshold-to-interference (T/I) ratio degradation limit for digital systems that we adopted in the *Report and Order* still applies. (The threshold-to-interference (T/I) ratio is defined as the ratio of desired to undesired signal power that degrades the digital receiver static and dynamic (outage) thresholds.) We also decline Petitioner's request to adopt 36 dB as the maximum required C/I.
- We adopt a power spectral density limit of 150 milliwatts (mW)/100 Megahertz (MHz).
- We modify the technical parameters to accommodate smaller, less expensive antennas with a minimum antenna gain of 43 dBi and a 1.2 degree half-power beamwidth.
- We decline Petitioner's requests: to shorten the construction period from 12 months to 180 days; to provide conditional authorization during the pendency of an application for a nationwide, non-exclusive license; and to require Automatic Transmitter Power Control (ATPC) for links with Effective Isotropic Radiated Power (EIRP) greater than 23 dBW. (ATPC automatically increases or decreases the output power of a transmitter based on the received signal level. EIRP represents the level of the transmitted signal.)

II. Background

2. On October 16, 2003, the Commission adopted a *Report and Order* establishing service rules to promote non-Federal development and use of the "millimeter wave" spectrum in the 71–76 GHz, 81–86 GHz, and 92–95 GHz bands, which are allocated to non-Federal Government and Federal Government users on a co-primary basis. Based on the determination that the highly directional, "pencil-beam" signal characteristics permit systems in these bands to be engineered so that many operations can co-exist in the same vicinity without causing interference to one another, the Commission adopted a flexible and innovative regulatory framework for the bands. Specifically, the *Report and Order* permits the issuance of an unlimited number of non-exclusive, nationwide licenses to non-Federal Government entities for all 12.9 GHz of spectrum. Under this licensing scheme, a license serves as a prerequisite for registering individual point-to-point links; licensees may operate a link only after the link is both registered with a third-party database and coordinated with the National Telecommunications and Information Administration (NTIA). This flexible and streamlined regulatory framework was designed to encourage innovative uses of the "millimeter wave" spectrum, facilitate future development in technology and equipment, promote competition in the communications services, equipment, and related markets, and advance potential sharing between non-Federal Government and Federal Government systems.

3. Initially, coordination of non-Federal Government links with Federal Government operations was accomplished under the existing coordination process; that is, requested non-Federal Government links were recorded in the Commission's Universal Licensing System (ULS) database and coordinated with NTIA through the Interdepartment Radio Advisory Committee (IRAC) Frequency Assignment Subcommittee. Starting on February 8, 2005, this interim link registration process was replaced by a permanent process where third-party database managers are responsible for recording each proposed non-Federal link in the third-party database link system and coordinating with NTIA's automated "green light/yellow light" mechanism to determine the potential for harmful interference with Federal operations. A "green light" response indicates that the link is coordinated with the Federal Government; a "yellow light" response indicates a potential for interference to Federal Government or certain other operations. In the case of a "yellow light," the licensee must file an application for the requested link with the Commission, which in turn will submit the application to the IRAC for individual coordination. This automated process is designed to streamline the administrative process for non-Federal users in the bands. We note that the classified nature of some Federal Government operations precludes the use of a public database containing both Federal Government and non-Federal Government links. Database managers will not be responsible for assigning frequencies but will be responsible for establishing and maintaining the database. However, they are not precluded from offering additional services, such as frequency

coordination, which will assist a licensee in designing a link.

4. The Commission divided the 71–76 GHz and 81–86 GHz bands into four unpaired 1.25 GHz segments each (eight total), without mandating specific channels within the "soft" segments. The Commission also determined that these segments may be aggregated without limit, as needed, although first-in-time interference protection rights would be diminished if the licensee did not load the spectrum at the rate of one bit per second per Hertz (1 bps/Hz).

5. On February 23, 2004, the Wireless Communications Association International, Inc. (WCA) filed a Petition seeking reconsideration ("the Petition") of the *Report and Order*. We received no oppositions or replies in response to the Petition but WCA, as well as individual members of WCA, clarified or refined the Petition in *ex parte* meetings with Commission staff. As discussed in further detail below, we considered all of the comments and *ex parte* presentations in the record in reaching our decisions.

III. Discussion

6. In its Petition, WCA claims that the *Report and Order* overlooked a number of detailed technical issues relating to the 71–76 GHz and 81–86 GHz bands ("70/80 GHz bands"). WCA suggests that the Commission take a course of remedial action as follows: (1) Require each new user of the 70/80 GHz bands to verify in advance that it will not cause harmful interference to any existing link; (2) reconsider its segmentation and channel loading requirements, preferably eliminating them but at the very least reducing the minimum throughput at which a designated assignment remains eligible for first-in-time interference protection; (3) adopt the interference protection criteria proffered by WCA, (4) shorten the construction period from 12 months to 180 days; (5) reconsider a trio of issues related to antenna and power requirements, including the Commission's rejection, in the *Report and Order*, of the industry's proposed power/gain tradeoff and requirement for certain radios to use ATPC, and its decision not to adopt a power spectral density limit; and (6) grant conditional operating authority to first-time 70/80 GHz applicants who have successfully coordinated and registered their proposed link but are awaiting their non-exclusive nationwide license. Following a discussion of the scope of this reconsideration and the effective date of our determinations, we address each of the issues raised by WCA in turn below.

A. Scope of Reconsideration

7. In the *Report and Order*, the Commission adopted rules and policies for non-Federal Government use of certain of the bands on an unlicensed (part 15) and licensed (part 101) basis. The Petition, and thus the instant *Memorandum Opinion and Order*, addresses only the rules and policies for non-Federal Government, licensed use of the 71–76 and 81–86 GHz bands.

B. Mandatory Interference Analyses Requirement for Non-Federal Users

1. Background

8. In the *Report and Order*, the Commission stated that due to the unique characteristics of the transmissions in these "millimeter wave" bands, no "prior coordination" among non-Federal Government licensees is required in advance of operation. In reaching this decision, the Commission focused only on traditional microwave prior coordination as set forth in part 101 of the Commission's rules and did not consider prior interference analyses. Specifically, the Commission stated that the antenna systems proposed for these bands would "concentrate energy in a very narrow path and have considerable attenuation at much shorter distances than occurs in the lower microwave bands" and that those characteristics would allow systems to be engineered to operate in close proximity to other systems so that many operations can co-exist in the same vicinity without causing interference to each other. Because the "pencil beam" characteristics of the bands diminish the risk of interference, the Commission reasoned that the first-in-time standard will protect the first-in-time registered or incumbent links, thus alleviating the need for traditional microwave prior coordination, which involves extensive interference analysis and "notice and response" to all licensees and applicants in the area that could be affected by the proposed operation. As a result, the *Report and Order* required that parties work out any interference that might occur after operations commence and interference is actually detected. Parties that are unable to reach an agreeable resolution are free to submit a complaint to the Commission after 30 days.

2. Petition

9. The Petitioner asserts that each registrant of a new link should be required to verify in advance, during the registration process, that its proposed link will not cause or receive harmful interference to or from any existing link previously registered in either the government or non-government databases. Notably, WCA suggests that with current technology permitting real-time, electronic interference analysis, the cost of prevention is negligible, while the consequences of harmful interference discovered after the fact can be "catastrophic" in terms of the severe impact a prolonged network outage has on the demand for 70/80 GHz radios. WCA states that for any application that requires gigabits-per-second speeds, "a network outage of thirty minutes is catastrophic, let alone thirty days." WCA objects to the interference protection procedures as outlined in the *Report and Order* because they are initiated only after a third-party database manager is notified of harmful interference. WCA is concerned that a "*post hoc*" approach would not adequately protect investment in equipment and would be both expensive and less likely to result in expeditious resolution. WCA argues that the Commission's approach requires the user to first ascertain that the system outage is due to RF interference (and not equipment malfunction) and then to notify the database manager so as to help identify the source of the interference. Even after the source is identified, if parties cannot resolve the issue informally, they must then file a complaint with the Commission 30 days after the matter is first reported to a database manager. With no guarantee on how long it will take for the Commission to rule, WCA asserts that customers are not willing to risk an outage of 30 days or longer "at some unspecified time in the indefinite future." Furthermore, WCA contends that a "*post hoc*" regime for commercial links makes little sense given the inescapable need to coordinate with Federal Government users in these bands. In sum, WCA argues that the "*post hoc*" approach adopted in the *Report and Order* imposes a one-time burden of coordinating with government users plus placing on licensees the continued burden of monitoring new registrations indefinitely.

10. In subsequent *Ex Parte* meetings, WCA further refined its position by stating that in a registration-only regime there may be a long delay between link registration and interference detection, making it harder to identify and correct the problem after the fact. WCA also asserts that interference analysis should be mandated because interference is often asymmetrical, with later registrants causing interference to first registrants without experiencing any interference in return, and thus later

registrants would have no incentive to protect incumbent registrants.

3. Discussion

11. We grant the Petitioner's request that we require interference analyses for non-Federal Government licensees. We still believe that interference is unlikely due to the "pencil-beam" nature of the transmissions in this service. However, a change from our original decision is justified after weighing the "unique pencil beam" characteristics of the 70/80 GHz band transmissions against new evidence in the record that the current regulatory scheme will delay, and perhaps hinder, industry efforts to use the 70/80 GHz band as anticipated (*e.g.*, for wireless broadband). WCA asserts that the consequence of harmful interference discovered only after the fact can be "bad enough to disqualify this technology as a viable option for much of the target market." We agree with WCA that the uncertainty and delay caused by an after-the-fact approach toward interference protection, and the severe impact of a network outage during the pendency of the interference resolution process, requires us to consider alternatives to the current registration process. We conclude that it would be easy, and far less costly in the long run, for non-government users to finish all interference analyses prior to equipment installation, particularly because non-government users already have to produce an interference profile to satisfy government coordination requirements. Although the risk of interference between users in these "pencil beam" bands should be low, we are persuaded by WCA's assertion that it is not low enough to risk the costs associated with an outage of 30 days or longer while a complaint is pending before the Commission. An examination of costs and benefits reveals that the costs of performing interference analyses would be small, particularly when compared to the benefits of preventing harmful interference to existing operations. In particular, we consider WCA's point that current technology permits real-time electronic interference analysis, thus rendering the cost of prevention minimal when compared to the cost of a network outage (the link data currently submitted by licensees at link registration will facilitate and expedite the process of obtaining interference analyses by providing the necessary site, antenna, and equipment data). We also note that the record contains no opposition to WCA's claims.

12. It is important to facilitate entry and development of this industry by lowering the risk of interference and thereby ensuring continued investment. Accordingly, we find that the additional assurance of no harmful interference provided by interference analyses in these bands would better serve the public interest. Therefore, we are revising the rules to require licensees, as part of the link registration process. to submit to the database manager an analysis under the interference protection criteria for the 70/80 GHz bands that demonstrates that the proposed link will neither cause nor receive harmful interference relative to previously registered non-government links. *See* 47 CFR 101.105(a)(5), App. B, *infra*. This requirement will apply to link registrations (new or modified) that are first submitted to a database manager on or after the effective date of this new requirement. (The requirement to submit an interference analysis to a database manager is subject to the Paperwork Reduction Act of 1995 and will be submitted to the Office of Management and Budget (OMB) for review. *See* paragraph 43, *infra*. The effective date of this new or modified information collection and/or third-party disclosure requirement will be no earlier than (1) thirty days after publication in the **Federal Register** and (2) the date that OMB approves it.)

13. In the unlikely event there is interference after operations commence, despite the prior interference analysis(es), the interference protection procedures set forth in the *Report and Order* govern: the first-in-time registered link is entitled to interference protection and the database manager will so inform the later-registered link operator that the link must be discontinued or modified to resolve the problem. If the complaining first-in-time licensee is not satisfied that the interference has been resolved, then 30 days after the matter is first reported to a database manager, a complaint may be filed with the Commission. Although not raised in the Petition, we take this opportunity to clarify that the 30-day period starts to run as soon as the database manager is notified in keeping with the overall premise that legitimate interference concerns must be addressed quickly.

14. The database managers will accept all interference analyses submitted during the link registration process and retain them electronically for subsequent review by the public. It is important for the "first-in-time" determination, and for adjudicating complaints filed with the Commission, that the interference analysis captures the exact snapshot in time (*i.e.*, conditions at the time-of-link-registration) that will be dispositive in a dispute. Without the benefit of an interference analysis on file, it would be much more difficult for registrants to recreate conditions accurately after the fact. In addition to being responsible for establishing and maintaining the database, the database managers are not precluded from offering additional services, such as frequency coordination, which will assist a licensee in designing a link, or their own interference analyses. (We note that the licensee is under no obligation to use the third-party database manager's services. Licensees are free to conduct their own interference analyses or to procure the interference analyses from a third party source or the database managers, provided the analyses meet generally accepted good engineering practice and the interference protection standards of § 101.105 of our rules.)

C. Segmentation and Channel Loading Requirement

1. Background

15. The introduction of competition plays a major role in how the market reacts to new and expanded telecommunications services. Ensuring a competitive environment was at the forefront of the Commission's original decision to segment the spectrum into units smaller than 5 GHz. Stating that such a plan will encourage efficiency, the Commission provided four unpaired 1.25 GHz segments in each band, for a total of eight segments intended to facilitate adequate guard bands and the maximum number of users at a given location. The Commission did not subject the spectrum to any aggregation limit, so each licensee can operate on up to all 12.9 GHz of co-primary spectrum and use as many segments as it needs on a 1.25 GHz increment. The Commission stated that the flexible or "soft" segmentation, coupled with a loading requirement, are appropriate safeguards that provide new entrants with reasonable access to spectrum by ensuring that spectrum is used rather than hoarded. (Segments are "soft" because there is no limit on aggregating segments, no pairing requirement (pairing is permitted but not required), and no channelization requirement within the segments. "Soft" segmentation provides a factor of scalability to the amount of spectrum that is authorized to a given user.)

16. The Commission also determined that commercial 70/80 GHz licensees will have to meet the 1 bps/Hz loading requirement of § 101.141 of the Commission's rules. Thus, when a licensee has not met that requirement, the registration database would be modified to limit coordination rights to

the spectrum that meets the § 101.141 requirement and the licensee loses protection rights on spectrum that has not.

2. Petition

17. The Petitioner asks the Commission to reconsider its "soft" segmentation of the 70/80 GHz bands and to reduce or eliminate the channel loading requirement. WCA asserts that there is no public interest benefit to be gained by regulating the width of the channels, the number of channels used, or the data rate transmitted. WCA also states that the record supports the 70/80 GHz bands not being channelized and that licensees should be permitted to use bandwidths of up to 5 GHz in each direction, in order to maximize flexibility in link design and to facilitate a smooth "upgrade path" as a user's data needs expand. According to the Petition, the segmentation scheme may force manufacturers to produce radios in conformance with the 1.25 GHz increments and, because some modulation schemes do not fit neatly into 1.25 GHz increments, this complicates equipment design and raises the cost of equipment.

18. WCA asserts that no loading requirement is currently necessary and that the Commission should allow the marketplace to dictate the appropriate balance between spectral efficiency, equipment cost, and bandwidth. WCA also states that depending on how the loading requirements are applied, the joint operation of the segmentation and loading rules might discourage or prevent flexible and low-cost frequency plans within a given "spatial pipe." ("Spatial pipe" is a term used by WCA to describe "a radio link between two points within which users would be permitted to use some or all of the spectrum for a single pair or multiple pairs of radios, using any modulation scheme the licensee desired.") WCA argues that the Commission can impose a channel loading requirement later if applicants find themselves precluded from deployment due to inefficient spectrum utilization. WCA notes that because the spectrum must be occupied one narrow pipe (or pencil beam) at a time, it would be impossible to warehouse the spectrum and otherwise gain market power. Petitioner states that the build-out requirement makes this impossible because the expensive radios in these frequencies make it less likely for competitors to be able to finance a plan to gain market dominance. Further, a 1 bps/Hz loading requirement would prohibit the use of existing, inexpensive binary signaling modulation schemes (*e.g.*, on-off keying (OOK) and binary phase shift keying (BPSK)), when it is in the public interest to facilitate the use of the simplest possible modulation schemes in these bands, and may force manufacturers to use other higher-order modulation schemes that may be more costly and experimental, and hence more time-consuming to develop, thereby delaying introduction of the millimeter wave equipment. Alternatively, WCA argues that if the Commission decides to retain a loading requirement, it should reduce the current 1 bps/Hz requirement to a 0.125 bps/Hz standard, measured over the bandwidth specified in the emission designator of the equipment employed.

3. Discussion

19. We grant WCA's proposal to eliminate segmentation and grant in part WCA's request to modify the 1 bps/Hz loading requirement in the 70/80 GHz bands. Our initial concerns about spectrum warehousing or monopolistic behavior by first registrants will be addressed by the 12-month construction requirement and the existing requirement to provide equipment and site-related data at link registration, including the type of emission designator and corresponding bandwidth. Together, these requirements limit a licensee to registering only for what it intends to build within 12 months, thus limiting opportunities for spectrum "hoarding." Moreover, we do not find segmentation to be necessary to avoid warehousing or monopolistic behavior because the "pencil beam" characteristic of transmissions in these bands ensures that even if a licensee registers for all 5 GHz in either the 71–76 GHz or 81–86 GHz bands, such transmissions will still be limited to narrow "pencil beams" and thus will not generally preclude other link registrants from locating nearby. (In a letter, dated January 31, 2005, WCA asserted that the only scenario in which the industry's proposal to allow both 50 dBi and 43 dBi antennas would lead to fewer link deployments than under the existing rules would be in the case of a very-high density, hub-and-spoke configuration that one might find on the roof of a skyscraper in an urban core.) Such high link densities will be further facilitated by our decision to require prior interference analyses together with the "pencil beam" and "spatial pipe" concepts envisioned for these bands. We are convinced that elimination of the segmentation scheme will provide manufacturers the freedom to produce radios utilizing a variety of modulation schemes, rather than only those that fit within a 1.25 GHz increment, thus lowering the cost of equipment for new entrants and spurring technological development and rollout. Furthermore, we find that allowing users the maximum flexibility in link design and the freedom to upgrade as their needs evolve will facilitate new entry in this nascent service.

20. Similarly, we find that it would be more prudent to adopt WCA's proposed 0.125 bps/Hz efficiency requirement to promote technical flexibility. In the *Report and Order*, we adopted a loading standard to promote efficient use of the spectrum and we established 1 bps/Hz as the efficiency requirement for these bands given that it is the least burdensome bit rate specified under part 101. However, while 1 bps/Hz is a reasonable and readily achievable efficiency requirement for microwave operations, we conclude that retaining the requirement for these bands would unnecessarily risk inhibiting the nascent industry's flexibility to offer products or services that meet their customers' needs. In this connection, we consider WCA's point that the requirement precludes the use of certain inexpensive modulation schemes (that are not precluded by a 0.125 bps/Hz efficiency requirement) together with the bands' unique pencil-beam characteristic and nonexclusive licensing regime (which ensure that any given link is very unlikely to preclude another licensee from operating a link in the same area). Put differently, although 1 bps/Hz is a reasonable efficiency rate, retaining it for these bands could unnecessarily preclude product offerings or increase equipment costs for customers such as plants, universities, or farms, that could otherwise use pencil-beam links (perhaps within their property), to transfer minimal amounts of data using devices that need not achieve 1 bps/Hz to meet the user's need, *e.g.*, remote control or telemetry. Moreover, as WCA observes, the Commission retains discretion to consider in the future whether a higher efficiency standard is necessary, *e.g.*, after the industry better develops equipment and usage. (Because the primary basis for adopting a lower channel loading requirement is to spur deployment by lowering equipment costs, there is no advantage to selecting a channel loading requirement between 0.125 bps/Hz and 1 bps/Hz. Any channel loading requirement greater than 0.125 bps/Hz will affect equipment development by limiting a manufacturer's choice of modulation schemes.) We also realize that we cannot impose a practical analog standard at this time until we determine that licensees are actually

utilizing analog equipment and have enough data and history to determine how much traffic is warranted over certain bandwidths. We acknowledge that problems may arise under a 0.125 bps/Hz limit when the bands become more congested, but we find the risk of traffic congestion to be lower due to the "pencil beam" transmission characteristics of this service. As stated above, our decisions to employ interference analyses and to retain the existing power/gain tradeoff standard associated with the narrow "pencil beam" transmissions envisioned in these bands will facilitate higher link densities. Furthermore, as this industry matures, it is inevitable that more efficient systems will force those using the lower 0.125 bps/Hz limit to upgrade to equipment with higher bit rates in order to stay competitive. We also find that lower-cost equipment will provide opportunities to develop the service, particularly in underserved rural areas where build-out costs are often the largest barrier to entry into those markets.

D. Interference Protection Criteria

1. Background

21. In the *Report and Order*, the Commission stated that the record supports the use of Part 101 in these bands to curtail possible harmful interference. Accordingly, the Commission adopted 36 dB as the minimum desired-to-undesired (D/U) ratio for protection of existing digital and analog facilities and a 1 dB degradation limit to the static threshold of the protected receiver for existing digital systems. (For purposes of our discussion, we will use the desired-to-undesired (D/U) ratio interchangeably with the carrier-to-interference (C/I) ratio.)

2. Petition

22. Because WCA expects the vast majority of early and mature deployments in the 70/80 GHz bands to employ digital modulation, particularly in densely populated areas, WCA believes maintaining a carrier-to-interference signal (C/I) ratio of 36 dB as the minimum would substantially overprotect many links, possibly giving those first in operation unneeded and unwarranted preemption rights over later entrants. Consequently, WCA asks the Commission to remove the 36 dB minimum limit from § 101.147(z) of the Commission's rules and to adopt WCA's proposal to amend § 101.105 of the Commission's rules so as to set the C/I ratio to protect each link as needed but in no event more than 36 dB. In addition, WCA proposes adoption of interference protection criteria based on no more than 1.0 dB of degradation to the static threshold of a protected receiver using digital modulation, and no more than 1.0 dB of degradation to the signal-to-noise (S/N) requirement of the receiver that will result in acceptable signal quality for continuous operation of a protected receiver using analog modulation.

3. Discussion

23. We grant the Petition in part by deleting the 36 dB C/I ratio altogether because we find that a 1 dB receiver degradation standard provides adequate protection for both digital and analog systems and addresses WCA's concern that the current rule "over protects" existing links. (Although we anticipate, as does WCA, that the majority of entrants will be utilizing digital equipment, we will, consistent with our shift away from a command-and-control regime toward a flexible scheme, not preclude the option for new entrants to employ analog equipment in this still-undeveloped industry. Our decision also focuses on reception which is consistent with the policy goals set forth in the Commission's *Spectrum Policy Task Force Report*. That report also emphasizes adopting more flexible and market-oriented regulatory models to increase opportunities for technologically innovative and economically efficient spectrum use and recommends that regulatory models clearly define the interference protection rights and responsibilities of licensees.) We find that deleting the 36 dB C/I interference protection requirement, when combined with a requirement to employ best engineering practices to design systems, will best serve the public interest. By relying on the ability to determine a "reasonable" C/I requirement based on the characteristics of the equipment deployed on a specific link in a specific location, we provide greater flexibility to new entrants, will not overprotect certain incumbent stations, and will not be subject to abuse by entrants unreasonably claiming a need to be protected to a high C/I ratio. Eliminating the 36 dB C/I ratio provides new entrants the flexibility to select and develop equipment best suited for their business models and relieves them of the burden of providing more interference protection than necessary. WCA proposes doing away with the 36 dB C/I minimum, and requests setting a 36 dB C/I as a maximum instead, with the presumption that the majority of entrants will deploy digital equipment, but offers no technical basis for choosing 36 dB as the maximum threshold. Setting a maximum C/I ratio unnecessarily constrains the design of deployments and may not allow for adequate protection to all systems, in particular analog systems. We also note that the Commission's service rules have traditionally not established a maximum C/I, but rather specify a minimum C/I ratio to protect incumbents. Moreover, it is not possible to select specific C/I ratios that would adequately protect both digital and analog systems without possibly overprotecting some systems and under protecting others. Rather than setting a C/I limit based on a presumption of a digital-only environment, and given the early stage of equipment development in this nascent service, it would be more prudent to eliminate the existing standard to maximize flexibility and afford licensees the freedom to develop and deploy equipment, analog or digital, to fit their specific needs. Setting an arbitrary limit could preclude classes of equipment which may need higher C/I ratios than would be required in the Commission's rules.

24. We find that adopting, in part, the changes sought by WCA will provide a specified level of protection for both analog and digital systems without unnecessarily constraining system design. We also find that our aforementioned decision to require interference analyses will enable licensees to determine their needed C/I and the C/I requirements of incumbent link registrants from equipment specifications contained in the third party link registration database. This will give licensees the opportunity to determine a "reasonable" C/I requirement based on the characteristics of the equipment utilized on a specific link.

25. Accordingly, we delete the minimum 36 dB C/I interference protection requirement and adopt a 1.0 dB degradation limit of the baseband signal-to-noise ratio required to produce an acceptable signal in the receiver for analog modulation. Also, we reaffirm our requirement adopted in the *Report and Order* that previously registered links be protected to a T/I level of 1.0 dB of degradation to the static threshold of the protected receiver for digital modulation. Because the 1.0 dB limit for degradation of the T/I ratio was adopted in the *Report and Order*, we need not address WCA's request to impose this requirement.

E. Construction Period

1. Background

26. Persuaded by the aggressive construction requirements set forth in the record, in the *Report and Order* the Commission shortened the traditional 18-month construction requirement of § 101.63 of the Commission's rules to 12 months. The Commission clarified that each construction period will commence on the date that the third-party database manager registers each link and that it will not require users to file a notification requirement as mandated by § 1.946(d) of the Commission's rules. Instead, licensees will provide notice to a database manager to withdraw unconstructed links from the third-party link registration database.

2. Petition

27. The Petition proposes to shorten the build out period from 12 months to 180 days. In submitting modifications to § 101.63(b) of the Commission's rules, WCA proposes that construction of each link occur within 180 days, commencing on the date of the registration for that particular link. WCA provides no justification for its proposal to change the construction period.

3. Discussion

28. We do not want to prematurely foreclose new entrants who may not have readily available capital to build out within a short timeframe. Mandating a 180-day build-out period on a nascent service with little or no equipment available may result in a flood of waiver requests and impose unnecessary costs or burdens on new entrants. It is our understanding that equipment production is underway, so we are hesitant to compress build-out where the timing of equipment rollout is not certain. We also do not want to set regulatory standards so high that it is more likely to impede build-out than encourage development of the service. The Commission reserved the discretion to revisit the issue if experience indicates that additional measures are necessary and we continue to find that to be the prudent approach in this developing service. Thus, we deny Petitioner's request to shorten the build-out period.

F. Antenna and Power Requirements

1. Minimum Antenna Gain and Maximum Power

a. Background

29. In the *Report and Order*, the Commission adopted a minimum 50 dBi and 0.6 degree half-power beamwidth which was supported by most commenters. The Commission agreed with the WCA proposal for technical parameters specifying a minimum 50 dBi gain in order to maximize the efficiency and use of the spectrum but decided not to adopt parameters for antennas with a gain of less than 50 dBi. The Commission stated that it could foresee legacy antennas with undesirable radiation patterns that could pose serious obstacles to the growth of microwave links in these bands in highly populated urban areas in the future.

b. Petition

30. WCA asks the Commission to adopt the "power/gain tradeoff" proposal developed by the industry, *i.e.*, 43 dBi minimum antenna gain and a 1.2 degree half-power beamwidth, rather than the adopted 50 dBi minimum antenna gain and 0.6 degree half-power beamwidth. WCA argues that the adopted 50 dBi minimum gain requirement necessitates the use of antennas that are a minimum of 0.61 meter (2 feet) in diameter, thereby adding to the cost of infrastructure, and thus potentially precluding greater deployment. Specifically, WCA states that these antennas are less marketable, more costly, and more sensitive to tower siting issues than smaller antennas. Petitioner asserts that the use of larger antennas limits available tower structures because of loading limitations and that the sway and twist of many towers are too great to be compatible with antennas with 0.6 degree or less beamwidth. According to WCA, less restrictive beamwidth rules coupled with a corresponding power reduction would maximize the use of existing antenna structures and promote the deployment in the 70/80 GHz bands without increasing the potential for interference. WCA argues adopting that the industry's proposal would provide more flexibility and lower the overall interference environment, provided that for antennas with gains of less than 50 dBi, the maximum EIRP is decreased by 2 dB for every 1 dB decrease in the antenna gain. Petitioner claims that a more flexible specification with a corresponding reduction in power would make it possible to use lower-cost, lower-power products, thus lowering barriers to entry without increasing the potential for interference. (In doing so, WCA acknowledges that the use of smaller antennas will result in wider transmitted beamwidths, but asserts that the interference analysis proposed by WCA will ensure that the use of smaller antennas will not unduly reduce frequency re-use opportunities.) In this connection, WCA claims that computer simulations show the power/gain tradeoff is even more important where Automatic Transmitter Power Control (ATPC) is not used although WCA emphasizes that it is important to disentangle the power/gain tradeoff from the separate question of whether to require ATPC.

31. In late January 2005, WCA further explained that, apart from the earlier engineering claims, the consensus estimate of its membership is that adopting the proposal would expand the market for 70/80 GHz radios from perhaps 20 to 25 percent of business locations to perhaps 75 to 80 percent of business locations. WCA notes that there are approximately 750,000 business locations of 20 or more employees (which typically indicates a need for high bandwidth) within one mile of a fiber point-of-presence (POP) but that most of these buildings do not have fiber connections. In this connection, WCA explains that the existing Commission's requirement for 50 dBi gain antennas would allow industry to serve only business locations with large concentrations of users, whereas 43 dBi gain antennas would allow the industry to serve locations with lower density business locations, such as campuses or office park settings. WCA also acknowledges that its power/gain tradeoff proposal may result in a potential reduction in deployment density on relatively few large buildings, but avers that this reduction pales in comparison to the much larger benefit of making the service attractive in lower-density business locations. WCA asserts that the spectral cost of the industry's proposed rule is therefore low because the theoretical reduction in the maximum density of hub-and-spoke links on a single rooftop will be limited to a very small subset of potential deployments. For example, WCA states that Gigabeam, a WCA member focusing on using 50 dBi gain antennas to serve the higher-density end of the market, performed a technical analysis that shows that it is possible to place 200 simultaneous two-way gigabit-class links on a large skyscraper rooftop using 43 dBi gain antennas. In this regard, WCA explains that while requiring at least a 50 dBi gain antenna might allow double that density to 400 links, there are simply not many rooftops where that level of deployment would occur. Moreover, WCA points out that adopting the industry proposal "would not *prevent* the use of 50 dBi gain antennas; it would only provide the additional

flexibility for lower-gain, lower-power applications on *other* rooftops." WCA also emphasizes that allowing flexibility to deploy lower-gain antennas at lower powers would allow the industry to address significantly more business locations because smaller antennas are cheaper to manufacture and cheaper and easier to mount because they require less expensive and thinner materials (plastic or metal), and a smaller surface area. WCA states that all antennas, large or small, must be manufactured with low surface tolerances in order to meet the Commission's sidelobe requirements but that it is "far more expensive and difficult to produce such low surface tolerances for larger antennas than for small ones for the simple reason that there is a larger surface area." WCA provides price ratios between the smaller and larger antennas that showed that the larger antennas could, depending on the vendor, cost from 3 to 8 times as much as the smaller antennas included in its proposal. WCA adds that the current "one-size-fits all approach" means that the antenna cost at the lower end of the market will become a significant portion of the retail price of the link, causing prices to be higher than they need to be, and demand to be suppressed. WCA asserts that while some market segments, such as those in higher-density areas, are relatively price insensitive, they do not represent the entire market. Rather, WCA states that the "other half (or more)" of the market resides in lower-density locations, businesses in campus or office park settings, with buildings of just two or three stories, that will initially deploy 1 Gigabit (Gb)/s Ethernet links and are price sensitive, *i.e.*, will not invest if the price is too high. Therefore, WCA states that its consensus estimate is that adoption of its proposal would dramatically expand the market for 70/80 GHz radios from perhaps 20 to 25 percent of business locations to perhaps 75 to 80 percent of business locations.

c. Discussion

32. We grant WCA's request to modify our technical requirements to allow for a minimum antenna gain of 43 dBi and 1.2 degree half-power beamwidth on policy grounds. We find that allowing smaller, wider beamwidth antennas is in the public interest because it will promote increased usage of the 71–76 GHz and 81–86 GHz bands in areas where those frequencies might otherwise be underutilized. Although the smaller antennas will produce a wider beam, we find that they will produce beam patterns that will retain the "unique pencil beam" characteristics envisioned in these bands. We also find that providing licensees the flexibility to select a wider range of equipment that best suits their particular business plans, whether the target market is high-density, high-rise locations in urban core areas or lower-density, office park settings with buildings of just two or three stories, will facilitate development and growth in this service. We also consider the cost information and market data that WCA provided to be illustrative of the significant economic impact that allowing smaller, less expensive antennas will have on the deployment of services in the 71–76 GHz and 81–86 GHz bands from 20–25 percent to 75 to 80 percent of business locations.

33. For the record, in reaching this decision, we are not persuaded by WCA's claim that allowing the 43 dBi antenna to operate under the "power/gain tradeoff" would result in less interference than the 50 dBi antenna. WCA's analysis wrongly assumes that all links will operate at the maximum allowed power. (A review of our licensing records for point-to-point stations below 24 GHz reflects that less than one percent of these frequencies are authorized for the maximum EIRP allowed under part 101.) We find it unlikely that all 70/80 GHz links will operate with the full power allowed under the rules, given that point-to-point links are deployed to transmit data, *etc.*, between two or more locations defined by the users' needs and sound engineering, rather than the maximum distance achievable using the maximum allowable power levels. *See* 47 CFR 101.113 (Transmitter power limitations) ("On any authorized frequency, the average power delivered to an antenna in this service must be the minimum amount of power necessary to carry out the communications desired.") Although WCA's October 8, 2004 *Ex Parte* asserts that Cisco Systems' simulation results demonstrate that random deployment would not suffer increased link failures as a result of the proposed power/gain tradeoff, Cisco noted earlier that, for equal path lengths (not for equal transmitter power) "the percentage of link failures decreases as the half power beamwidth (HPBW) decreases" and that "[w]ith equal maximum path length, devices with narrower beam, higher gain antennas require less transmit power, resulting in lower interference levels in the system." In other words, at any appropriate EIRP needed to make a link work reliably, a 0.6 degree beamwidth will always have less potential to block other licensees from operating links between the same most desirable points (*e.g.*, the rooftops of the two tallest buildings in an urban area) than a 1.2 degree beamwidth operating with the same EIRP. In sum, there is less side lobe interference potential with the 50 dBi gain antennas, as well as less overall interference potential because the transmitter power needed is reduced with the higher gain, narrower beam, antennas.

34. Nonetheless, as discussed above, we are persuaded as a policy matter that relaxing the technical parameters to allow for lower-gain, wider beamwidth antennas best serves the public interest by promoting increased development of the nascent 70/80 GHz industry and thereby increase access to the 70/80 GHz bands that might otherwise remain underutilized. We adopt Petitioner's proposed modifications to § 101.115 of the Commission's rules including new technical parameters for radiation suppression for cross polarization discrimination and for co-polar discrimination between 1.2 and 5 degrees. The benefits of smaller antennas in terms of aesthetics and structure loading are undeniable, as a general matter, and the record before us reflects a potential for significant cost savings associated with deployment of the smaller antennas, with the larger antennas costing from three to eight times as much as the smaller antennas. We also consider the concern that a "one-size-fits all approach" to antenna equipment may fail to address the needs of over half of the potential market. In sum, we find that revising the rules to allow antenna gain less than 50 dBi (but greater than or equal to 43 dBi) with a proportional reduction in maximum authorized EIRP in a ratio of 2 dB of power per 1 dB of gain will best serve the public interest by expanding the potential for services from the 20 to 25 percent of business locations in high-density urban areas to 75 to 80 percent of business locations, particularly in lower-density locations. We further find that these benefits outweigh the relatively minor overall increase in interference potential resulting from these rule changes. In this connection, we consider that the new interference analysis requirement adopted herein will also provide great benefit by reducing the potential for harmful interference. Because our decision will necessitate modifications to one or more databases used to register links, we advise licensees that it will not be possible to submit registrations for links with antennas that meet the revised rule, *i.e.*, antenna gain less than 50 dBi (but greater than or equal to 43 dBi) until all necessary software

modifications are completed. Licensees interested in filing such links should first consult with a database manager as to the status of the system updates.

2. Automatic Transmitter Power Control (ATPC)

a. Background

35. In the *Report and Order*, the Commission decided against requiring ATPC on the basis that the industry is in the early stages of development of equipment for these bands, and the Commission believed that manufacturers would benefit more from relaxation of the transmitter equipment specifications than from relaxation in the antenna requirements. Thus, the Commission determined that users need not bear the additional cost of ATPC. In fact, the Commission saw more benefits from allowing more flexibility in the manufacturing of the transceivers, which contain more expensive hardware, than in the manufacturing of the antennas.

b. Petition

36. WCA asks the Commission to require ATPC for links with EIRP greater than 23 dBW. (ATPC automatically increases or decreases the output power of a transmitter based on the received signal level.) The Petition states that industry simulations conducted confirm that use of ATPC for links that have EIRP greater than 23 dBW will have a significant, positive contribution toward managing interference in the 70/80 GHz bands and will facilitate high-density deployment of 70/80 GHz radios.

c. Discussion

37. We deny WCA's proposal to require ATPC for links with EIRP greater than 23 dBW. To require ATPC as one of several useful tools to help control interference would run counter to the flexible approach we have adopted to encourage development in the 70/80 GHz bands, particularly where the record does not show that requiring such tools is either necessary or sufficient to resolve adverse operating conditions. Moreover, we continue to believe that the more prudent course during the early stages of technology development in these millimeter wave bands is to allow manufacturers and licensees maximum flexibility and freedom to design a wide range of equipment necessary to provide services in these bands. Furthermore, although ATPC technology has been available to licensees in other frequency bands and is allowed under part 101, the Commission has not mandated its use in the past for any part 101 microwave service in order to give licensees the discretion to identify their own equipment needs. Various technical and economic factors may provide incentives to licensees to use the technology but there are circumstances when its use may not be necessary or desirable. The Commission is therefore reluctant to mandate the use of a specific technology which may not be necessary in all cases and may be a more expensive means to increase reliability or control interference than others that could achieve the same end result. Because the Commission is now requiring interference analyses to be completed before operations, we find that the interference potential is more confined than under our previous rules, and make ATPC a less desirable option where other mitigating factors can be used, such as shielding or spatial diversification. There are also techniques other than ATPC to increase reliability, such as the use of free space optical technology for diversity. We find that licensees should be free to use ATPC or other technologies, coupled with the interference protections otherwise provided for this service, to preserve quality of services, and should have the flexibility to design and deploy systems to meet their needs without increasing the potential for interference to other systems.

3. Power Spectral Density Limit

a. Petition

38. WCA asks the Commission to adopt a limit on power spectral density to no more than 150 mW/100 MHz. If there are no power spectral density limits, WCA believes it would be possible for a device to transmit an EIRP of 55 dBW in an arbitrarily small bandwidth (*e.g.*, 1 megahertz). According to WCA, such a device would have significantly different spectral and spatial properties from the "virtual fiber" radios for which the 70/80 GHz band is uniquely well suited since narrowband devices would have much longer ranges and much larger exclusion zones, significantly reducing potential deployment densities. Stating that there are already many bands at lower frequencies in which narrower bandwidths can be used, WCA seeks adoption of the limit in order to preserve the 70/80 GHz bands for high bandwidth radios as a wireless alternative for fiber-equivalent services.

b. Discussion

39. We grant WCA's proposal to adopt a power spectral density limit of no more than 150 mW/100 MHz in order to preserve the 70/80 GHz bands for high bandwidth transmissions. Although narrow bandwidth emissions are not the intended use of these frequency bands, and we did not believe that a licensee would "waste" large amounts of power to do this, given the nature of the investment necessary, we agree with WCA that it could be possible for someone to use the flexibility in our present rules to use a narrow bandwidth with a high power density, especially if they were to use analog signals. Thus, we find that a minor rule change can easily eliminate this potential problem and retain our goal for wide bandwidth use of the 70–80–90 GHz bands. We conclude that the 150 mW/100 MHz power spectral density limit will facilitate deployment of the high data-rate transmissions envisioned in these bands, for so-called "fiber-equivalent" wireless services.

G. Conditional Operating Authority

1. Petition

40. WCA seeks to have the Commission amend § 101.31(b) to add the 70/80 GHz frequencies to the list of frequencies for which conditional operation is available, so that nationwide license applicants may get links up and running as soon as Federal Government coordination by NTIA and link registration have been completed. The Petition asserts that conditional operating authority is an important element of licensing under part 101 and therefore should also be available to 70/80 GHz licensees.

2. Discussion

41. We acknowledge that certain microwave services under part 101 are permitted to operate while awaiting a license, but we are concerned that introducing conditional operating authority here could risk confusion as to the interference protection date for purposes of determining the first-in-time registered link. Furthermore, while the application for a nationwide license is a one-time burden for common carriers, we note that private and non-common carriers are not subject to the statutory 30-day Public Notice period and our licensing records reflect that their applications are routinely granted on virtually an overnight basis. Finally, we note that both NTIA and the FCC's ULS databases are configured so that link data submissions are reviewable and subject to approval after verification that the applicant has a valid call sign (*i.e.*, a license for the 71–76, 81–86, and 92–95 GHz service).

42. In *ex parte* discussions with the Bureau on July 22, 2004, WCA conceded that pre-license operating authority is less important if nationwide licensing

occurs quickly, which has been the case to date. Given that grant of the nationwide license carries with it a reconsideration period—which would allow the licensee to build-out notwithstanding a challenge—and link registrations are subject to challenge only after operations commence, there appears little need for conditional operating authority. We note that even under our conditional operating rules, parties must discontinue operations should a site be subject to a challenge. On our own motion, however, we are revising § 101.1513 of the rules, 47 CFR 101.1513, to make clear that the ten-year license term runs from the initial grant date of the license.

IV. Procedural Matters

A. Paperwork Reduction Analysis

43. This document contains new or modified information collection or third party disclosure requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

44. The Commission will include a copy of this Memorandum Opinion and Order on *Reconsideration* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A).

B. Supplemental Final Regulatory Flexibility Analysis

45. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking* in WT Docket No. 02–146 (*NPRM*). The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. In addition, a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *Report and Order* in WT Docket No. 02–146 (*Report and Order*). This present Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) for the *Memorandum Opinion and Order* conforms to the RFA.

1. Need for, and Objectives of, Adopted Rules

46. *The Memorandum Opinion and Order* responds to the Petition for Reconsideration submitted by the Wireless Communications Association International, Inc. on February 23, 2004. The need for and objectives of the rules adopted in this *Memorandum Opinion and Order* are the same as those discussed in the FRFA for the *Report and Order*. In the *Report and Order*, the Commission adopted rules for the licensing and operation of the 71–76 GHz, 81–86 GHz and 92–95 GHz (70–80–90 GHz) spectrum bands. Licensees may use the 70 GHz, 80 GHz, and 90 GHz bands for any point-to-point, non-broadcast service on a non-common carrier and/or on a common carrier basis. *See* 47 CFR 101.1507, 101.1511. At the time of adoption, there were no rules in place for these bands. The rules implemented non-exclusive, nationwide licensing with site-by-site registration for these bands. *The Memorandum Opinion and Order* does not change the rules for unlicensed operation adopted in the *Report and Order*. The Commission concluded that this approach will also stimulate investment in new technologies, provide a critical means of achieving greater spectrum efficiency, and promote research and development.

47. Consistent with these policy goals, *The Memorandum Opinion and Order* adopts an interference analysis requirement and power spectral density limit and relaxes some of the existing technical standards for the 71–76 GHz and 81–86 GHz bands to stimulate development of a nascent industry. Specifically, *The Memorandum Opinion and Order* amends the existing technical rules by (1) eliminating the band segmentation and loading requirement and adopting an efficiency requirement of 0.125 bps/Hz, (2) modifying the interference protection criteria by deleting the minimum 36 dB C/I ratio, adopting for analog systems a 1.0 dB degradation limit for the baseband S/N ratio, and reaffirming the existing 1.0 dB receiver T/I ratio degradation limit for digital systems; and (3) modifying the technical parameters to accommodate smaller, less expensive antennas with a minimum antenna gain of 43 dBi and 1.2 degrees half-power beamwidth. The Commission declined Petitioner's requests: to adopt 36 dB as the maximum required C/I ratio; to shorten the construction period from 12 months to 180 days; to provide conditional authorization during the pendency of an application for a nationwide, non-exclusive license; and to require ATPC for links with EIRP greater than 23 dBW.

2. Summary of Significant Issues Raised by Public Comments in Response to the FRFA

48. We received no comments directly in response to the FRFA in this proceeding. In addition, no comments were submitted concerning small business issues. *Description and Estimate of the Number of Small Entities to Which the Adopted Rules Will Apply*

49. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

50. In this section, we further describe and estimate the number of small entity licensees and regulatees that may be affected by rules adopted pursuant to this *Memorandum Opinion and Order*. At this point in time, the Commission's Universal Licensing Systems (ULS) only lists three licensees, two registered links, and little or no equipment in the 70–80–90 GHz service. We further note that there are three third-party database managers. Each link must be registered prior to operation by licensees in the 70–80–90 GHz service. The *Report and Order* adopted rules to permit an unlimited number of non-exclusive, nationwide licenses for all 12.9 GHz of spectrum. Given that the service is still in the early stages of development, it is difficult to determine the exact number of small business entities that will be affected.

51. In the FRFA, the Commission stated that the SBA has developed a small business size standard for Cellular and Other Wireless telecommunication, which consists of all such firms having 1,500 or fewer employees. According to Census Bureau data for 1997, in this category there was a total of 977 firms that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional twelve firms had employment of 1,000

employees or more. Thus, under this size standard, the majority of firms can be considered small. Although the service is still developing, we apply this standard to the wireless telecommunication firms in the 70–80–90 GHz service that will utilize the "pencil beam" technology to provide wireless broadband services and high-speed, point-to-point wireless local area networks.

52. The applicable definition of small entity is the definition under the SBA rules applicable to manufacturers of "Radio and Television Broadcasting and Communications Equipment." According to the SBA's regulation, an RF manufacturer must have 750 or fewer employees in order to qualify as a small business. Census Bureau data indicates that there are 858 companies in the United States that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities. Therefore, we reiterate our belief that no more than 778 of the companies that manufacture RF equipment qualify as small entities. We note again that it is difficult to determine the exact number of small business entities that will be affected in this nascent industry but we apply this standard to the "pencil beam" antenna equipment manufacturers in the 70–80–90 GHz service.

3. Description of Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

53. In this section of the Supplemental FRFA, we analyze the projected reporting, recordkeeping, and other compliance requirements that may apply to small entities as a result of this *Memorandum Opinion and Order*. In the *Memorandum Opinion and Order*, we adopt an interference analysis requirement which will require all licensees to obtain an interference analysis and electronically submit a copy to the third party database manager as part of the link registration. Correspondingly, as part of their duties, the third-party database managers will retain these submissions electronically and make them available, online to the public. The other decisions in the *Memorandum Opinion and Order* impose compliance requirements rather than reporting or recordkeeping requirements: We adopt a power spectral density limit and amend existing technical requirements by (1) eliminating the band segmentation and loading requirement and adopting an efficiency requirement of 0.125 bps/Hz; (2) modifying the interference protection criteria by deleting the minimum 36 dB C/I ratio, adopting for analog systems a 1.0 dB degradation limit for the baseband S/N ratio, and reaffirming the existing 1.0 dB receiver T/I ratio degradation limit for digital systems; and (3) modifying the technical parameters to accommodate smaller, less expensive antennas with a minimum antenna gain of 43 dBi and 1.2 degrees half-power beamwidth.

4. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

54. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its adopted approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

55. In choosing among the various alternatives in the *Memorandum Opinion and Order*, we sought to minimize the adverse economic impact on licensees, including those that are small entities. For instance, we decided that the purpose of the interference-analysis requirement would not be met by having licensees certify compliance, rather than submitting the analysis to the third-party database manager. In adopting the interference-analysis requirements, we considered the costs and benefits of imposing an interference analysis requirement, particularly for small entities, and concluded that the costs of performing such analyses would be relatively small, particularly when compared to the benefits of preventing harmful interference to existing operations for all licensees. We also find it important to facilitate entry and development of this industry by lowering the risk of interference and thereby ensuring continued investment. Finally, we find that the additional assurance of no harmful interference provided by interference analyses in these bands will better serve the public interest.

56. Our decision to eliminate the band segmentation and loading requirements will provide licensees, including small entities, the freedom to produce radios utilizing a variety of modulation schemes, rather than only those that fit within a 1.25 GHz segment, thus lowering the cost of equipment for new entrants and spurring technological development and rollout. Moreover, it also allows users the maximum flexibility in link design and the freedom to upgrade as their needs evolve thus facilitating new entry in this nascent service. Our related decision to eliminate the 1 bps/Hz loading requirement in favor of a lower efficiency requirement of 0.125 bps/Hz for equipment certification will allow the use of certain inexpensive modulation schemes, thus decreasing equipment costs and allow for more product offerings. We also find that lower cost equipment will provide opportunities to develop the service, particularly in underserved rural areas where build-out costs are often the largest barrier to entry into those markets, and assist small entities interested in entering this service.

57. Our decision to modify our interference protection criteria by deleting the minimum 36 dB C/I ratio, adopting for analog systems a 1.0 dB degradation limit for the baseband S/N ratio, reaffirming the existing 1.0 dB receiver T/I ratio degradation limit for digital systems, and rejecting Petitioner's proposal to adopt 36 dB as the maximum required C/I, will provide new entrants the flexibility to select and develop equipment best suited for their business models and relieves them of the burden of providing more interference protection than necessary. We believe that the emphasis on maximizing flexibility in equipment design and the freedom to utilize a variety of radio technologies, including lower cost equipment, reflected in the decisions of the *Memorandum Opinion and Order* will benefit small entities looking to enter this new developing service. Finally, we adopt a power spectral density limit in order to facilitate deployment in the 71–76 GHz and 81–86 GHz bands of the high data-rate transmissions envisioned in these bands, for so-called "fiber-equivalent" wireless services.

58. Our decision to grant WCA's request to modify our technical requirements to allow for a 43 dBi minimum antenna gain and 1.2 degree half-power beamwidth will provide new entrants the flexibility to select smaller, less expensive antennas and spur deployment of the service. We find that allowing smaller, wider beamwidth antennas is in the public interest because it will promote increased usage of the 71–76 GHz and 81–86 GHz bands in areas where those frequencies would otherwise be underutilized. By providing licensees the flexibility to select a wider range of equipment that

best suits their particular business plans, our decision will facilitate entry by small business entities in this service and expand deployment of services in lower-density business locations, such as campuses or office park settings.

59. We reject the Petitioner's proposal that we shorten the construction period from 12 months to 180 days because we do not want to prematurely foreclose new entrants, particularly small entities, who may not have readily available capital to build out within a short timeframe. Mandating a 180-day build-out period on a nascent service with little or no equipment available may result in a flood of waiver requests and impose unnecessary costs or burdens on new entrants. We noted that it is our understanding that equipment production is underway, so we are hesitant to compress build-out where the timing of equipment rollout is not certain. We also do not want to set regulatory standards so high that it is more likely to impede build-out than encourage development of the service. In the *Report and Order*, the Commission reserved the discretion to revisit the issue if experience indicates that additional measures are necessary and in the *Memorandum Opinion and Order* we continue to find that to be the prudent approach in this developing service.

60. We also reject Petitioner's proposal that we provide conditional authorization during the pendency of an application for a nationwide, non-exclusive license. We are concerned that introducing conditional operating authority could risk confusion as to the interference protection date for purposes of determining the first-in-time registered link for link registrants, including small entities. Further, our licensing records reflect that applications are routinely granted on virtually an overnight basis and Petitioner has conceded that conditional operating authority is less important if nationwide licensing occurs quickly.

61. Finally, we reject the Petitioner's proposal that we require ATPC for links with EIRP greater than 23 dBW, because we continue to believe that the more prudent course during the early stages of technology development in these millimeter wave bands is to allow manufacturers and licensees, including many small entities, maximum flexibility and freedom to design a wide range of equipment necessary to provide services in these bands. The Commission is reluctant to mandate the use of a specific technology which may not be necessary in all cases and may be a more expensive means to increase reliability or control interference than others that could achieve the same end result. Notably, although ATPC technology has been available to licensees in other frequency bands and is allowed under part 101, the Commission has not mandated its use in the past for any part 101 microwave service in order to give licensees the discretion to identify their own equipment needs. Various technical and economic factors may provide incentives to licensees to use the technology but there are circumstances when its use may not be necessary or desirable. We find that licensees should be free to use ATPC or other technologies, coupled with the interference protections otherwise provided for this service, such as the interference analysis requirement at link registration, to preserve quality of services, and should have the flexibility to design and deploy systems to meet their needs without increasing the potential for interference to other systems.

5. Federal Rules That Overlap, Duplicate, or Conflict With These Proposed Rules

62. None.

6. Report to Congress

63. The Commission will send a copy of this *Memorandum Opinion and Order*, including this Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

C. Congressional Review Act

64. The Commission will send a copy of this Memorandum Opinion and Order, including the Supplemental FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

V. Ordering Clauses

65. Accordingly, *it is ordered* that pursuant to sections 1, 4(i), 303(f) and (r), 309, 316, 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303(f) and (r), 309, 316, and 332, this *Memorandum Opinion and Order* and the rules specified in Appendix B are hereby adopted.

66. *It is further ordered* that the rules set forth in Appendix B will become effective 30 days after publication in the **Federal Register**, except that new or modified information collection or third-party disclosure requirements discussed in paragraph 43 will not become effective prior to OMB approval.

67. *It is further ordered*, pursuant to sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 405 and § 1.106(a)(1) of the Commission's Rules, 47 CFR 1.106(a)(1), the Petition for Reconsideration filed by Wireless Communications Association International, Inc., on February 23, 2004 in WT Docket 02–146 is granted in part to the extent discussed herein, and otherwise is denied.

68. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Memorandum Opinion and Order*, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 101

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission hereby amends 47 CFR part 101 as follows:

PART 101—FIXED MICROWAVE SERVICES

■ 1. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

■ 2. Section 101.105 is amended by redesignating paragraph (a)(5) as (a)(7), adding paragraphs (a)(5) and (a)(6), and by revising paragraphs (c)(2)(i) and (c)(2)(ii) to read as follows:

§ 101.105 Interference protection criteria.

(a) * * *

(5) *71,000–76,000 MHz; 81,000–86,000 MHz.* In these bands the following interference criteria shall apply:

(i) For receivers employing digital modulation: based upon manufacturer data and following TSB 10–F or other generally acceptable good engineering practice, for each potential case of interference a threshold-to-interference ratio (T/I) shall be determined that would cause 1.0 dB of degradation to the static threshold of the protected receiver. For the range of carrier power levels (C) between the clear-air (unfaded) value and the fully-faded static threshold value, in no case shall interference cause C/I to be less than the T/I so determined unless it can be shown that the

availability of the affected receiver would still be acceptable despite the interference.

(ii) For receivers employing analog modulation: manufacturer data or industry criteria will specify a baseband signal-to-noise requirement (S/N) of the receiver that will result in acceptable signal quality for continuous operation. Following TSB 10–F or other generally acceptable good engineering practice, for each potential case of interference a C/I objective shall be calculated to ensure that this S/N will not be degraded by more than 1.0 dB. For the range of carrier power levels (C) between the clear-air (unfaded) value and the fully-faded threshold value, in no case shall interference cause the C/I to be less than the objective so determined unless it can be shown that the signal quality and availability of the affected receiver would still be acceptable despite the interference.

(6) *92,000–94,000 MHz; 94,100–95,000 MHz.* In these bands prior links shall be protected to a threshold-to-interference ratio (T/I) level of 1.0 dB of degradation to the static threshold of the protected receiver. Any new link shall not decrease a previous link's desired-to-undesired (D/U) signal ratio below a minimum of 36 dB, unless the earlier link's licensee agrees to accept a lower D/U.

* * * * *

(c) * * *

(2) * * *

(i) *Co-Channel Interference.* Both side band and carrier-beat, applicable to all bands; the existing or previously authorized system must be afforded a carrier to interfering signal protection ratio of at least 90 dB, except in the 952–960 MHz band where it must be 75dB, and in the 71,000–76,000 MHz and 81,000–86,000 MHz bands where the criteria in paragraph (a)(5) of this section applies, and in the 92,000–94,000 MHz and 94,100–95,000 MHz bands, where the criteria in paragraph (a)(6) of this section applies; or

(ii) *Adjacent Channel Interference.* Applicable to all bands; the existing or previously authorized system must be afforded a carrier to interfering signal protection ratio of at least 56 dB, except in the 71,000–76,000 MHz and 81,000–86,000 MHz bands where the criteria in paragraph (a)(5) of this section applies, and in the 92,000–94,000 MHz and 94,100–95,000 MHz bands, where the criteria in paragraph (a)(6) of this section applies.

* * * * *

■ 3. Section 101.109 is amended by revising two entries in the table of paragraph (c), and footnote 3 to read as follows:

§ 101.109 Bandwidth.

(c) * * *

Frequency band (MHz)	Maximum authorized bandwidth
* * * * *	
71,000 to 76,000	5000 MHz
81,000 to 86,000	5000 MHz
* * * * *	

* * * * *

[3] To be specified in authorization. For the band 92 to 95 GHz, maximum bandwidth is licensed in one segment of 2 GHz from 92–94 GHz and one 0.9 GHz segment from 94.1 to 95 GHz, or the total of the loaded band if smaller than the assigned bandwidth.

* * * * *

■ 4. Section 101.113 is amended by adding footnote 13 to two entries in the table of paragraph (a) to read as follows:

§ 101.113 Transmitter power limitations.

(a) * * *

Frequency band (MHz)	Maximum allowable EIRP [1 2]	
	Fixed [1 2] (dBW)	Mobile (dBW)
* * * * *		
71,000–76,000 [13]	+55	+55
81,000–86,000 [13]	+55	+55
* * * * *		

* * * * *

[13] The maximum transmitter power is limited to 3 watts (5 dBW) unless a proportional reduction in maximum authorized EIRP is required under § 101.115. The maximum transmitter power spectral density is limited to 150 mW per 100 MHz.

* * * * *

■ 5. Section 101.115 is amended by removing the entries of "71,000 to 76,000" and "81,000 to 86,000" in the table of paragraph (b)(2), and by adding four new entries in numerical order and footnote 15 to read as follows:

§ 101.115 Directional Antennas.

(b) * * *

(2) * * *

Frequency (MHz)	Category	Maximum beam width to 3 dB points [1] (included angle in degrees)	Minimum antenna gain (dBi)	Minimum radiation suppression to angle in degrees from centerline of main beam in decibels						
				5° to 10°	10° to 15°	15° to 20°	20° to 30°	30° to 100°	100° to 140°	140° to 180°
* * * * *										
71,000 to 76,000 (co-polar) [15] ..	N/A	1.2	43	35	40	45	50	50	55	55
71,000 to 76,000 (cross-polar) [15]	N/A	1.2	43	45	50	50	55	55	55	55
81,000 to 86,000 (co-polar) [15] ..	N/A	1.2	43	35	40	45	50	50	55	55
81,000 to 86,000 (cross-polar) [15]	N/A	1.2	43	45	50	50	55	55	55	55
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[15] Antenna gain less than 50 dBi (but greater than or equal to 43 dBi) is permitted only with a proportional reduction in maximum authorized EIRP in a ratio of 2 dB of power per 1 dB of gain, so that the maximum allowable EIRP (in dBW) for antennas of less than 50 dBi gain becomes +55 – 2(50–G), where G is the antenna gain in dBi. In addition, antennas in these bands must meet two additional standards for minimum radiation suppression: At angles between 1.2 and 5 degrees from the centerline of the main beam, co-polar discrimination must be G – 28, where G is the antenna gain in dBi; and at angles of less than 5 degrees from the centerline of main beam, cross-polar discrimination must be at least 25 dB.

* * * * *

■ 6. Section 101.139 is amended by adding paragraphs (h) and (i) to read as follows:

§ 101.139 Authorization of transmitters.

* * * * *

(h) *71,000–76,000 MHz; 81,000–86,000 MHz.* For equipment employing digital modulation techniques, the minimum bit rate requirement is 0.125 bit per second per Hz.

(i) *92,000–94,000 MHz; 94,100–95,000 MHz.* For equipment employing digital modulation techniques, the minimum bit rate requirement is 1.0 bit per second per Hz.

■ 7. Section 101.147 is amended by revising paragraph (z) to read as follows:

§ 101.147 Frequency Assignments.

* * * * *

(z) *71,000–76,000 MHz; 81,000–86,000 MHz; 92,000–94,000 MHz; 94,100–95,000 MHz.* (1) Those applicants who are approved in accordance with FCC Form 601 will each be granted a single, non-exclusive nationwide license. Site-by-site registration is on a first-come, first-served basis. Registration will be in the Universal Licensing System until the Wireless Telecommunications Bureau announces by public notice, the implementation of a third-party database. *See* 47 CFR 101.1523. Links may not operate until NTIA approval is received. Licensees may use these bands for any point-to-point non-broadcast service.

(2) Prior links shall be protected using the interference protection criteria set forth in section 101.105. For transmitters employing digital modulation techniques and operating in the 71,000–76,000 MHz or 81,000–86,000 MHz bands, the licensee must construct a system that meets a minimum bit rate of 0.125 bits per second per Hertz of bandwidth. For transmitters that operate in the 92,000–94,000 MHz or 94,100–95,000 MHz bands, licensees must construct a system that meets a minimum bit rate of 1.0 bit per second per Hertz of bandwidth. If it is determined that a licensee has not met these loading requirements, then the database will be modified to limit coordination rights to the spectrum that is loaded and the licensee will lose protection rights on spectrum that has not been loaded.

■ 8. Section 101.1505 is revised to read as follows:

§ 101.1505 Segmentation plan.

(a) An entity may request any portion of the 71–76 GHz and 81–86 GHz bands, up to 5 gigahertz in each segment for a total of 10 gigahertz. Licensees are also permitted to register smaller segments.

(b) The 92–95 GHz band is divided into three segments: 92.0–94.0 GHz and 94.1–95.0 GHz for non-government and government users, and 94.0–94.1 GHz for Federal Government use. Pairing is allowed and segments may be aggregated without limit. The bands in paragraph (a) of this section can be included for a possible 12.9 gigahertz maximum aggregation. Licensees are also permitted to register smaller segments than provided here.

■ 9. Section 101.1513 is revised to read as follows:

§ 101.1513 License term and renewal expectancy.

The license term is ten years, beginning on the date of the initial authorization (nationwide license) grant. Registering links will not change the overall renewal period of the license.

■ 10. Section 101.1523 is amended by revising paragraph (b) to read as follows:

§ 101.1523 Sharing and coordination among non-government licensees and between non-government and government services.

* * * * *

(b) The licensee or applicant shall:

(1) Complete coordination with Federal Government links according to the coordination standards and procedures adopted in Report and Order, FCC 03–248, and as further detailed in subsequent implementation public notices issued consistent with that order;

(2) Provide an electronic copy of an interference analysis to the third-party database manager which demonstrates that the potential for harmful interference to or from all previously registered non-government links has been analyzed according to the standards of section 101.105 and generally accepted good engineering practice, and that the proposed non-government link will neither cause harmful interference to, nor receive harmful interference from, any previously registered non-government link; and

(3) Provide upon request any information related to the interference analysis and the corresponding link. The third-party database managers shall receive and retain the interference analyses electronically and make them available to the public. Protection of individual links against harmful interference from other links shall be granted to first-in-time registered links. Successful completion of coordination via the NTIA automated mechanism shall constitute successful non-Federal Government to Federal Government coordination for that individual link.

* * * * *

[FR Doc. 05–10120 Filed 5–24–05; 8:45 am]
BILLING CODE 6712–01–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU31

Endangered and Threatened Wildlife and Plants; Opening of the Comment Period for the Proposed and Final Designation of Critical Habitat for the Klamath River and Columbia River Populations of Bull Trout

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; opening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the opening of a public comment period on the proposed and final designation of critical habitat for the Klamath River and Columbia River populations of bull trout (*Salvelinus confluentus*). Due to court action, we have determined that it would be appropriate to reevaluate the exclusions made in the final critical habitat rule. We are opening this comment period to allow all interested parties to comment simultaneously on the November 29, 2002, proposed rule (67 FR 71235) and the October 6, 2004, final rule (69 FR 59996). Copies of the proposed and final rules, as well as the economic analysis for the critical habitat designation, are available on the Internet at *http://pacific.fws.gov/bulltrout* or from the Portland Regional Office at the address and contact numbers below.

DATES: We will accept public comments until June 24, 2005.

ADDRESSES: Written comments and materials may be submitted to us by any one of the following methods:

1. You may submit written comments and information to John Young, Bull Trout Coordinator, U.S. Fish and Wildlife Service, Ecological Services, 911 NE 11th Avenue, Portland, OR 97232;

2. You may hand-deliver written comments and information to our office, at the above address, or fax your comments to 503/231–6243; or

3. You may also send comments by electronic mail (e-mail) to *R1BullTroutCH@r1.fws.gov*. For

directions on how to submit electronic filing of comments, see the "Public Comments Solicited" section. In the event that our internet connection is not functional, please submit your comments by the alternate methods mentioned above.

FOR FURTHER INFORMATION CONTACT: John Young, at the address above (telephone 503/231–6194; facsimile 503/231–6243).

SUPPLEMENTARY INFORMATION:

Background

We published a proposed rule to designate critical habitat for the Klamath River and Columbia River populations of bull trout on November 29, 2002 (67 FR 71235). The proposed critical habitat designation included approximately 18,471 miles (mi) (29,720 kilometers (km)) of streams, and 532,721 acres (ac) (215,585 hectares (ha)) of lakes and reservoirs on Oregon, Washington, Idaho, and Montana. The final critical habitat designation was published on October 6, 2004 (69 FR 59996), and included approximately 1,748 mi (2,813 km) of streams and 61,235 ac (24,781 ha) of lakes and marshes. On December 14, 2004, Alliance for the Wild Rockies *et al.* (plaintiffs) filed a complaint challenging the adequacy of the final designation. In particular, the plaintiffs challenged the exclusions made in the final rule, pursuant to section 4(b)(2) of the Act.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act, with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that "The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) of this section on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned."

The economic analysis estimated the potential economic effects over a 10-year period would range from $200 to $260 million ($20 to $26 million per year) for the bull trout. It is expected that Federal agencies will bear 70 percent of these costs. The total estimated costs associated with bull trout consultation is expected to be $9.8 million annually, and total project modification costs are expected to range from $19.5 to $26.1 million annually. Economic costs were considered in balancing the benefits of including and excluding areas from critical habitat. The economic analysis is available on the Internet and from the mailing address in the **ADDRESSES** section above.

Once the public comment period has closed, we will compile all comments and data received and consider them for use in our reevaluation of the final rule. We will then reconsider all of the relevant impacts of designating the proposed areas as critical habitat on the basis of our administrative record. We do not intend to contract for a new formal economic analysis, but we will consider any new information received regarding the economic impacts of the designation. Upon completion of the reconsideration process, we will issue a new final rule designating critical habitat for the Klamath River and Columbia River populations of bull trout.

Public Comments Solicited

We intend that any final action resulting from our November 2002 proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the portion of the proposed rule subject to reevaluation. We will accept written comments and information during this comment period on the November 29, 2002, proposed rule (67 FR 71235) and the October 6, 2004, final rule (69 FR 59996). On the basis of public comment, during the development of our new final determination, we may find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2), or not appropriate for exclusion. In all of these cases, this information would be incorporated into our new final determination with respect to those areas. We specifically seek comments on:

(1) The reasons why any of the habitat identified in this rule should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of exclusion outweigh the benefits of specifying such area as part of critical habitat;

(2) Information related to the benefits of designating any specific areas as critical habitat for the bull trout;

(3) Information related to the benefits of excluding any specific areas as critical habitat for the bull trout;

(4) Specific information on the amount and distribution of bull trout habitat, and why those particular amounts and distributions of habitat are essential to the conservation of this species;

(5) Any effects of the Ninth Circuit's recent decision in *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F.3d 1059 (Ninth Cir. 2004) that we should consider in our review of the final designation of critical habitat for the Klamath River and Columbia River populations of bull trout (69 FR 59996);

(6) Any foreseeable economic or other impacts resulting from the designation of critical habitat, in particular, any previously unidentified impacts on small entities or families;

(7) Whether the draft economic analysis identifies all State and local economic costs and economic benefits attributable to the critical habitat designation. If not, what costs and benefits are overlooked;

(8) Are the adjustments to local governments' economic data made by the economic analysis reasonable? If not, please provide alternative interpretations and the justification for the alternative, and/or the reasons the interpretation in the economic analysis is not correct;

(9) Any previously unidentified impacts associated with likely regulatory changes as a result of the designation of critical habitat;

(10) Any previously unidentified regional costs or benefits associated with land use controls that derive from the designation, to the extent possible economic cost or benefit analysis should be included as the Service will not conduct additional economic analysis on this rule;

(11) Whether the designation will result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion from the final designation;

(12) Some of the lands we have identified as essential for the conservation of the bull trout were excluded from critical habitat designation. We specifically solicit comment on the inclusion or exclusion of such areas and:

(a) Whether these areas are essential and why;

(b) The benefits of including these areas as essential habitat;

(c) The benefits of excluding these areas as essential habitat;

(13) With specific reference to the recent amendments to sections 4(a)(3) and 4(b)(2) of the Act, we request

information from the Department of Defense to assist the Secretary of the Interior in making a determination as to whether to exclude critical habitat on lands administered by or under the control of the Department of Defense based on the benefit of an Integrated Natural Resources Management Plan (INRMP) to the conservation of the species; and information regarding impacts to national security associated with designation of critical habitat; and

(14) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

(15) Whether contemplated changes to Federal land management plans should be considered and if so, how.

Refer to the **ADDRESSES** section for information on how to submit written comments and information. Our final determination on critical habitat for the Klamath River and Columbia River populations of bull trout will take into consideration all comments and any additional information received.

Please submit electronic comments in an ASCII file format and avoid the use of special characters and encryption. Please also include "Attn: RIN 1018–AU31" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact the Bull Trout Coordinator (see **ADDRESSES** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Comments and materials received, as well as supporting documentation used to designate critical habitat, will be available for inspection, by appointment, during normal business hours, in the U.S. Fish and Wildlife Service Office at the above address.

Copies of the final economic analysis and proposed and final rules are available on the Internet at: *http://pacific.fws.gov/bulltrout* or from the Bull Trout Coordinator at the address and contact numbers above.

Author

The primary author of this notice is the U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: May 16, 2005.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–10246 Filed 5–24–05; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 70, No. 100
Wednesday, May 25, 2005

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 925 and 944

[Docket No. FV03–925–1 PR]

Grapes Grown in a Designated Area of Southeastern California and Imported Table Grapes; Proposed Change in Regulatory Periods

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the regulatory periods when minimum grade, size, quality, and maturity requirements apply to southeastern California grapes under Marketing Order No. 925 (order), and to imported grapes under the table grape import regulation. The current regulatory periods for both domestic and imported grapes are April 20 through August 15 of each year. The California Desert Grape Administrative Committee (Committee), which locally administers the order, unanimously recommended changing the date when these requirements expire for grapes grown in California to July 10 because few grapes are normally shipped after that date. A corresponding change for imported table grapes is required under section 8e of the Agricultural Marketing Agreement Act of 1937. The Desert Grape Growers League of California (the "League") requested that the beginning date of the regulatory period for imported table grapes be changed from April 20 to April 1. The League requested this change to prevent the marketing of grape imports that do not meet the California grape order's grade, size, quality, and maturity requirements. The Act provides authority for such change. If implemented, the regulatory period for domestic grapes would be April 1–July 10 so both sets of requirements apply during the same time period. This proposed rule also would clarify the maturity (soluble solids) requirements for southeastern California and imported Flame Seedless variety grapes.

DATES: Comments must be received by July 25, 2005.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments should be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, E-mail: *moab.docketclerk@usda.gov,* or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Rose Aguayo or Kurt Kimmel, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; Telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, 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.

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 proposed rule is issued under Marketing Agreement and Marketing Order No. 925, (7 CFR part 925), regulating the handling of grapes grown in a designated area of southeastern 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."

This proposed rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including table grapes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities. The table grape import regulation is specified in § 944.503 (7 CFR part 944.503).

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

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

Section 608c(15)(A) of the Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under this section, 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. Section 608c(15)(B) 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.

There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Introduction

Section 925.52(a)(2) of the order provides authority to limit the handling of any grade, size, quality, maturity, or pack of grapes differently for different varieties, or any combination of the foregoing during any period or periods. Under the terms of the order, fresh market shipments of grapes grown in a designated area of southeastern

California are required to be inspected and are subject to grade, size, quality, maturity, pack, and container requirements during the period April 20 through August 15 of each year.

Current requirements under the marketing order require such shipments to be at least U.S. No. 1 Table, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera type) (7 CFR 51.880 through 51.914; (Standards), or meet the requirements of the U.S. No. 1 Institutional grade, except for the tolerance percentage for bunch size. The tolerance is 33 percent instead of 4 percent as is required to meet the U.S. No. 1 Institutional grade.

Grapes meeting the institutional quality requirements may be marked "DGAC No. 1 Institutional" but shall not be marked "Institutional Pack." Grapes of the Flame Seedless and Perlette varieties are required to meet the "other varieties" standard for berry size (ten-sixteenths of an inch).

In addition, fresh shipments of grapes from the marketing order area are required to meet the minimum maturity requirements for table grapes as specified in the California Code of Regulations (3 CCR 1436.12). Grapes of the Flame Seedless variety shall be considered mature if the juice meets or exceeds 16.5 percent soluble solids, or contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in the juice in accordance with applicable sampling and testing procedures specified in the California Code of Regulations.

Currently, the foregoing requirements also apply to imported table grapes under section 8e of the Act during the period April 20 through August 15 (except for the 16.5 percent soluble solids option). However, as described below, importers of grapes currently manage to avoid these requirements.

For example, imported grapes can be (and are in fact) shipped in large quantities before the requirements come into effect and then are stored, allowing them to be marketed during the regulatory period of the order without having to meet the same requirements as domestic grapes. The changes in this proposed rule would ensure more equitable and stable conditions for all market participants, consistent with the statutory mandate.

A USDA/ERS report discussed the purposes and benefits of quality/condition standards (USDA, Economic Research Service, Agricultural Economic Report Number 707, "Federal Marketing Orders and Federal Research and Promotion Programs, Background for 1995 Farm Legislation", by Steven A. Neff and Gerald E. Plato, May 1995). The basic rationale for such standards is that only satisfied customers are repeat customers. Thus, quality standards help ensure that consumers are presented a product that is of a consistent quality. This helps create buyer confidence and contributes to stable market conditions. When consumers purchase satisfactory quality grapes, they are likely to purchase grapes again. If they purchase poor quality grapes, they are likely to delay future purchases, which could reduce demand for all grapes.

Changing the Date When Domestic and Imported Table Grape Regulations Expire

Section 925.304 of the order provides a regulatory period of April 20 through August 15 when minimum grade, size, quality, and maturity requirements apply to grapes grown in southeastern California. A final rule published on March 20, 1987, (52 FR 8865) established these regulatory periods to promote the orderly marketing of grapes.

The Committee met on November 14, 2002, and unanimously recommended modifying § 925.304 of the order to change the date when minimum grade, size, quality, and maturity requirements expire to July 10, rather than August 15. The Committee met again on December 12, 2002, and clarified that the proposed regulatory period (April 20–July 10) should also apply to pack and container requirements under the order.

Since 1987, the amount of grapes handled in the production area after July 10 has generally decreased as older vineyards, which typically produce late [season] varieties, have been removed. From 2000–2004, more than 99 percent of the 8.0 million 18-pound lugs of grapes grown in the production area were handled during the period April 20–July 10. On average, less than half of one percent (21,688 18-pound lugs) of these grapes were harvested and marketed during the period July 11–August 15.

Southeastern California grapes handled after July 10 tend to bring much lower prices than early season grapes. For example, in 2003, Flame Seedless grapes during the first two weeks of May had an average FOB price of $13.85 to $23.85 while end-of-season (August) Flame Seedless grapes brought an average FOB price of $11.85 to $12.85 per 18-pound lug.

Additionally, inspection costs outweigh the benefits of the order for grapes handled after July 10, with inspection fees proportionally higher for the volume of grapes inspected. For inspections of production area grapes, the Federal/State Inspection Service (Inspection Service) charges range from $0.026 to $0.043 depending on the weight of the container, or $25 per certificate, whichever is greater. Inspector travel and overtime fees also are charged, as applicable. This information can be viewed at *http://www.cdfa.ca.gov/is/spi/schedule.htm* and *http://www.cdfa.ca.gov/is/spi/feeinfo.htm*. At the end of the season, grape handlers from the production area ship a smaller volume and inspection fees are proportionally higher per lug.

The Committee believes that ending regulatory requirements in July would benefit handlers and producers by reducing inspection costs. Therefore, at its November 14, 2002, meeting, the Committee unanimously recommended modifying § 925.304 of the order to change the date when minimum grade, size, quality, and maturity requirements expire to July 10.

Under section 8e of the Act, minimum grade, size, quality, and maturity requirements for table grapes imported into the United States are established under Table Grape Import Regulation 4 (7 CFR 944.503) (import regulation).

Section 944.503(a)(3) of the import regulation specifies that the regulatory period for imported grapes for the fresh market is April 20 through August 15 of each year. Since this proposal would change the regulatory period when grade, size, quality, and maturity requirements expire for grapes grown in the production area under the marketing order to July 10, a corresponding change to the regulatory period for imported table grapes is required under section 8e of the Act.

Reports from the U.S. Census Bureau indicate that during April through October of 2000, 2001, 2002, and 2003, an average of 12.6 million 18-pound lugs of Mexican grapes were imported and marketed. Average imports from Chile at these times totaled 8.7 million 18-pound lugs. On average, Mexico and Chile accounted for 98 percent of the imports. The remaining 2 percent came from various countries.

It is expected that an earlier end to the regulatory period for domestic and imported grapes would benefit handlers, producers, and importers, because this would reduce the regulatory burden on these entities.

Changing the Beginning of the Regulatory Period for Domestic and Imported Table Grapes

In January 2003, the League requested USDA to change the beginning date of the regulatory period for imported table grapes from April 20 to April 1, and

provided information supporting that request. The League contends that during the prior year, imports of grapes that did not meet marketing order requirements were on the market and were able to avoid the California grape order's grade, size, maturity, and quality requirements. The League further contends that there would be no adverse effect on the availability and prices of grapes if the regulatory period for imports were changed to April 1.

Section 608e–1(b)(1) of the Act allows the Secretary of Agriculture to extend order requirements for a period, not to exceed 35 days, during which the order requirements would be effective for an imported commodity during any year, if the Secretary determines that the additional period of time is necessary to effectuate the purposes of the Act and to prevent the circumvention by imports of the grade, size, quality, or maturity requirements of the marketing order applicable to domestic production. Further, section 608e–1(b)(2) of the Act provides that in making such a determination, the Secretary, through notice and comment procedures, shall consider:

(A) To what extent, during the previous year, imports of a commodity that did not meet the requirements of a marketing order applicable to such commodity were marketed in the United States during the period that such marketing order requirements were in effect for available domestic commodities (or would have been marketed during such time if not for any additional period established by the Secretary);

(B) If the importation into the United States of such commodity did, or was likely to, circumvent the grade, size, quality, or maturity standards of a seasonal marketing order applicable to such commodity produced in the United States; and

(C) The availability and price of commodities of the variety covered by the marketing order during any additional period the marketing order requirements are to be in effect.

Imported grapes are either sold immediately or stored for later sale. Importers may voluntarily request inspection of grapes suspected of not meeting U.S. No. 1 Table Grade or other contractual requirements desired by the importer prior to April 20. Data provided by the League shows that a high percentage of grapes subjected to these voluntary inspections failed to meet the requested quality checks.

The data reflects a pattern of uneven quality—both high and low—of imported grapes prior to April 20. The data also shows sales of imported grapes that would have failed section 8e requirements in the market during the regulated period, and that lower quality/condition grapes are purchased for lower prices than those obtained for higher quality fruit. Quality includes size, color, shape, texture, freedom from defects, and other more permanent physical properties of a product that can affect its market value. Condition includes the stage of maturity, decay, freezing injury, shriveling, or any other deterioration that may have occurred, or progressed, since the product was harvested and that may continue to progress.

Since exporting countries can and, in fact, do export many high quality grapes to the United States prior to April 20, and have the capability to export grapes meeting minimum import requirements, we would not expect a shortage of grapes in the market with an earlier effective date for section 8e import requirements. An earlier date would only ensure that grapes being imported met minimum requirements. As a result, we would expect prices to firm up since there would not be a heavy volume of low quality/poor condition grapes in the market. Further, buyers would be assured of good quality grapes with excellent value. This is expected to result in repeat purchases of high quality imported and domestic grapes, which would benefit both segments of the industry.

USDA will review and analyze all comments received as a result of publication of this proposed rule. Given the provisions of section 608(e)–1(b)(2) of the Act, and information provided by petitioners, USDA is specifically interested in any comments, information or data which addresses the following: (a) During prior years, whether imports of grapes that did not meet section 8e requirements were sold to retailers in the United States during the period that such requirements were in effect; (b) whether imported grapes did or were likely to circumvent such section 8e requirements; and (c) whether there would be any adverse effects on the availability and prices of grapes if the beginning of the regulatory period for imports were changed to April 1.

The U.S. Census Bureau indicates that on average for 2000, 2001, 2002, and 2003 (January through December), 60.0 million 18-pound lugs of grapes were imported into the United States. The two main countries exporting to the United States were Chile, with average exports of 45.7 million 18-pound lugs (76 percent of the total), and Mexico, with 12.6 million 18-pound lugs (21 percent of the total). The remaining three percent came from various countries.

Trade data from the U.S. Census Bureau shows that Chile accounts for almost all U.S. imports of fresh grapes in the February through April period in recent years. The total average grape imports for that period in the years 2000–2004 averaged 33.6 million 18-pound lugs. Of this amount, 32.8 million came from Chile (97.6 percent). South Africa accounted for 0.5 million lugs (1.6 percent), and the remaining 0.8 percent came from various countries.

Information from the League for 2000, 2001, 2002, 2003, and 2004 shows that the Port of Philadelphia (where historically the greatest percentage of Chilean table grapes enters the United States) received on-average 20 million 18-pound lugs of imported Chilean grapes during the February 1–April 19 period, with 30 percent (6 million) of these 20 million 18-pound lugs arriving between April 1 and April 19.

The League compiled weekly inspection summaries of inspection data from USDA's Fresh Products Branch, Fruit and Vegetable Programs. These inspection summaries consisted of voluntary condition and quality inspections of imported grapes at the Port of Philadelphia for the period February–April in 2000, 2001, 2002, 2003 and 2004. Based on AMS experience, importers request voluntary quality and condition inspections on grapes that appear to be of lower quality or condition than buyer specifications prior to April 20 to determine the grade of the fruit as specified in the Standards.

The Table Grape import regulation specifies that imported grapes must meet the minimum grade and size requirements for U.S. No. 1 Table or for U.S. No. 1 Institutional grade as specified in the Standards, with the exception of the extra tolerance for bunch size for U.S. No. 1 Institutional.

The USDA Fresh Products Branch data on voluntary inspections of Chilean grapes indicates a relatively high failure rate, tending toward the upper part of the range as the April 20 effective date nears.

According to the data provided by the League, approximately 2 million 18-pound lugs of imported Chilean grapes arriving at the Philadelphia Port during the April 1 through April 19 period were inspected voluntarily for quality and condition with failure rates ranging from a low of 75 percent to a high of 90 percent in 2000; from 65 percent to 78 percent in 2001; from 65 percent to 70 percent in 2002; from 53 percent to 78 percent in 2003; and from 42 percent to 57 percent in 2004. For the two to three days immediately prior to April 20 in

2000, 2001, 2002, 2003, and 2004, the failure rates averaged 90 percent in 2000, 78 percent in 2001, 67 percent in 2002, 73 percent in 2003, and 46 percent in 2004.

Prior to April 20, grapes voluntarily inspected may be placed into the channels of commerce in the United States. By contrast, imported grapes that fail import quality requirements during the period April 20–August 15 may be reworked and marketed in the United States if the grapes meet the import requirements when re-inspected; otherwise the grapes must be exported, destroyed, or utilized in processed products.

When consumer demand exceeds supply, the imported grapes move directly into retail markets; however, when supply exceeds demand, the imported grapes are put in cold storage until there is a demand for the grapes. The length of storage may negatively affect the quality of the grapes.

Studies of table grape importer storage behavior performed by SURRES, a division of the Applied Technology Corporation, and the College of Business and Management, University of Maryland, indicate that importers use their storage capability extensively during the March–April time frames and that storage periods in the 30–60 day range are not uncommon at this time of year. Thus, this would allow grapes imported prior to April 20, which would not have met import quality requirements currently in place after April 20, to be sold after April 20, in competition with grapes that have passed inspection and met or exceeded the marketing order and import requirements.

The League's weekly inspection summary indicates that an insignificant amount of grapes are imported after April 20 and the amount imported during the regulated period would not account for the substantial percentage of imported grapes that are being bought and sold consistently in May. USDA Market News Service market reports classify commodities as fine/excellent, good, fair, ordinary, or poor condition/quality. Many of the USDA Market News Service Reports show that fair, ordinary, and poor condition imported table grapes were on the market during May 2000, 2001, 2002, 2003, and 2004; and June 2000, 2001 and 2004. Generally, the ordinary and poor condition imported grapes would not be permitted to enter the United States during the regulation period because they would fail the minimum import requirements. Fair condition grapes might also fail to meet minimum import requirements.

USDA Market News Wholesale reports indicate that fair, ordinary, and poor condition imported grapes are on the market during the period that the southeastern California marketing order requirements are in effect and that these imported grapes compete against grapes that comply with the standards implemented under the marketing order. USDA Market News Philadelphia Wholesale Fruit and Vegetable Reports, dated May 15, 16, and 17, 2002, show that imported poor condition Chilean Red Seedless grapes were selling in the market for $.50 a lug. Chilean Red Seedless grapes were in various markets on May 17, 2002: Fair/good condition grapes were in the St. Louis market at $8 a lug; ordinary/fair condition grapes were in the Boston and Chicago markets at $5 to $8 a lug; ordinary condition grapes were in the New York market at $5 a lug and in the Baltimore market at $3 to $6 a lug; and poor condition grapes were in the Detroit market at $3 to $4 a lug. Excellent and good quality grapes from the production area were sold in various markets during that time at prices ranging from $22 to $37 per 18-pound lug of grapes. Additionally, USDA Market News Philadelphia Reports dated May 7, 8 and 9, 2003, show that poor/ordinary condition grapes were on the market at $1 to $6 a lug. Good quality grapes from the production area were sold in various markets during that time at prices ranging from $24 to $29 per 18-pound lug of grapes. USDA Market News Philadelphia Wholesale Fruit and Vegetable Reports, dated May 13 and 14, 2004, show that imported ordinary condition Chilean Crimson Seedless grapes were selling in the market for $5–$10 a lug, and reports dated May 17, 2004, show that imported ordinary condition Thompson Seedless grapes were selling in the market for $5 a lug. Good quality grapes from the production area were sold in various markets during that time at prices ranging from $30 to $40 a lug. The domestic industry contends that it might have received higher prices due to consumer demand if the lower condition imported grapes were not competing with them during that time.

The California Table Grape Commission (CTGC) Market Activity Report of May 10, 2002, indicates that 12 percent of the stores in the Central Market (Terre Haute, Ft. Wayne, and Indianapolis, IN) were carrying poor condition Chilean Red Seedless grapes at $1.79 a pound; and that 18 percent of the stores in the West Market (Phoenix, Arizona) were carrying poor/fair condition Chilean Black Seedless grapes at $1.99 a pound, as well as fair condition Chilean Red Seedless Grapes at $.79–$1.49 a pound.

Additionally, the CTGC Grape Market Activity Report of May 10, 2002, shows that 36 percent of the West Market (Phoenix, Arizona) stores carried fair/good condition Chilean Thompson Seedless grapes, while the May 17, 2002, report shows that 35 percent of the stores in Central Markets were carrying poor/fair Chilean Thompson seedless grapes priced at $1.99–$2.49 a pound and that 67 percent of the stores in the Northeast Market (New York, New Jersey, Pennsylvania) were carrying poor/fair Chilean Thompson seedless grapes priced at $2.49–$3.99 a pound. Additionally, the May 18, 2001, report shows that 11 percent of the Central stores were carrying very poor condition Chilean Thompson Seedless grapes at $2.49 a pound. The CTGC Market Activity Report of May 16, 2003, indicates that 25 percent of the stores in Indianapolis, IN and San Antonio, TX were carrying fair condition Chilean Thompson Seedless grapes at $2.59 a pound. The June 6, 2003, report indicates that 40 percent of the stores in the Northeast Market were carrying fair condition Chilean Crimson Seedless grapes at $1.99 a pound.

Weekly arrival summaries were provided by the League from Sermaco, a private company that provides import information on Chilean table grapes from ships' manifests. The weekly arrival summaries show that 1.6 million 18-pound lugs of imported Chilean Thompson Seedless grapes arrived at all ports during the weeks of April 1–April 19, 2004. These arrival summaries also showed that 3,846 18-pound lugs of Chilean Thompson Seedless grapes arrived after the regulatory period began on April 20, 2004. USDA Market News Terminal Reports indicate that imported Chilean poor, ordinary, and fair condition Thompson Seedless grapes [that probably would not meet the standards provided in the marketing order] were on various markets during the regulated period, whereas the grapes imported during the regulatory period were subject to import requirements. From the above referenced information, USDA believes that imported Chilean grapes that were in fair, ordinary, and poor condition and that were imported prior to April 20, were stored and then marketed during May 2000, 2001, 2002, 2003, and 2004; and during June 2000, 2001, and 2004, in competition with inspected and marketing order compliant California grapes. In addition, fair, ordinary, and poor condition imported grapes were on the market during May 2000, 2001, 2002, 2003, and

2004 and during June 2000, 2001, 2003, and 2004.

The League believes that an earlier beginning (April 1) to the regulatory period would allow most questionable quality/condition and failing grapes to clear the market before the southeastern California grape industry begins shipments. The League believes that this would help strengthen the market and firm up prices for both domestic and imported grapes.

The League believes that the marketing of grapes of lower quality/condition (because they did not have to meet the marketing order standards) in competition with grapes that do have to meet those standards and are of a higher quality/condition tends to lower market demand and depress prices for all grapes in the market.

The proposed change in the beginning date of the regulatory period for grapes would help alleviate price depressing conditions by prohibiting the sale of low-quality and low-condition grapes and help set a positive market tone.

USDA Market News Wholesale Fruit and Vegetable Reports and CTGC's Grape Market Activity Reports indicate that low condition and failing grapes are sold at reduced prices. In addition, USDA Market News Service Terminal Market Wholesale Fruit and Vegetable Reports show the condition and price of Chilean, Brazilian, South African, Mexican, and southeastern California grapes and indicate that better condition grapes tend to receive higher prices per box.

For example, the Philadelphia Wholesale Fruit and Vegetable Report for May 10, 2004, indicates that small size, good-to-excellent condition, white seedless grapes from southeastern California sold for $46 per 18-pound lug (bagged), and that Chilean large poor condition white seedless grapes sold for $5 to $10 per 18-pound lug. Poor condition, lower-priced, imported grapes are present in the marketplace at the same times as better condition grapes that meet the minimum quality requirements under the marketing order and import regulations. Without the presence of poorer condition grapes in the market, the overall quality/condition level of domestic and imported grapes should advance. Higher overall condition/quality should result in increased demand and repeat purchases. This would benefit the marketers of both domestic and imported grapes.

The April 1 date is being proposed because this date would enable most grapes imported prior to April 1 to clear the market prior to the commencement of the southeastern California harvest and marketing season.

In addition, the information from USDA's Market News Service indicates that better condition grapes yield higher prices, which could offset the added inspection costs of 2.5 cents per box for imported grapes. In 2000, 2001, and 2002, less than half of one percent of imported grapes required mandatory inspection. However, if inspection in these years had been mandatory as of April 1, about 15 percent would have had to be inspected. Thus, consumers would have been assured of receiving fewer low quality grapes.

This proposed rule is expected to prevent circumvention of the intent of the Act by grape imports and to provide consumers with higher quality/condition grapes on a more consistent basis. Experience has shown that an improvement in product quality and condition results in increased acceptance in the marketplace, and more frequent purchases. If this were achieved, domestic producers and handlers of southeastern California grapes, and exporters and importers of foreign-produced grapes would benefit from more stable marketing conditions and prices. Buyers, too, would be rewarded with more satisfactory quality/condition grapes, which could result in more grape purchases. This would benefit the producers and marketers of both domestic and imported grapes.

Inspection fees would be applicable to grapes imported during the period April 1 through April 19. These fees vary, depending on such factors as the location of the inspection, the size of the load to be inspected, and whether there are multiple commodities to be inspected. Current inspection fees for imported grapes are 2.5 cents per package when inspected at dockside. When the inspection is performed at a location other than dockside, the fees range from $76 to $99 per car lot depending the number of packages in the load and the type of inspection requested. A carlot usually contains 45,000 pounds of grapes. Information on inspection fees can be viewed at *http://www.ams.usda.gov/fv/fpboverview.htm*.

During October 2003–April 2004, FOB prices for imported grapes ranged from $6 to $44 per package, depending on the month, condition, and size of the grapes. In April 2004, prices per package ranged from $8 to $26 per package. Therefore; inspection fees would be less than 1 percent of the value of the grapes imported during this period of time.

USDA also is proposing to change the beginning of the domestic regulatory period from April 20 to April 1 to keep the beginning of both regulatory periods the same and to ensure that the same requirements apply to both domestic and imported grapes during the April 1–19 period.

Clarification of Maturity Requirements

This proposed rule also revises § 944.503(a)(1)(ii) to clarify that imported Flame Seedless variety grapes shall be considered mature if the juice meets or exceeds 16.5 percent soluble solids, or contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in the juice in accordance with applicable sampling and testing procedures specified in the California Code of Regulations (3 CCR 1436.3, 1436.5, 1463.6, 1436.7, 1436.12, and 1436.17). Currently, this subparagraph does not include the 16.5 percent option for meeting maturity requirements. In addition, obsolete language regarding requirements in effect only in 1998 is removed from paragraph (a)(1). These same requirements are already in effect for grapes shipped from southeastern California under Marketing Order No. 925.

Initial Regulatory Flexibility Impact Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule 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 in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and 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. Import regulations issued under the Act are comparable to those established under Federal marketing orders.

There are approximately 20 handlers of southeastern California grapes who are subject to regulation under the order and about 50 grape producers in the production area. In addition, there are approximately 123 importers of grapes. Small agricultural service firms, which include grape handlers and importers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $6,000,000, and small agricultural

producers are defined as those whose annual receipts are less than $750,000. Twelve of the 20 handlers subject to regulation have annual grape sales of less than $ 6 million. In addition, just under 80 percent of producers in the production area have annual sales less than $750,000. Therefore, a majority of handlers and producers may be classified as small entities. The average importer receives $2.8 million in revenue from the sale of grapes. Therefore, we believe that the majority of these importers are small entities.

Summary of Proposed Changes

This rule would revise the regulatory periods when minimum grade, size, quality, and maturity requirements apply to grapes grown in southeastern California under the order, and to imported grapes under the table grape import regulation. The current regulatory periods for both domestic and imported grapes are April 20 through August 15 of each year. The California Desert Grape Administrative Committee (the "Committee"), which locally administers the order for grapes grown in a designated area of southeastern California, unanimously recommended changing the date when these requirements expire for grapes grown in California to July 10. A corresponding change to the regulatory period for imported table grapes is required under section 8e of the Act. This shortened regulatory period is in the interest of handlers and producers.

The Desert Grape Growers League of California (the "League") requested that the beginning date of the regulatory period for imported grapes be changed from April 20 to April 1 and provided information to support its request. This proposed action is expected to prevent circumvention of the California grape order's grade, size, quality, and maturity requirements by low-quality grapes and to provide consumers with higher quality grapes on a more consistent basis. Experience has shown that an improvement in product quality results in increased acceptance in the marketplace, and more frequent purchases. To keep the beginning of the domestic regulatory period in line with the beginning of the import regulatory period, USDA also is proposing to change the beginning of the domestic regulatory period from April 20 to April 1.

Changing the Ending of the Regulatory Period for Domestic and Imported Grapes

Section 925.52(a)(2) of the grape order provides authority to limit the handling of any grade, size, quality, maturity or pack of grapes differently for different varieties, or any combination of the foregoing during any period or periods.

Section 925.304 of the order's administrative rules and regulations provides a regulatory period of April 20 through August 15 when minimum grade, size, quality, and maturity requirements apply to grapes grown in southeastern California under the order. A final rule published on March 20, 1987, (52 FR 8865) established these regulatory periods to promote the orderly marketing of grapes.

Grape handlers in the production area shipped and marketed on average 8 million 18-pound lugs of grapes annually from 2000–2004. Approximately 99 percent of the 8 million 18-pound lugs were shipped and marketed during the period May 1–July 10. At least fourteen varieties are grown in the production area regulated under the order and marketed in major U.S. market areas. The four major varieties are Flame Seedless, Perlettes, Thompson Seedless, and Sugraone.

Since 1987, the amount of grapes handled after July 10 has decreased, and in the period 2000–2004, the amount of grapes handled after July 10 constituted less than 1 percent of the on-average 8 million lugs produced in the production area. The Committee met on November 14, 2002, and unanimously recommended modifying § 925.304 of the order's administrative rules and regulations to advance the date when minimum grade, size, quality, and maturity requirements expire to July 10, rather than August 15. The Committee met again on December 12, 2002, and clarified that the proposed regulatory period should also apply to pack and container requirements under the order.

The amount of grapes handled in the production area after July 10 has generally decreased as older vineyards, which typically produce late season varieties, have been removed. During the past three years, more than 99 percent of the grapes grown in the production area were handled during the period April 20 through July 10.

Grapes handled after July 10 tend to bring much lower prices than early season grapes. For example, in the 2003 season, early season (handled in the first two weeks of May) Flame Seedless grapes had an average FOB price of $13.85 to $23.85 while end-of-season Flame Seedless grapes brought an average FOB price of $11.85 to $12.85 per 18-pound lug.

Additionally, inspection costs outweigh the benefits of the order requirements for grapes handled after July 10, as inspection fees are proportionally higher for the volume of grapes inspected. Thus, this shortened regulatory period is expected to benefit handlers and producers. This change would also benefit enterprises that import grapes after July 10.

Reports from the U.S. Census Bureau indicate that during the April–October period of 2000, 2001, 2002, and 2003, an average of 12.6 million 18-pound lugs of Mexican grapes were imported and marketed. Average imports from Chile at these times totaled 8.7 million 18-pound lugs. On average, Mexico and Chile accounted for 98 percent of imports. The remaining 2 percent came from other countries.

Other alternatives were suggested to more adequately reflect the end of the harvest for the domestic production area and to generate shipments of higher quality grapes.

For example, one suggestion was to change the ending date of the regulatory period for grapes grown in the designated area of southeastern California to July 1 or July 5. This suggestion was not adopted because the Committee believes that July 10 would be more reflective of the end of the [season], as less than half of one percent of grapes are shipped from the production area after July 10.

Section 8e of the Act specifies that whenever certain specified commodities, including table grapes, are regulated under a Federal marketing order, imports of that commodity into the United States are prohibited unless they meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity. Minimum grade, size, quality, and maturity requirements for table grapes imported into the United States are established under Table Grape Import Regulation 4 (7 CFR 944.503)(import regulation).

Section 944.503(a)(3) of the import regulation specifies that the regulatory period for imported grapes for the fresh market is April 20 through August 15 of each year. Since this proposal would change the expiration date of regulatory period for the California production area to July 10, a corresponding change to the regulatory period for imported table grapes is required under section 8e of the Act.

It is expected that the shortened regulatory period for domestic and imported grapes would benefit handlers, producers, and importers because their regulatory burdens would be reduced.

Changing the Beginning of the Regulatory Period for Imported Grapes

The U.S. Census Bureau indicates that on average for 2000, 2001, 2002, and

2003 (January through December); 60.0 million 18-pound lugs of grapes were imported into the United States. The two main countries exporting to the United States were Chile, with average exports of 45.7 million 18-pound lugs (76 percent of the total), and Mexico with 12.6 million 18-pound lugs (21 percent of the total). The remaining three percent came from other countries.

The major varieties imported from Chile include Thompson Seedless, Flame Seedless, Red Globes, and Crimson Seedless. The majority of Chilean shipments arrive in the United States during the December–April period. Imports from Mexico to the United States are concentrated in the months of May, June, and July, with the majority of the crop shipped during the months of May and June. The most significant imported Mexican varieties are Thompson Seedless, Perlette, and Flame Seedless. The League requested that the beginning date of the regulatory period for imported grapes be advanced from April 20 to April 1, and submitted information to support its request to USDA for review and evaluation. USDA is proposing to change the beginning of the domestic regulatory period to keep the import and domestic regulatory period dates the same.

The authority for changing the beginning date of the regulatory period for imports is specified in § 608e–1(b) of the Act. These provisions allow the Secretary to extend import requirements for a period, not to exceed 35 days, during which the import requirements would be effective for the imported commodity. To change the beginning date, USDA considers the following: (1) For the prior year, whether imports of grapes that did not meet import requirements were marketed in the United States during the period that such import requirements were in effect; (2) whether imported grapes did or were likely to circumvent such import requirements; and (3) whether there would be any adverse effect on the availability and prices of grapes if the regulatory period for imports was changed to April 1.

The League contends that such an action is needed to prevent circumvention of the California grape order's grade, size, maturity, and quality requirements by table grape imports.

Trade data from the U.S. Census Bureau also shows that Chile accounts for almost all U.S. imports of fresh grapes during the February–April period in recent years. The total average grape imports for that period in the years 2000–2004 averaged 33.6 million 18-pound lugs. Of this amount, 32.8 million came from Chile (97.6 percent). South Africa accounted for 0.5 million lugs (1.6 percent). The remaining 0.8 percent came from other countries. Information from the League for 2000, 2001, 2002, 2003, and 2004 shows that the Port of Philadelphia (where historically the greatest percentage of Chilean table grapes enters the United States) received on-average 20 million 18-pound lugs of imported Chilean grapes during the February 1–April 19 period, with 30 percent (6 million) of these 20 million 18-pound lugs arriving between April 1 and April 19.

The League compiled weekly inspection summaries of inspection data from USDA's Fresh Products Branch, Fruit and Vegetable Programs. These inspection summaries consisted of voluntary condition and quality inspections of imported grapes at the Port of Philadelphia for the period February–April 2000, 2001, 2002, 2003, and 2004.

Based on AMS experience, importers request voluntary quality and condition inspections on grapes that appear to be of lesser quality prior to April 20 to determine the grade of the fruit as specified in the United States Standards for Grades of Table Grapes (European or Vinifera type) (7 CFR 51.880 through 51.914).

According to the data provided by the League, approximately 2 million 18-pound lugs of imported Chilean grapes arriving at the Philadelphia Port during the April 1 through April 19 period were inspected voluntarily for quality and condition with failure rates ranging from a low of 75 percent to a high of 90 percent in 2000; from 65 percent to 78 percent in 2001; 65 percent to 70 percent in 2002; from 53 percent to 78 percent in 2003; and from 42 percent to 57 percent in 2004. For the two to three days immediately prior to April 20 in 2000, 2001, 2002, 2003, and 2004, the failure rates averaged 90 percent in 2000, 78 percent in 2001, 67 percent in 2002, 73 percent in 2003, and 46 percent in 2004.

As mentioned earlier, these summaries and U.S. Census Bureau trade data indicate that voluntarily inspected and uninspected imported grapes were imported into the United States prior to April 20 and were marketed during the April 20–June period each year. As a practical matter, the quantities of grapes imported immediately prior to the beginning of the regulatory period are generally so large that they could not all be marketed before import requirements go into effect or the domestic industry begins shipments.

USDA Market News data indicates that poorer condition imported grapes are marketed at lower prices than those obtained for better condition domestic or imported grapes in the marketplace. Poor condition grapes can cause a dampening effect on demand for all grapes in the marketplace. Thus, the proposed change would benefit both domestic shippers and importers of grapes.

Studies of table grape importer storage behavior performed by SURRES, a division of Applied Technology Corporation, and the College of Business and Management, University of Maryland, indicate that importers use their storage capability extensively during the March–April time frames and that storage periods in the 30–60 day range are not uncommon at this time of year.

According to information from USDA Grape Market News, low quality imported grapes are in the U.S. market, from coast to coast, consistently during May, the same time as table grapes that have met the standards of the marketing order. On average, 60.0 million 18-pound lugs of grapes (2000, 2001, 2002, and 2003) were imported into the United States at all ports during the January–December period.

Further, on average, the Philadelphia Port receives 11 varieties of table grapes that are exempted under the import requirements. During the period April 1–19, 2000, 2001, 2002, 2003, and 2004 approximately 6 million 18-pound lugs of Chilean grapes were imported into the United States. On average, 1.8 million of these 18-pound lugs are exempted under the import requirements during this period. It is estimated that approximately 5.4 million 18-pound lugs of imported Chilean grapes would remain exempt from import requirements if the regulatory period is changed to April 1–July 10.

During the 2000–2004 period, after April 20—the current effective date of the order requirements and the table grape import regulation—there was a significant decrease in imports. The League pointed out that approximately 230,000 18-pound lugs of Chilean grapes on average (2000, 2001, 2002, 2003, and 2004) were imported into the United States the week following April 20, a significant decrease from the previous week's, on average, 3.3 million 18-pound lugs. Of these approximately 230,000 18-pound lugs of Chilean table grapes, 140,000 lugs were non-exempt varieties and subject to inspection for grade, size, quality, and maturity requirements under the table grape import regulations.

USDA Market News Service Reports and Sermaco reports on arrivals of

imported grapes indicate that imported table grapes are in the domestic market during May and June, that many of those grapes are in fair, ordinary, and poor condition, and that they compete with domestic and imported grapes that are required to be inspected and certified as meeting minimum quality requirements. The USDA Fresh Products Branch data on voluntary inspections for 2000 and 2001 indicates a relatively high failure rate for imported Chilean grapes for the period April 1 through 19, increasing somewhat as the April 20 effective date nears. The inspection data provided further indicates that less than half of one percent (approximately 137,000 18-pound lugs on average) of imported regulated Chilean grapes during the last three years were subject to inspection during the period April 20 through the end of the Chilean shipping season, July 14. Limited quantities of Chilean grapes are imported after the import regulation takes effect. The majority of imports from Mexico is imported during the May–July period, and is inspected under the import regulation.

USDA Economic Research Service (ERS) studies indicate that low quality commodities can adversely affect the market for shippers of acceptable quality products. Quality requirements are typically used to cultivate a positive image of a consistent and reliable supplier of high-quality product. This results in consumer good will that strengthens demand and boosts producer prices. (USDA, Economic Research Service, Agricultural Economic Report Number 629, "Federal Marketing Orders for Fruits, Vegetables, Nuts, and Specialty Crops" by Nicholas J. Powers, March 1990; USDA, Economic Research Service, "Criteria for Evaluating Federal Marketing Orders: Fruits, Vegetables, Nuts, and Specialty Commodities" by Leo C. Polopolus, Hoy F. Carman, Edward V. Jesse, and James D. Shaffer, December 1986).

The presence of lower quality grapes in the marketplace weakens demand for all grapes. Market research and experience show that consumers often purchase other commodities in place of the commodity with which they had a bad quality experience, which has a negative effect on grower, handler, exporter, and importer returns.

The ERS report also discusses the purposes of quality standards. The basic rationale for such standards is that only satisfied customers are repeat customers. When consumers have a good quality experience, they make repeat purchases. Thus, quality standards help ensure that consumers are presented a product that is of a consistent quality.

Given the marketing of uninspected imported grapes during May 2000, 2001, 2002, 2003, and 2004 and June 2000, 2001, and 2004 it is in the interest of producers and importers that demand not be adversely affected by the marketing of lower quality/condition grapes. There is an obvious need to maintain consumer confidence through good-quality product.

The per capita consumption of fresh grapes has increased from 3.97 pounds in 1980 to 8.59 pounds in 2002. Changing the regulatory period for imports to April 1 would help better maintain quality and consumer acceptance in the marketplace, and could further increase per capita consumption.

According to the League, table grapes from some countries exporting to the United States must meet minimum inspection requirements on a year-round basis in both the European Union and in Canada. Hence, a change in the effective date to April 1 should not affect the availability of imported table grapes because quality table grapes could easily be diverted to the U.S. market. During April 1–19, 2004, FOB prices for imported grapes in U.S. markets ranged from $8 to $26 per package, depending on the month, condition, and size of the grapes. In comparison, Canadian FOB prices for imported grapes ranged from $12.03 to $33.98 and European Union prices ranged from $8 to $22 during April 2004 depending on condition and size of the grapes.

Better quality grapes yield more revenue, which could offset the added inspection costs of 2.5 cents per box for imported grapes checked at dockside. In 2000, 2001, 2002, 2003 and 2004, less than 1 percent of Chilean grapes required mandatory inspection. However, if inspection in these years had been mandatory as of April 1, about 15 percent would have had to be inspected. Thus, consumers would have been assured of receiving fewer lower quality grapes. It is anticipated that the price would be slightly higher as higher quality fruit would be sold to consumers.

Inspection fees would be applicable to grapes imported during the April 1–19 period. These fees vary, depending on such factors as the location of the inspection, the size of the load to be inspected, and whether there are multiple commodities to be inspected. Current inspection fees for imported grapes are 2.5 cents per package when inspected at dockside. When the inspection is performed at a location other than dockside, the fees range from $76 to $99 per car lot, depending on the number of packages in the load. (See *http://www.ams.usda.gov/fv/fpboverview.htm* for inspection fee information). A carlot usually contains 45,000 pounds of grapes.

During the October 2003–April 2004 period, FOB prices for imported grapes ranged from $6 to mostly $44 per package, depending on the month, condition, and size of the grapes. In April 2004, prices per package ranged from $8 to $26 per package. Therefore, inspection fees would be less than 1 percent of the value of the grapes imported during this period of time.

The benefit of changing the regulatory periods when grade, size, quality, and maturity requirements apply to grapes grown in a designated area of southeastern California and to imported grapes under the grape import regulation is not expected to be disproportionately larger or smaller for small importers than for large importers, nor for small handlers or producers than for larger entities.

While earlier beginning dates for the regulatory period for imported grapes are authorized by statute, which provides that the additional period of time may not exceed 35 days, April 1 is less restrictive than the 35 days for importers, and one that could improve the quality of imported and domestic grapes, lessen the chances of circumvention of the grape marketing order's grade, size, quality, and maturity requirements by low quality/condition grape imports, and be in the interest of handlers, producers, importers, and consumers.

This rule would not impose any additional reporting or recordkeeping requirements on either small or large grape handlers or importers. 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. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

Further, the Committee's meetings were widely publicized throughout the grape industry and all interested persons were invited to attend the meetings and participate in Committee deliberations. Like all Committee meetings, the November 14, 2002, and the December 12, 2002, meetings were public meetings and all entities, both large and small, were able to express their views on changing the ending date from August 15 to July 10. In addition, the World Trade Organization, the

Chilean Technical Barriers to Trade (TBT) inquiry point for notifications under the U.S-Chile Free Trade Agreement, the embassies of Argentina, Brazil, Canada, Chile, Italy, Mexico, Peru, and South Africa, and known grape importers will be notified of the proposed action. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects

7 CFR Part 925

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR parts 925 and 944 are proposed to be amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR parts 925 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. The introductory text to § 925.304 is proposed to be revised to read as follows:

§ 925.304 California Desert Grape Regulation 6.

During the period April 1 through July 10 each year, no person shall pack or repack any variety of grapes except Emperor, Almeria, Calmeria, and Ribier varieties, on any Saturday, Sunday, Memorial Day, or the observed Independence Day holiday, unless approved in accordance with paragraph (e) of this section, nor handle any variety of grapes except Emperor, Calmeria, Almeria, and Ribier varieties, unless such grapes meet the requirements specified in this section.

* * * * *

PART 944—FRUITS; IMPORT REGULATIONS

3. In § 944.503, paragraphs (a)(1) introductory text, (a)(1)(ii), and (a)(3) are proposed to be revised to read as follows: § 944.503 Table Grape Import Regulation 4.

(a)(1) Pursuant to section 8e of the Act and Part 944—Fruits, Import Regulations, the importation into the United States of any variety of Vinifera species table grapes, except Emperor, Calmeria, Almeria, and Ribier varieties, is prohibited unless such grapes meet the minimum grade and size requirements specified in 7 CFR 51.884 for U.S. No. 1 table, as set forth in the United States Standards for Grades of Table Grapes (European Vinifera Type, 7 CFR 51.880 through 51.914), or shall meet all the requirements of U.S. No. 1 Institutional with the exception of the tolerance for bunch size. Such tolerance shall be 33 percent instead of 4 percent as is required to meet U.S. No. 1 Institutional grade. Grapes meeting these quality requirements shall not be marked "Institutional Pack," but may be marked "DGAC No. 1 Institutional."

(i) * * *

(ii) Grapes of the Flame Seedless variety shall meet the minimum berry size requirement of ten-sixteenths of an inch (1.5875 centimeters) and shall be considered mature if the juice meets or exceeds 16.5 percent soluble solids, or the juice contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in the juice, in accordance with applicable sampling and testing procedures specified in sections 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of Article 25 of Title 3: California Code of Regulations (CCR).

* * * * *

(3) All regulated varieties of grapes offered for importation shall be subject to the grape import requirements contained in this section effective April 1 through July 10.

* * * * *

Dated: May 20, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–10440 Filed 5–24–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1430

RIN 0560–AH28

2004 Dairy Disaster Assistance Payment Program

AGENCIES: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on a new program, the 2004 Dairy Disaster Assistance Payment Program, as authorized by the Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act of 2005. The proposed program will provide up to $10 million in assistance for producers in counties declared a disaster by the President in 2004 due to hurricanes. Payments would be made for losses in the three month period, August–October 2004, only. This action is designed to provide financial assistance to producers who suffered dairy production and milk spoilage losses due to hurricanes in 2004.

DATES: Comments on this rule must be received on or before June 24, 2005, in order to be assured consideration.

ADDRESSES: The agencies invite interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- E-Mail: Send comments to *Danielle_Cooke@wdc.usda.gov*.
- Fax: Submit comments by facsimile transmission to: (202) 690–1536.
- Mail: Submit comments to Grady Bilberry, Director, Price Support Division (PSD), Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0512, Room 4095–S, 1400 Independence Avenue, SW., Washington, DC 20250–0512.
- Hand Delivery or Courier: Deliver comments to the above address.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Comments may be inspected in the Office of the Director, PSD, FSA, USDA, Room 4095 South Building, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this proposed rule is available on the PSD home page at *http://www.fsa.usda.gov/dafp/psd/*.

FOR FURTHER INFORMATION CONTACT: Danielle Cooke, phone: (202) 720–1919;

e-mail:
Danielle_Cooke@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 103 of Division B of the Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act of 2005 (Pub. L. 108–324, 118 Stat. 1220) (the 2004 Act), enacted October 13, 2004, requires the Secretary of Agriculture to use $10 million to make payments to dairy producers for losses in a county declared a disaster by the President in 2004 due to hurricanes. Hurricanes Charley, Frances, Ivan, and Jeanne severely impacted dairy producers in certain areas of the southeastern portion of the United States during the months of August and September of 2004. As a result, many dairy producers may have incurred decreases in production due to cattle losses and milk that had to be dumped because of lack of electricity, closed milk plants, and damaged containment equipment.

Pursuant to the legislation, this rule sets out proposed regulations for the new program. As proposed, dairy producers who suffered production losses and dairy spoilage losses as a result of 2004 hurricanes may apply for compensation for losses incurred during the period of August through October of 2004 only. Benefits will be provided to eligible dairy producers in those counties declared disasters under a Presidential disaster declaration issued because of a hurricane that meet all program eligibility requirements and are subsequently approved for participation in the 2004 Dairy Disaster Assistance Payment Program. Dairy producers in counties contiguous to an approved county are not eligible.

To be eligible under the proposed program, dairy producers must have produced milk in the United States during the 2004 calendar year in a dairy operation located in a county declared a disaster by the President due to hurricanes in 2004. As a result of the hurricanes, the operation must have suffered dairy production losses or dairy spoilage losses in the eligible months. In addition, adequate evidence of dairy production losses or spoilage losses must be provided to FSA to substantiate the losses suffered and certified by each producer. Subject to comment and further consideration, payments will not be reduced as a result of payments from a milk buyer or marketing cooperative for dumped or spoiled milk.

Applicants must apply for benefits during the sign-up period announced by the Deputy Administrator for Farm Programs. At the close of the sign-up period, the total production and spoilage losses from all eligible applicants will be determined. Payment eligibilities will be separately calculated on an operation by operation basis. An individual may be involved in more than one operation. Payments to eligible producers will be calculated by multiplying the eligible pounds by the average price received for commercial milk production in the affected areas during the eligible months. If the total amount of available funding ($10 million, less any reserve established to account for disputed claims) is insufficient to compensate eligible producers for eligible losses, then CCC will pay losses at two levels in an effort to more equitably distribute the limited funds and maximize the effectiveness of the program. Thus, in case of inadequate funds for all eligible losses, CCC will calculate each operation's percentage overall quarterly percentage reduction for the full August–October period from the calculated base for the operation for the full quarter (August through October). Calculated losses over the period from August to October 2004 of greater than 20 percent of their normal production would be paid at the maximum per-pound payment rate. A loss of over 20 percent in one or two of the eligible months will not qualify for the maximum per-pound payment. Payments for eligible losses below the 20-percent threshold would be made at a rate that will exhaust the available funds that remain following payment of eligible losses at the higher level. CCC decided to establish the minimum loss level at 20 percent for this purpose in order to be consistent with other FSA and CCC disaster programs. For example, the minimum loss that a producer must have suffered to be eligible for the 2003 Hurricane Assistance Program for 2002-crop sugarcane was 20 percent, for the CCC Tree Assistance Program it is 15 percent of normal production, for the Crop Disaster Program the minimum production loss is 35 percent and the required quality loss is 20 percent, for the Livestock Assistance Program losses must exceed 40 percent, for the 2002 Cattle Feed Program the minimum was 5 percent, and for the 2001/2002-crop Sugar Beet Disaster Program the minimum was a 35 percent. Different payments for differing degrees of losses will distribute the limited funds provided under this program in a manner that provides greater assistance to producers who suffered greater losses from the subject hurricanes. An example is below. If funds are adequate for all eligible losses, all eligible producers will be paid at the average price received for commercial milk production in their area during the months of August through October of 2004. CCC encourages comments on these provisions and the appropriate loss-level percentage.

Example:

	Producer A (South Carolina)	Producer B (Florida)	Producer C (Alabama)	Producer D (Georgia)
Total Base Production	800,000	2,000,000	1,500,000	600,000
Actual Production	485,000	1,820,000	1,070,000	490,000
Pounds Dumped or Spoiled	5,000	20,000	20,000	10,000
Total Eligible Loss	320,000	200,000	450,000	120,000
20% of Base Production	160,000	400,000	300,000	120,000
Pounds of loss above 20% loss level	160,000	0	150,000	0
Payment Rate	[1] $0.1559	[1] $0.1762	[1] $0.1626	[1] $0.1626
DDAP for loss above 20%	$24,944	$0	$24,390	$0
DDAP for under 20% loss @ $0.12/lb. (example only)	$19,200	$24,000	$36,000	$14,400
Total DDAP	$44,144	$24,000	$60,390	$14,400
Eligible Losses x average price	$49,888	$35,240	$73,100	$19,512
Percent production loss suffered	40	10	30	20
Percent financial losses recovered from DDAP	88	68	83	74

[1] Lb.

CCC considered two additional provisions that were not included in the proposed rule, but which are discussed here to obtain public comment. First, the agency considered adding an adjustment to the producer's calculated production losses in the eligible months for cows that were added to the milking herd in order to make up for per-cow production decreases as a result of the hurricane. It was determined that basing the payments in this program on the dairy operation's production during the eligible months, less the production from cows that were added after the base production calculation month would be administratively difficult, and the additional step in the eligible production calculations would make the process less reliable. Further, the additional recordkeeping and reporting requirements imposed on producers to report the number of cows added during each eligible month, the corresponding dates of purchase, and per-cow production based on the number of days of ownership during each eligible month, was felt to be too burdensome for program participation and would likely have a negligible effect on payments. Second, the agency considered paying the dairy operation's milk marketing cooperative directly for milk that was dumped. Instead, this rule proposes that payments will be based on the reduction in the amount of production marketed, including any dumped production, that can be verified. Payments for eligible losses will be made directly by FSA to producers. To segregate payments into two payment schemes, one for producers' production losses, and one for cooperatives' losses from dumped milk, would greatly add to the administrative burden of carrying out this program. Further, the statute provides that these payments will be made "* * * to dairy producers * * *" Thus, this rule provides for making payments only to producers. Nevertheless, the agency invites comments on these two variations that were considered, and specifically requests suggestions for how these options could be added to the program regulations in a simple, straightforward way.

Producers who have received a payment under the Dairy Indemnity Payment Program (7 CFR part 760) shall be ineligible for payments under this rule. Gross revenue and per-person payment limits do not apply. Information provided on applications and supporting documentation will be subject to verification by FSA. False certifications by producers carry strict penalties and FSA will validate applications with random spot-checks. Dairy producers determined to have made any false certifications or adopted any misrepresentation, scheme, or device that defeats the program's purpose will be required to refund any payments issued under this program with interest, and may be subject to other civil, criminal, or administrative remedies. During the application period, dairy producers may apply in person at FSA county offices during regular business hours. Applications may also be submitted to CCC by mail or FAX. Program applications may be obtained in person, by mail, telephone, and facsimile from producers' designated FSA county office or via the Internet at *http://www.fsa.usda.gov/dafp/psd/*. In order to expedite the availability of funds it has been determined to be in the public interest to limit the comment period to 30 days.

Executive Order 12866

This proposed rule has been determined to be "significant" under Executive Order 12866 and was reviewed by the Office of Management and Budget (OMB). A cost-benefit assessment of this rule was completed and is available from Ms. Cooke using the contact information above.

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking with respect to the subject of this rule.

Environmental Assessment

The environmental impacts of this proposed rule have been considered consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. To the extent these authorities may apply, CCC has concluded that this rule is categorically excluded from further environmental review as evidenced by the completion of an environmental evaluation. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12998. This final rule preempts State laws to the extent such laws are inconsistent with it. This rule is not retroactive. Before judicial action may be brought concerning this rule, all administrative remedies set forth at 7 CFR parts 11 and 780 must be exhausted.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject of this rule. Further, this rule contains no unfunded mandates as defined in sections 202 and 205 of UMRA.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995, FSA has submitted a request for approval to the Office of Management and Budget (OMB) of an information collection required to support this proposed rule for the 2004 Dairy Disaster Assistance Payment Program. A notice was published in the **Federal Register** on February 16, 2005, (70 FR 7923) with estimates of the information collection burden required to implement this program and requesting comments on those requirements as required by 5 CFR 1320.8(d)(1). Copies of the information collection may be obtained from Danielle Cooke, phone: (202) 720–1919; e-mail: *Danielle_Cooke@wdc.fsa.usda.gov*.

Government Paperwork Elimination Act

CCC is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general, and FSA in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The forms and other information collection activities required to be utilized by a person subject to this rule are not yet fully implemented in a way that would allow the public to conduct business with CCC electronically. Accordingly, at

this time, all forms required to be submitted under this rule may be submitted to CCC by mail or FAX.

List of Subjects in 7 CFR Part 1430

Dairy, Disaster assistance, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 7 CFR part 1430 is proposed to be amended as follows:

PART 1430—DAIRY PRODUCTS

1. The authority citation for part 1430 is revised to read as follows:

Authority: 7 U.S.C. 7981 and 7982; 15 U.S.C. 714b and 714c; Pub. L. 108–324, 118 Stat. 1220.

2. Subpart C is added to read as follows:

Subpart C—2004 Dairy Disaster Assistance Payment Program

Sec.

1430.300 Applicability.
1430.301 Administration.
1430.302 Definitions.
1430.303 Time and method of application.
1430.304 Eligibility.
1430.305 Proof of production.
1430.306 Determination of losses incurred.
1430.307 Rate of payment and limitations on funding.
1430.308 Availability of funds.
1430.309 Appeals.
1430.310 Misrepresentation and scheme or device.
1430.311 Death, incompetence, or disappearance.
1430.312 Maintaining records.
1430.313 Refunds; joint and several liability.
1430.314 Miscellaneous provisions.
1430.315 Termination of program.

Subpart C—2004 Dairy Disaster Assistance Payment Program

§ 1430.300 Applicability.

(a) Subject to the availability of funds, this subpart sets forth the terms and conditions applicable to the 2004 Dairy Disaster Assistance Payment Program authorized by section 103 of Division B of Public Law 108–324. Benefits will be provided to eligible United States producers who have suffered dairy production losses and dairy spoilage losses in eligible counties as a result of a hurricane disaster in 2004.

(b) To be eligible for this program, a producer must have been a milk producer in 2004 in a county declared a disaster by the President of the United States due to a 2004 hurricane. Only losses occurring in those counties are eligible for payment in this program. Producers in contiguous counties that were not designated by the President as a disaster county due to a hurricane in 2004 are not eligible.

(c) Subject to the availability of funds, benefits shall be provided by the Commodity Credit Corporation (CCC) to eligible dairy producers. Additional terms and conditions may be set forth in the payment application that must be executed by participants to receive a disaster assistance payment for dairy production losses and dairy spoilage losses.

(d) To be eligible for payments, producers must comply with the provisions of, and their losses must meet the conditions of, this subpart and any other conditions imposed by CCC.

§ 1430.301 Administration.

(a) The 2004 Dairy Disaster Assistance Payment Program shall be administered under the general supervision of the Executive Vice President, CCC (Administrator, FSA), or a designee, and shall be carried out in the field by FSA State and county committees (State and county committees) and FSA employees.

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) The State committee shall take any action required by the regulations of this subpart that has not been taken by the county committee. The State committee shall also:

(1) Correct, or require the county committee to correct, any action taken by such county committee that is not in accordance with the regulations of this subpart; and

(2) Require a county committee to withhold taking any action that is not in accordance with the regulations of this subpart.

(d) No delegation in this subpart to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by the State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines in cases where lateness or failure to meet such requirements do not adversely affect the operation of the 2004 Dairy Disaster Assistance Payment Program and does not violate statutory limitations on the program.

(f) Data furnished by the applicants will be used to determine eligibility for program benefits. Although participation in the 2004 Dairy Disaster Assistance Payment Program is voluntary, program benefits will not be provided unless the participant furnishes all requested data.

§ 1430.302 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the 2004 Dairy Disaster Assistance Payment Program established by this subpart.

Application means the 2004 Dairy Disaster Assistance Payment Program Application.

Application period means the time period established by the Deputy Administrator for producers to apply for program benefits.

CCC means the Commodity Credit Corporation of the Department.

County committee means the FSA county committee.

County office means the FSA office responsible for administering FSA programs for farms located in a specific area in a State.

Dairy operation means any person or group of persons who, as a single unit, as determined by CCC, produces and markets milk commercially from cows and whose production facilities are located in the United States.

Department or USDA means the United States Department of Agriculture.

Deputy Administrator means the Deputy Administrator for Farm Programs (DAFP), FSA, or a designee.

Disaster county means a county declared a disaster by the President of the United States due to a hurricane in 2004, and is only the county so declared, not a contiguous county.

Farm Service Agency or FSA means the Farm Service Agency of the Department.

Hundredweight or cwt. means 100 pounds.

Milk handler or cooperative means the marketing agency to, or through which, the producer commercially markets whole milk.

Milk marketings means a marketing of milk for which there is a verifiable sales or delivery record of milk marketed for commercial use.

Payment pounds means the pounds of milk production from a dairy operation for which the dairy producer is eligible to be paid under this subpart.

Producer means any individual, group of individuals, partnership, corporation, estate, trust association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen of, or legal resident alien in the United States, and who directly or indirectly, as determined by the Secretary, shares in the risk of producing milk, and makes contributions (including land, labor,

management, equipment, or capital) to the dairy farming operation of the individual or entity of the proceeds of this operation.

Starting base production means actual commercial production marketed by the dairy operation during the month of July 2004, or alternative period established by the Deputy Administrator.

Verifiable production records means evidence that is used to substantiate the amount of production marketed, including any dumped production, and that can be verified by CCC through an independent source.

§ 1430.303 Time and method of application.

(a) Dairy producers may obtain an Application, in person, by mail, by telephone, or by facsimile from any county FSA office. In addition, applicants may download a copy of the Application at *http://www.sc.egov.usda.gov.*

(b) A request for benefits under this subpart must be submitted on a completed Application as defined in § 1430.302. Applications and any other supporting documentation shall be submitted to the FSA county office serving the county where the dairy operation is located but, in any case, must be received by the FSA county office by the close of business on the date established by the Deputy Administrator. Applications not received by the close of business on such date will be disapproved as not having been timely filed and the dairy producer will not be eligible for benefits under this program.

(c) All persons who share in the risk of a dairy operation's total production must certify to the information on the Application before the Application will be considered complete.

(d) Each dairy producer requesting benefits under this subpart must certify to the accuracy and truthfulness of the information provided in their application and any supporting documentation. All information provided is subject to verification by CCC. Refusal to allow CCC or any other agency of the Department of Agriculture to verify any information provided will result in a denial of eligibility. Furnishing the information is voluntary; however, without it program benefits will not be approved. Providing a false certification to the Government may be punishable by imprisonment, fines and other penalties or sanctions.

§ 1430.304 Eligibility.

(a) Producers in the United States will be eligible to receive hurricane-related dairy disaster benefits under this part only if they have suffered dairy production or dairy spoilage losses in counties declared a disaster by the President due to any hurricane in 2004. To be eligible to receive payments under this subpart, producers in a dairy operation must:

(1) Have produced and commercially marketed milk in the United States and commercially marketed the milk produced during the 2004 calendar year;

(2) Be a producer on a dairy farm operation physically located in a disaster county where production and milk spoilage losses were incurred as a result of 2004 hurricanes, and limiting their claims to losses occurring in those counties;

(3) Provide proof of monthly milk production dumped and commercially marketed by all persons in the eligible dairy operation during the third quarter of the 2004 milk marketing year, or other period as determined by FSA, to determine the total pounds of eligible losses that will be used for payment; and

(4) Apply for payments during the application period established by the Deputy Administrator.

(b) Payments may be made for losses suffered by an otherwise eligible producer who is now deceased or is a dissolved entity if a representative who currently has authority to enter into a contract for the producer or the producer's estate signs the application for payment. Proof of authority to sign for the deceased producer's estate or a dissolved entity must be provided. If a producer is now a dissolved general partnership or joint venture, all members of the general partnership or joint venture at the time of dissolution or their duly-authorized representatives must sign the application for payment.

(c) Producers associated with a dairy operation must submit a timely application and comply with all other terms and conditions of this subpart and instructions issued by CCC, as well as comply with those instructions that are otherwise contained in the application to be eligible for benefits under this subpart.

(d) As a condition to receive benefits under this part, a producer must have been in compliance with the Highly Erodible Land Conservation and Wetland Conservation provisions of 7 CFR part 12 for the 2004 calendar year, as applicable, and must not otherwise be barred from receiving benefits under 7 CFR part 12 or any other law or regulation.

(e) Payments will be limited to losses in eligible counties in eligible months.

(f) All payments under this part are subject to the availability of funds.

§ 1430.305 Proof of production.

(a) A dairy producer must, based on the instructions issued by the Deputy Administrator, provide adequate proof of the dairy operation's commercial production, including any dumped production, for each month for July 2004 through October 2004, and must specifically identify any dumped production for August through October 2004. If a month other than July 2004 is used records for that month must be provided.

(1) A producer must certify and provide such proof as requested that losses for which compensation is claimed were hurricane-related and occurred in an eligible county in an eligible month.

(2) Additional supporting documentation may be requested by FSA as necessary to verify production or spoilage losses to the satisfaction of FSA.

(b) Adequate proof under paragraph (a) of this section must be based on milk marketing statements obtained from the dairy operation's milk handler or marketing cooperative. Supporting documents may include, but are not limited to: tank records, milk handler records, daily milk marketings, copies of any payments received from other sources for production or spoilage losses, or any other documents available to confirm the production history of the dairy operation and determine losses incurred by the dairy operation. All information provided is subject to verification, spot check, and audit by FSA. Also, FSA or another CCC representative may examine the dairy operation's production or spoilage claims.

(c) If adequate proof of commercially-marketed production and supporting documentation is not presented to the satisfaction of CCC or FSA, the request for benefits will be rejected. In the case of a new producer that had no verifiable, actual, commercial production marketed by the dairy operation during the month of July 2004, but which suffered eligible losses, an alternate period may be established by the Deputy Administrator.

(d) Evidence of production will be used to establish the commercial marketing and production history of the dairy operation so that production and spoilage losses can be computed in accordance with § 1430.306.

§ 1430.306 Determination of losses incurred.

(a) Eligible payable losses will be calculated on a dairy operation by dairy operation basis and will be limited to those occurring in August to October

2004. Specifically, dairy production and spoilage losses incurred by producers under this subpart will be determined on the established history of the dairy operation's actual commercial production marketed from August through October 2004, and actual production dumped or otherwise not marketed from August through October 2004, as provided by the dairy operation consistent with § 1430.305. Except as otherwise provided in these regulations, the starting base production, as defined in § 1430.302, will be adjusted downward by a percentage determined by CCC to determine the base production for the months of August through October 2004. These adjustments are made to account for the seasonal declines that can occur during those months. The base production for each of the months August through October 2004, will be calculated by reducing the starting base production (July 2004, or approved alternate month) as follows:

(1) August 2004 base production will be the starting base production reduced by 9 percent;

(2) September 2004 base production will be the starting base production reduced by 15 percent;

(3) October 2004 base production will be the starting base production reduced by 11 percent.

(b) The eligible dairy production losses for a dairy operation will, for each of the months of August through October 2004, will be:

(1) The new base production for the dairy operation calculated under paragraph (a) of this section less, (2) For each such month for each dairy operation, the total of:

(i) Actual commercially-marketed production; plus

(ii) The pounds of production dumped (whether related to the hurricane or not), or otherwise not commercially marketed (whether related to the hurricane or not). For dumping losses to be eligible, they must be hurricane related, as described under paragraphs (c) and (d) of this section.

(c) Actual production losses may be adjusted to the extent the reduction in production is not certified by the producer to be the result of the hurricane or is determined by FSA not to be hurricane-related. Actual production, as adjusted, that exceeds the adjusted base production will indicate that the dairy operation incurred no production losses for the corresponding month as a result of the hurricane disaster, and production for that month will not qualify as a production loss for the purposes of this program.

(d) Eligible dairy spoilage losses incurred by producers under this subpart for each of the months August through October 2004 will be determined based on actual milk produced and dumped on the farm as a result of the 2004 hurricanes. Proper documentation of milk dumped on the farm as a result of spoilage due to a hurricane must be provided to CCC as provided in § 1430.305.

(e) Eligible production and spoilage losses as otherwise determined under paragraphs (a) through (d) of this section will be added together to determine total eligible losses incurred by the dairy operation subject to all other eligibility requirements as may be included in this part or elsewhere.

(f) Payment on eligible dairy operation losses will be calculated using whole pounds of milk. No double counting is permitted, and only one payment will be made for each pound of milk calculated as an eligible loss after the distribution of the operation's eligible production loss among the producers of the dairy operation according to § 1430.307(b). Payments under this part will not be affected by any payments for dumped or spoiled milk that the dairy operation may have received from its milk handler, or marketing cooperative, or any other private party.

(g) If a producer is eligible to receive payments under this part and benefits under any other program administered by the Secretary for the same losses, the producer must choose whether to receive the other program benefits or payments under this part, but shall not be eligible for both. The limitation on multiple benefits prohibits a producer from being compensated more than once for the same losses. If the other USDA program benefits are not available until after an application for benefits has been filed under this part, the producer may, to avoid this restriction on such other benefits, refund the total amount of the payment to the administrative FSA office from which the payment was received.

§ 1430.307 Rate of payment and limitations on funding.

(a) Subject to the availability of funds, the payment rate for eligible production and spoilage losses determined according to § 1430.306 will be, depending on the State, the average monthly Mailbox milk price for the Florida, the Southeast, or the Appalachian States Marketing Orders as reported by the Agricultural Marketing Service during the months of August, September, and October of 2004. Maximum payment rates for eligible losses for dairy operations located in specific states will be as follows:

(1) Florida—$17.62 per hundredweight ($0.1762 per pound).

(2) Alabama, Georgia, and Louisiana—$16.26 per hundredweight ($0.1626 per pound).

(3) North Carolina and South Carolina—$15.59 per hundredweight ($0.1559 per pound).

(b) Subject to the availability of funds, each eligible dairy operation's payment will be calculated by multiplying the applicable payment rate under paragraph (a) of this section by the operation's total eligible losses. Where there are multiple producers in the dairy operation, individual producers' payments will be disbursed according to each producer's share of the dairy operation's production as specified in the Application.

(c) If the total value of losses claimed under paragraph (b) of this section exceeds the $10 million available for the 2004 Dairy Disaster Assistance Payment Program, less any reserve that may be created under paragraph (e) of this section, total eligible losses of individual dairy operations that, as calculated as an overall percentage for the full three month period, August–October 2004 (not a monthly average for any one month), are greater than 20 percent of the total base production for those three months will be paid at the maximum rate under paragraph (a) of this section to the extent available funding allows. A loss of over 20 percent in only one or two of the eligible months will not of itself qualify for the maximum per-pound payment. Total eligible losses for a producer, as calculated under § 1430.306, of less than or equal to 20 percent during the eligibility period of August to October 2004 will be paid at a rate determined by dividing the eligible losses of less than 20 percent by the funds remaining after making payments for all eligible losses above the 20-percent threshold.

(d) In no event shall the payment exceed the value determined by multiplying the producer's total eligible loss times the average price received for commercial milk production in their area as defined in paragraph (a) of this section.

(e) A reserve may be created to handle claims that extend beyond the conclusion of the application period, but claims shall not be payable once the available funding is expended.

§ 1430.308 Availability of funds.

The total available program funds shall be $10 million as provided by section 103 of Division B of Public Law 108–324.

§ 1430.309 Appeals.

Any producer who is dissatisfied with a determination made pursuant to this subpart may request reconsideration or appeal of such determination in accordance with the appeal regulations set forth at 7 CFR parts 11 and 780. Appeals of determinations of ineligibility or payment amounts are subject to the limitations in §§ 1430.307 and 1430.308.

§ 1430.310 Misrepresentation and scheme or device.

(a) In addition to other penalties, sanctions or remedies as may apply, a dairy producer shall be ineligible to receive assistance under this program if the producer is determined by FSA or CCC to have:

(1) Adopted any scheme or device that tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, shall be refunded with interest together with such other sums as may become due. Any dairy operation or person engaged in acts prohibited by this section and any dairy operation or person receiving payment under this subpart shall be jointly and severally liable with other persons or operations involved in such claim for benefits for any refund due under this section and for related charges. The remedies provided in this subpart shall be in addition to other civil, criminal, or administrative remedies that may apply.

§ 1430.311 Death, incompetence, or disappearance.

In the case of death, incompetency, disappearance, or dissolution of a person that is eligible to receive benefits in accordance with this subpart, such alternate person or persons specified in 7 CFR part 707 may receive such benefits, as determined appropriate by FSA.

§ 1430.312 Maintaining records.

Persons applying for benefits under this program must maintain records and accounts to document all eligibility requirements specified herein. Such records and accounts must be retained for 3 years after the date of payment to the dairy operations under this program. Destruction of the records after such date shall be at the risk of the party undertaking the destruction.

§ 1430.313 Refunds; joint and several liability.

(a) Excess payments, payments provided as the result of erroneous information provided by any person, or payments resulting from a failure to comply with any requirement or condition for payment under the application or this subpart, must be refunded to CCC.

(b) A refund required under this section shall be due with interest determined in accordance with paragraph (d) of this section and late payment charges as provided in 7 CFR part 1403.

(c) Persons signing a dairy operation's application as having an interest in the operation shall be jointly and severally liable for any refund and related charges found to be due under this section.

(d) Interest shall be applicable to any refunds required in accordance with 7 CFR parts 792 and 1403. Such interest shall be charged at the rate that the United States Department of the Treasury charges CCC for funds, and shall accrue from the date FSA or CCC made the erroneous payment to the date of repayment.

(e) FSA may waive the accrual of interest if it determines that the cause of the erroneous determination was not due to any action of the person, or was beyond the control of the person committing the violation. Any waiver is at the discretion of FSA alone.

§ 1430.314 Miscellaneous provisions.

(a) *Offset.* CCC may offset or withhold any amount due CCC under this subpart in accordance with the provisions of 7 CFR part 1403.

(b) *Claims.* Claims or debts will be settled in accordance with the provisions of 7 CFR part 1403.

(c) *Other interests.* Payments or any portion thereof due under this subpart shall be made without regard to questions of title under State law and without regard to any claim or lien against the livestock, or proceeds thereof, in favor of the owner or any other creditor except agencies and instrumentalities of the U.S. Government.

(d) *Assignments.* Any producer entitled to any payment under this part may assign any payments in accordance with the provisions of 7 CFR part 1404.

§ 1430.315 Termination of program.

This program will be terminated after payment has been made to those applicants certified as eligible pursuant to the application period established in § 1430.304. All eligibility determinations shall be final except as otherwise determined by the Deputy Administrator.

Signed in Washington, DC, on May 19, 2005.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 05–10444 Filed 5–24–05; 8:45 am]

BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH72

List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®–24P, –52B, –61BT, –32PT, –24PHB, and –24PTH Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the Transnuclear, Inc., Standardized NUHOMS® System listing within the "List of approved spent fuel storage casks" to include Amendment No. 8 to Certificate of Compliance Number (CoC No.) 1004. Amendment No. 8 to the Standardized NUHOMS® System CoC would modify the cask design by adding a new spent fuel storage and transfer system, designated the NUHOMS®–24PTH System. The NUHOMS®–24PTH System consists of new or modified components: the –24PTH dry shielded canister (DSC); a new –24PTH DSC basket design; a modified horizontal storage module (HSM), designated the HSM–H; and a modified transfer cask (TC), designated the OS 197FC TC. The NUHOMS®–24PTH System is designed to store fuel with a maximum average burnup of up to 62 gigawatts-day/metric ton of uranium; maximum average initial enrichment of 5.0 weight percent; minimum cooling time of 3.0 years; and maximum heat load of 40.8 kilowatts per DSC, under a general license.

DATES: Comments on the proposed rule must be received on or before June 24, 2005.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH72) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information,

the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. 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 Gallagher (301) 415–5905; e-mail *cag@nrc.gov*. Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays (telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers at the NRC's Public Document Room (PDR), O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. An electronic copy of the proposed CoC, Technical Specifications (TS), and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. 050750211.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415–6219, e-mail, *jmm2@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Procedural Background

This rule is limited to the changes contained in Amendment 8 to CoC No. 1004 and does not include other aspects of the Standardized NUHOMS® System cask design. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The direct final rule will become effective on August 8, 2005. However, if the NRC receives significant adverse comments by June 24, 2005, then the NRC will publish a document that withdraws the direct final rule and will subsequently address the comments received in a final rule. The NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

List of Subjects In 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099. 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1004 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004.

Initial Certificate Effective Date: January 23, 1995.

Amendment Number 1 Effective Date: April 27, 2000.

Amendment Number 2 Effective Date: September 5, 2000.

Amendment Number 3 Effective Date: September 12, 2001.

Amendment Number 4 Effective Date: February 12, 2002.

Amendment Number 5 Effective Date: January 7, 2004.

Amendment Number 6 Effective Date: December 22, 2003.

Amendment Number 7 Effective Date: March 2, 2004.

Amendment Number 8 Effective Date: August 8, 2005.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1004.

Certificate Expiration Date: January 23, 2015.

Model Number: NUHOMS® –24P, –52B, –61BT, –32PT, –24PHB, and –24PTH.

* * * * *

Dated at Rockville, Maryland, this 6th day of May, 2005.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. 05–10390 Filed 5–24–05; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 713 and 741

Fidelity Bond and Insurance Coverage for Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: NCUA proposes to amend its fidelity bond rule to increase the maximum allowable deductible, presently $200,000, and change the minimum required coverage. NCUA also proposes to discontinue listing approved bonds in the rule but continue to list and update them on its website. NCUA believes these changes modernize the rule and provide flexibility while addressing safety and soundness concerns. NCUA solicits comment on whether to rescind its approval of Blanket Bond Standard Form 23, which has not changed since 1950 and is no longer widely used. NCUA solicits suggestions on factors credit unions should consider in determining whether to raise their bond coverage above the regulatory requirements. Finally, NCUA is proposing a technical correction in the regulation that requires fidelity bond coverage for federally insured, state chartered credit unions.

DATES: Comments must be received on or before July 25, 2005.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- NCUA Web site: *http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs. html*. Follow the instructions for submitting comments.
- E-mail: Address to *regcomments@ncua.gov*. Include "[Your name] Comments on Proposed Rule 713, Fidelity Bonds," in the e-mail subject line.
- Fax: (703) 518–6319. Use the subject line described above for e-mail.
- Mail: Address to Mary F. Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- Hand Delivery/Courier: Same as mail address.

FOR FURTHER INFORMATION CONTACT: Ross P. Kendall, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION: NCUA's policy is to review regulations periodically to "update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions." Interpretive Ruling and Policy Statement (IRPS) 87–2, Developing and Reviewing Government Regulations. NCUA notifies the public about the review, which is conducted on a rolling basis so that a third of its regulations are reviewed each year. The changes in this proposed rule are the result of NCUA's staff review and public comments.

Proposed Changes

Increase in Maximum Deductible and Changes in Coverage Amounts

The rule currently provides a sliding scale, based on asset size, for both the maximum allowable deductible and coverage amounts in a fidelity bond. The maximum deductible is currently $2,000 plus one one-thousandth of total assets, up to a maximum of $200,000. 12 CFR 713.6(a). The result of this formula is that credit unions with assets in excess of $198 million are limited to a $200,000 deductible. Asset size is currently the only consideration affecting the amount of the deductible.

The Board is proposing to keep the current formula based on asset size but raise the maximum deductible to $1,000,000 for credit unions that qualify under NCUA's Regulatory Flexibility Program. 12 CFR part 742. The proposed amendment provides that credit unions qualifying under the Regulatory Flexibility Program with assets over $200 million will be able to purchase bonds with greater deductibles than is permitted under the current rule. The proposed maximum deductible of $1,000,000 is reached when a qualifying credit union has assets over $998 million.

The Board notes that many credit unions have had a substantial growth in assets since the maximum deductible was last increased in 1981, and inflation in the economy since then also supports making an adjustment. The Board believes large, well-run credit unions with substantial net worth can absorb financial risk greater than $200,000. The Board notes, for example, that a credit union with assets of one billion dollars and sufficient net worth to qualify under the Regulatory Flexibility Program would have a net worth of at least $90 million, which is more than adequate to absorb a million dollar deductible.

The Board invites comment on whether different criteria, such as the capital standards in NCUA's Prompt Corrective Action regulation, would be a more appropriate measure to link to the higher permissible deductible. 12 CFR part 702. In any event, the Board intends to maintain, as reflected in the proposal, the current deductible limits for credit unions that do not qualify under the additional criteria.

With regard to status changes, the proposal provides that a credit union initially meeting the criterion but subsequently failing to meet the criterion for a larger deductible must get the required coverage within thirty days. The proposal would also require that a credit union in these circumstances to give written notice to the appropriate NCUA regional office. A credit union's notice will only need to state that its status has changed and confirm that it has secured the required coverage.

The NCUA Board believes the current risk environment for credit unions calls for increases in bond coverage at both ends of the range in asset size. Currently, the maximum required coverage is $5 million and applies to all credit unions with assets greater than $295 million. The rule notes that credit unions with substantial amounts of cash on hand or in transit may require greater coverage. 12 CFR 713.5.

The $5 million maximum coverage requirement has not changed since 1977 and, in addition to inflation, at least two additional factors support raising this limit. Since 1999, the number of federally insured credit unions with

assets greater than $500 million has increased from 121 to 245. During the same period, assets held by these credit unions have grown from $129 billion to $313 billion and now represent almost half of all assets held by all federally insured credit unions. Moreover, the rate of growth in assets for credit unions of this size is almost 80% since 1999. The Board believes prudent practice and considerations of safety and soundness dictate a higher required maximum for credit unions with assets greater than $500 million. Accordingly, the Board proposes to increase the minimum bond coverage for credit unions with assets in excess of $500 million: The required fidelity bond coverage must equal one percent of the credit union's assets, rounded to the nearest $100 million, to a maximum required bond coverage amount of $9 million.

The Board also believes that substantial risk of loss has grown for smaller credit unions. The current rule's formula allows credit unions with assets of less than $4 million to have minimum bond coverage of less than $250,000. 12 CFR 713.5(a). The Board proposes that, for smaller credit unions, they should have bond coverage of at least $250,000 or their total assets, whichever is less.

The Board believes increasing the coverage requirement in the regulation for smaller credit unions will not be a significant cost for smaller credit unions but is important because of increasing safety and soundness challenges for them. Of the approximately 2,500 credit unions with assets under $4 million, the Board understands most already have bonds equal to or greater than $250,000 and many have coverage in the range of $500,000 to $1 million. Premiums depend on various factors, including geographic location and level and type of activities. The Board believes increases in premium costs for smaller credit unions are incrementally small as compared to the significant increase in coverage they can get. For example, the Board understands that a small, east coat credit union, currently with a $100,000 bond costing about $600 could increase coverage to $250,000 for about an additional $100.

Smaller credit unions are in many ways uniquely vulnerable to fraud that can, given advances in technology, quickly produce losses that exceed their assets. Since year-end 1993, the NCUA has experienced thirteen instances in which losses to the National Credit Union Share Insurance Fund from insolvent credit unions have exceeded the credit union's stated assets at the time of liquidation, even after recovery of the full bond amount. Accordingly, the Board proposes to increase the minimum required coverage for all credit unions to the lesser of $250,000 or its total assets.

The changes reflected in the proposed rule are consistent with the Board's ongoing efforts to reduce regulatory burden while preserving necessary requirements to assure credit union safety and soundness. The Board does not believe the increased coverage requirements will add significantly to the premium costs. The Board also anticipates that the proposed change in the deductible ceiling will result in well-run credit unions being able to get fidelity bond coverage at lower cost.

Listing of Approved Bond Forms

The Board proposes to discontinue listing approved fidelity bonds by form number and offering company but continue to list and update this information on the agency's Web site. 12 CFR 713.4. The Board believes that a regulation is not the most efficient or effective way to notify credit unions about changes regarding which bonds are approved. Changes in the marketplace such as mergers and acquisitions affect the accuracy of the list of companies. For example, NCUA has approved bond forms offered by the Cincinnati Insurance Company and the Chubb Group but that information has not as yet been incorporated in the rule by an amendment.

Since the rule was last amended in 1999, NCUA has significantly enhanced the usefulness of its Web site and credit unions have come to rely increasingly on the Web as a source of information. The Board believes the agency's Web site is a flexible, timely, and accurate medium for information about approved bonds for credit unions. The Board proposes, therefore, to eliminate the listing of approved bond forms and companies from the rule but to continue to provide the information on the agency's Web site (*http://www.ncua.gov*). The proposed amendment changes § 713.4 of the rule so that it refers to the Web site but includes a statement that anyone without access to the Web can obtain a current listing of approved bond forms by contacting NCUA directly. The amendment would retain the current language in the rule requiring prior approval of the Board for bond forms not listed on the Web or departing from the described coverages.

Technical Amendment

The fidelity bond requirements in our rules apply to federally insured, state chartered credit unions. 12 CFR 741.201. The proposed rule makes a technical correction to correct a cross-reference in subsection (b) of this rule to a provision in the corporate credit union rule.

Continued Viability of Standard Blanket Bond Form 23

The current rule lists Credit Union Blanket Bond Standard Form 23 of the Surety Association of America as a bond that credit unions may use without obtaining prior NCUA approval. 12 CFR 713.4(a). This bond form was last revised over fifty years ago. The Board is aware of the dramatic changes in both the credit union and the fidelity bond businesses that have occurred since 1950 and questions whether this form of blanket bond has continued relevance and viability. The Board solicits comment on whether to rescind its approval of this bond form and is particularly interested in hearing from any credit union that might still have this bond.

Additional Factors to Consider When Considering Additional Coverage

The current rule notes that credit unions should consider additional coverage, beyond the coverage the regulation requires, if their circumstances warrant; the regulation offers the amount of cash on hand and amount of cash in transit as examples. 12 CFR 713.5(b). The Board believes it may be helpful to credit unions for the regulation to highlight other circumstances that credit unions should consider when considering whether to get additional coverage. Commenters should note this subsection in the regulation does not set out regulatory requirements but only suggests factors credit unions should consider when adjusting their coverage to their circumstances. The Board welcomes comments on additional examples of activities the regulation could highlight, such as funds transfer operations, that may present additional, potential risks because of new programs that are available.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities. NCUA considers credit unions having less than ten million dollars in assets to be small for purposes of RFA. Interpretive Ruling and Policy Statement (IRPS) 87–2 as amended by IRPS 03–2. The proposal would require credit unions with assets under $4

million to obtain higher fidelity bond coverage than is currently required. The NCUA believes, based on discussions with members of the industry, that the increase in premium to obtain the higher coverage will be, relative to the premium already required, insignificant. The NCUA has determined and certifies that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that an RFA analysis is not required. NCUA solicits comment on this analysis and welcomes any information that would suggest a different conclusion.

Paperwork Reduction Act

A. Request for Comment on Proposed Information Collection

In accordance with the requirements of the Paperwork Reduction Act of 1995, NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. Simultaneous with its publication of this proposed amendment to Part 713, NCUA is submitting a copy of the proposed rule to the Office of Management and Budget (OMB) along with an application for an OMB control number.

The proposed amendment would require some federally insured credit unions to monitor their asset size and status under NCUA's Regulatory Flexibility Program to ensure their continued eligibility for the higher bond deductible permissible under the revised regulation. These federally insured credit unions would also be required to notify their bond carrier and their regulator in the event their status changes and they become no longer eligible to have the higher deductible. Credit unions that no longer qualify for the higher deductible must obtain revised coverage within thirty days of their change in status.

NCUA estimates it will take an average of one hour for a credit union to provide notice to both its bond carrier and its regulator of its changed status. NCUA notes that credit unions with assets greater than $200 million comprise approximately seven percent of all federally insured credit unions; of these, 266 presently qualify for participation in the Regulatory Flexibility program. Based on NCUA's information, on average less than two percent of all Regulatory Flexibility program eligible credit unions fall out of eligibility annually.

Thus, the burden associated with this collection of information may be summarized as follows:

Number of Respondents: 5.

Estimated Time per Response: 1 hour.

Notice to Regulators: 1 hour x 5 credit unions = 5 hours.

Estimated Total Annual Burden: 5 hours.

The Paperwork Reduction Act and OMB regulations require that the public be provided an opportunity to comment on the paperwork requirements, including an agency's estimate of the burden of the paperwork requirements. The NCUA Board invites comment on: (1) Whether the paperwork requirements are necessary; (2) the accuracy of NCUA's estimates on the burden of the paperwork requirements; (3) ways to enhance the quality, utility, and clarity of the paperwork requirements; and (4) ways to minimize the burden of the paperwork requirements.

Comments should be sent to: OMB Reports Management Branch, New Executive Office Building, Room 10202, Washington, DC 20503; Attention: Joseph Lackey, Desk Officer for NCUA. Please send NCUA a copy of any comments submitted to OMB.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on State and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. It will not have substantial direct effects on the states, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681–(1998).

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed rule is understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Parts 713 and 741

Credit unions, Insurance, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on May 19, 2005.

Mary F. Rupp,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR parts 713 and 741 as follows:

PART 713—FIDELITY BONDS AND INSURANCE COVERAGE FOR FEDERAL CREDIT UNIONS

1. The authority citation for part 713 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757(5)(D), and (7)(I). 1766, 1782, 1784, 1785 and 1786.

2. Amend § 713.4 by revising paragraph (a) to read as follows:

§ 713.4 What bond forms may be used?

(a) A current listing of basic bond forms that may be used without prior NCUA Board approval is on NCUA's Web site, *http://www.ncua.gov*. If you are unable to access the NCUA Web site, you can get a current listing of approved bond forms by contacting NCUA's Public and Congressional Affairs Office, at (703) 518–6330.

* * * * *

3. Amend § 713.5 by revising paragraph (a) to read as follows:

§ 713.5 What is the required minimum dollar amount of coverage?

(a) The minimum required amount of fidelity bond coverage for any single loss is computed based on a federal credit union's total assets.

Assets	Minimum bond
$0 to $4,000,000	Lesser of total assets or $250,000.
$4,000,001 to $50,000,000	$100,000 plus $50,000 for each million or fraction thereof over $1,000,000.

Assets	Minimum bond
$50,000,000 to $500,000,000	$2,550,000 plus $10,000 for each million or fraction thereof over $50,000,000, to a maximum of $5,000,000.
Over $500,000,000	One percent of assets, rounded to the nearest hundred million, to a maximum of $9,000,000.

* * * * *

4. Amend § 713.6 by revising paragraph (a)(1) and by adding paragraph (c) to read as follows:

§ 713.6 What is the permissible deductible?

(a)(1)The maximum amount of allowable deductible is computed based on a federal credit union's asset size, as follows:

Assets	Maximum deductible
$0 to $100,000	No deductible allowed.
$100,001 to $250,000	$1,000.
$250,000 to $1,000,000	$2,000.
Over $1,000,000	$2,000 plus 1/1000 of total assets up to a maximum of $200,000; for credit unions that qualify for NCUA's Regulatory Flexibility Program in part 742, the maximum deductible is $1,000,000.

* * * * *

(c) A credit union that becomes ineligible to have a deductible in excess of $200,000 must, within 30 days of becoming ineligible for the higher deductible, obtain the required coverage and notify the appropriate NCUA regional office in writing of its changed status and confirm that it has obtained the required coverage.

PART 741—REQUIREMENTS FOR INSURANCE

1. The authority citation for part 741continues to read as follows:

Authority: 12 U.S.C. 1757, 1766, 1781–1790, and 1790d.

2. Amend § 741.201 by revising paragraph (b) to read as follows:

§ 741.201 Minimum fidelity bond requirements.

* * * * *

(b) Corporate credit unions must comply with § 704.18 of this chapter in lieu of part 713 of this chapter.

[FR Doc. 05–10380 Filed 5–24–05; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM307; Notice No. 25–05–05–SC]

Special Conditions: Embraer Model ERJ 190 Series Airplanes; Sudden Engine Stoppage, Interaction of Systems and Structures, Operation Without Normal Electrical Power, Electronic Flight Control Systems, Automatic Takeoff Thrust Control System (ATTCS), and Protection From Effects of High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Embraer Model ERJ 190 series airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features are associated with (1) engine size and torque load which affect sudden engine stoppage, (2) electrical and electronic systems which perform critical functions, and (3) an Automatic Takeoff Thrust Control Systems (ATTCS). These proposed special conditions also pertain to the effects of such novel or unusual design features, such as their effects on the structural performance of the airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before June 24, 2005.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM307, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM307. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Tom Groves, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1503; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection

before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late, if it is possible to do so without incurring expense or delay. We may change the proposed special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

Embraer made the original application for certification of the ERJ 190 on May 20, 1999. The Embraer application includes six different models, the initial variant being designated as the ERJ 190–100. The application was submitted concurrently with that for the ERJ 170–100, which received an FAA Type Certificate (TC) on February 20, 2004. Although the applications were submitted as two distinct type certificates, the airplanes share the same conceptual design and general configuration. On July 2, 2003, Embraer submitted a request for an extension of its original application for the ERJ 190 series, with a new proposed reference date of May 30, 2001, for establishing the type certification basis. The FAA certification basis was adjusted to reflect this new reference date. In addition Embraer has elected to voluntarily comply with certain 14 CFR part 25 amendments introduced after the May 30, 2001 reference date.

The Embraer ERJ 190–100 is a low wing, transport-category aircraft powered by two wing-mounted General Electric CF34–10E turbofan engines. The airplane is a 108 passenger regional jet with a maximum take off weight of 51,800 kilograms (114,200 pounds). The maximum operating altitude and speed are 41,000 feet and 320 knots calibrated air speed (KCAS)/0.82 MACH, respectively.

Type Certification Basis

Based on the May 30, 2001 reference date of application, and under the provisions of 14 CFR 21.17, Embraer must show that the Model ERJ 190 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–101. If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Embraer ERJ 190–100 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of 14 CFR 21.16.

Embraer has proposed to voluntarily adopt several 14 CFR part 25 amendments that became effective after the requested new reference date of May 30, 2001, specifically Amendment 25–102, except paragraph 25.981(c); Amendments 25–103 through 25–105 in their entirety; Amendment 25–107, except paragraph 25.735(h); Amendment 25–108 through 25–110 in their entirety; and Amendments 25–112 through 25–114 in their entirety.

In addition to the applicable airworthiness regulations and special conditions, the Embraer Model ERJ 190 series airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 93–574, the "Noise Control Act of 1972."

Special conditions, 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 features, the special conditions would also apply to the other model under the provisions of § 21.101.

Discussion of Novel or Unusual Design Features

The Embraer ERJ 190 series airplanes will incorporate a number of novel or unusual design features. Because of rapid improvements in airplane technology, the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. The special conditions proposed for the Embraer ERJ 190 series airplanes contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. These special conditions are the same as those required for the Embraer Model ERJ 170.

The Embraer ERJ 190 series airplanes will incorporate the novel or unusual design features described below.

Engine Size and Torque Load

Since 1957, § 25.361(b)(1) has required that engine mounts and supporting structures must be designed to withstand the limit engine torque load which is posed by sudden engine stoppage due to malfunction or structural failure, such as compressor jamming. Design torque loads associated with typical failure scenarios were estimated by the engine manufacturer and provided to the airframe manufacturer as limit loads. These limit loads were considered simple, pure static torque loads. However, the size, configuration, and failure modes of jet engines have changed considerably from those envisioned when the engine seizure requirement of § 25.361(b) was first adopted. Current engines are much larger and are now designed with large bypass fans capable of producing much larger torque, if they become jammed.

Relative to the engine configurations that existed when the rule was developed in 1957, the present generation of engines is sufficiently different and novel to justify issuance of special conditions to establish appropriate design standards. The latest generation of jet engines is capable of producing, during failure, transient loads that are significantly higher and more complex than those produced by the generation of engines in existence when the current regulation was developed.

In order to maintain the level of safety envisioned in 14 CFR 25.361(b), more comprehensive criteria are needed for the new generation of high bypass engines. The proposed special condition would distinguish between the more common failure events involving transient deceleration conditions with temporary loss of thrust capability and those rare events resulting from structural failures. Associated with these events, the proposed criteria establish design limit and ultimate load conditions.

Interaction of Systems and Structures

The Embraer Model 190 series airplane has fly-by-wire flight control systems and other power-operated systems that could affect the structural performance of the airplane, either directly or as a result of a failure or malfunction. These systems can alleviate loads in the airframe and, when in a failure state, can impose loads to the airframe. Currently, 14 CFR part 25 does not adequately account for the direct effects of these systems or for the effects of failure of these systems on structural performance of the airplane. The proposed special conditions

provide the criteria to be used in assessing these effects.

Electrical and Electronic Systems Which Perform Critical Functions

The Embraer Model 190 series airplane will have electrical and electronic systems which perform critical functions. The electronic flight control system installations establish the criticality of the electrical power generation and distribution systems, since the loss of all electrical power may be catastrophic to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate standards for the protection of the Electronic Flight Control System from the adverse effects of operations without normal electrical power. Accordingly, this system is considered to be a novel or unusual design feature, and special conditions are proposed to retain the level of safety envisioned by 14 CFR 25.1351(d).

Section 25.1351(d), "Operation without normal electrical power," requires safe operation in visual flight rule (VFR) conditions for at least five minutes with inoperative normal power. This rule was structured around a traditional design utilizing mechanical control cables for flight control surfaces and the pilot controls. Such traditional designs enable the flightcrew to maintain control of the airplane, while providing time to sort out the electrical failure, start engines if necessary, and re-establish some of the electrical power generation capability.

The Embraer Model 190 series airplane, however, will utilize an Electronic Flight Control System for the pitch and yaw control (elevator, stabilizer, and rudder). There is no mechanical linkage between the pilot controls and these flight control surfaces. Pilot control inputs are converted to electrical signals, which are processed and then transmitted via wires to the control surface actuators. At the control surface actuators, the electrical signals are converted to an actuator command, which moves the control surface.

In order to maintain the same level of safety as an airplane with conventional flight controls, an airplane with electronic flight controls—such as the Embraer Model 190 series—must not be time limited in its operation, including being without the normal source of electrical power generated by the engine or the Auxiliary Power Unit (APU) generators.

Service experience has shown that the loss of all electrical power generated by the airplane's engine generators or APU is not extremely improbable. Thus, it must be demonstrated that the airplane can continue safe flight and landing (including steering and braking on ground for airplanes using steer/brake-by-wire) after total loss of normal electrical power with the use of its emergency electrical power systems. These emergency electrical power systems must be able to power loads that are essential for continued safe flight and landing.

Electronic Flight Control System

In airplanes with Electronic Flight Control Systems, there may not always be a direct correlation between pilot control position and the associated airplane control surface position. Under certain circumstances, a commanded maneuver that does not require a large control input may require a large control surface movement, possibly encroaching on a control surface or actuation system limit without the flightcrew's knowledge. This situation can arise in either manually piloted or autopilot flight and may be further exacerbated on airplanes where the pilot controls are not back-driven during autopilot system operation. Unless the flightcrew is made aware of excessive deflection or impending control surface limiting, control of the airplane by the pilot or autoflight system may be inadvertently continued so as to cause loss of control of the airplane or other unsafe characteristics of stability or performance.

Given these possibilities, a special condition for Embraer Model ERJ 190 series airplanes addresses control surface position awareness. This special condition requires that suitable display or annunciation of flight control position be provided to the flightcrew when near full surface authority (not crew-commanded) is being used, unless other existing indications are found adequate or sufficient to prompt any required crew actions. Suitability of such a display or annunciation must take into account that some piloted maneuvers may demand the airplane's maximum performance capability, possibly associated with a full control surface deflection. Therefore, simple display systems—that would function in both intended and unexpected control-limiting situations—must be properly balanced to provide needed crew awareness and minimize nuisance alerts.

Automatic Takeoff Thrust Control System

The Embraer Model ERJ 190 series airplane will incorporate an Automatic Takeoff Thrust Control System (ATTCS) in the engine's Full Authority Digital Electronic Control (FADEC) system architecture. The manufacturer requested that the FAA issue special conditions to allow performance credit to be taken for use of this function during go-around to show compliance with the requirement of § 25.121(d) regarding the approach climb gradient.

Section 25.904 and Appendix I refer to operation of ATTCS only during takeoff. Model ERJ 190 series airplanes have this feature for go-around also. The ATTCS will automatically increase thrust to the maximum go-around thrust available under the ambient conditions in the following circumstances:

- If an engine failure occurs during an all-engines-operating go-around, or
- If an engine has failed or been shut down earlier in the flight.

This maximum go-around thrust is the same as that used to show compliance with the approach-climb-gradient requirement of § 25.121(d). If the ATTCS is not operating, selection of go-around thrust will result in a lower thrust level.

The part 25 standards for ATTCS, contained in § 25.904 [Automatic takeoff thrust control system (ATTCS) and Appendix I], specifically restrict performance credit for ATTCS to takeoff. Expanding the scope of the standards to include other phases of flight, such as go-around, was considered when the standards were issued but was not accepted because of the effect on the flightcrew's workload. As stated in the preamble to amendment 25–62:

> In regard to ATTCS credit for approach climb and go-around maneuvers, current regulations preclude a higher thrust for the approach climb [§ 25.121(d)] than for the landing climb [§ 25.119]. The workload required for the flightcrew to monitor and select from multiple in-flight thrust settings in the event of an engine failure during a critical point in the approach, landing, or go-around operations is excessive. Therefore, the FAA does not agree that the scope of the amendment should be changed to include the use of ATTCS for anything except the takeoff phase. (Refer to 52 FR 43153, November 9, 1987.)

The ATTCS incorporated on Embraer Model ERJ 190 series airplanes allows the pilot to use the same power setting procedure during a go-around, regardless of whether or not an engine fails. In either case, the pilot obtains go-around power by moving the throttles into the forward (takeoff/go-around) throttle detent. Since the ATTCS is permanently armed for the go-around phase, it will function automatically following an engine failure and advance the remaining engine to the ATTCS thrust level. This design adequately

addresses the concerns about pilot workload which were discussed in the preamble to Amendment 25–62.

The system design allows the pilot to enable or disable the ATTCS function for takeoff. If the pilot enables ATTCS, a white "ATTCS" icon will be displayed on the Engine Indication and Crew Alerting System (EICAS) beneath the thrust mode indication on the display. This white icon indicates to the pilot that the ATTCS function is enabled. When the throttle lever is put in the TO/GA (takeoff/go-around) detent position, the white icon turns green, indicating to the pilot that the ATTCS is armed. If the pilot disables the ATTCS function for takeoff, no indication appears on the EICAS.

Regardless of whether the ATTCS is enabled for takeoff, it is automatically enabled when the airplane reaches the end of the take-off phase (that is, the thrust lever is below the TO/GA position and the altitude is greater than 1,700 feet above the ground, 5 minutes have elapsed since lift-off, or the airplane speed is greater than 140 knots).

During climb, cruise, and descent, when the throttle is not in the TO/GA position, the ATTCS indication is inhibited. During descent and approach to land, until the thrust management system go-around mode is enabled—either by crew action or automatically when the landing gear are down and locked and flaps are extended—the ATTCS indication remains inhibited.

When the go-around thrust mode is enabled, unless the ATTCS system has failed, the white "ATTCS" icon will again be shown on the EICAS, indicating to the pilot that the system is enabled and in an operative condition in the event a go-around is necessary. If the thrust lever is subsequently placed in the TO/GA position, the ATTCS icon turns green, indicating that the system is armed and ready to operate.

If an engine fails during the go-around or during a one-engine-inoperative go-around in which an engine had been shut down or otherwise made inoperative earlier in the flight, the EICAS indication will be GA RSV (go-around reserve) when the thrust levers are placed in the TO/GA position. The GA RSV indication means that the maximum go-around thrust under the ambient conditions has been commanded.

The propulsive thrust used to determine compliance with the approach climb requirements of § 25.121(d) is limited to the lesser of (i) the thrust provided by the ATTCS system, or (ii) 111 percent of the thrust resulting from the initial thrust setting with the ATTCS system failing to perform its uptrim function and without action by the crew to reset thrust. This requirement limits the adverse performance effects of a failure of the ATTCS and ensures adequate all-engines-operating go-around performance.

These special conditions require a showing of compliance with the provisions of § 25.904 and Appendix I applicable to the approach climb and go-around maneuvers.

The definition of a critical time interval for the approach climb case is of primary importance. During this time, it must be extremely improbable to violate a flight path derived from the gradient requirement of § 25.121(d). That gradient requirement implies a minimum one-engine-inoperative flight path with the airplane in the approach configuration. The engine may have been inoperative before initiating the go-around, or it may become inoperative during the go-around. The definition of the critical time interval must consider both possibilities.

Protection From Effects of HIRF

As noted earlier, Embraer Model ERJ 190 series airplanes will include an Electronic Flight Control System as well as advanced avionics for the display and control of critical airplane functions. These systems may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards that address the protection of this equipment from the adverse effects of HIRF. Accordingly, these systems are considered to be novel or unusual design features.

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the applicable regulations, special conditions are needed for the Embraer Model ERJ 190 series airplanes. These special conditions require that avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

With the trend toward increased power levels from ground-based transmitters and the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown in accordance with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths indicated in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

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

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to the Embraer ERJ 190 series airplane. Should Embraer apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features of the Embraer ERJ 190 series airplane. This is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Embraer ERJ 190 series airplane.

Sudden Engine Stoppage

In lieu of compliance with § 25.361(b) the following special condition applies:

1. *For turbine engine installations,* the engine mounts, pylons and adjacent supporting airframe structure must be designed to withstand 1g level flight loads acting simultaneously with the maximum limit torque loads imposed by each of the following:

a. Sudden engine deceleration due to a malfunction which could result in a temporary loss of power or thrust; and

b. The maximum acceleration of the engine.

2. *For auxiliary power unit installations,* the power unit mounts and adjacent supporting airframe structure must be designed to withstand 1g level flight loads acting simultaneously with the maximum limit torque loads imposed by each of the following:

a. Sudden auxiliary power unit deceleration due to malfunction or structural failure; and

b. The maximum acceleration of the power unit.

3. *For engine supporting structures,* an ultimate loading condition must be considered that combines 1g flight loads with the transient dynamic loads resulting from:

a. The loss of any fan, compressor, or turbine blade; and

b. Separately, where applicable to a specific engine design, any other engine structural failure that results in higher loads.

4. *The ultimate loads* developed from the conditions specified in paragraphs 3.a. and 3.b. above are to be multiplied by a factor of 1.0 when applied to engine mounts and pylons and multiplied by a factor of 1.25 when applied to adjacent supporting airframe structure.

Interaction of Systems and Structures

In addition to the requirements of part 25, subparts C and D, the following special condition applies:

1. *General.* For airplanes equipped with systems that affect structural performance, either directly or as a result of a failure or malfunction, the influence of these systems and their failure conditions must be taken into account when showing compliance with the requirements of 14 CFR part 25, subparts C and D. The following criteria must be used to evaluate the structural performance of airplanes equipped with flight control systems, autopilots, stability augmentation systems, load alleviation systems, "flutter" control systems, and fuel management systems. If these criteria are used for other systems, it may be necessary to adapt the criteria to the specific system.

a. The criteria defined herein address only the direct structural consequences of the system responses and performances and cannot be considered in isolation but should be included in the overall safety evaluation of the airplane. These criteria may in some instances duplicate standards already established for this evaluation. These criteria are applicable only to structures whose failure could prevent continued safe flight and landing. Specific criteria that define acceptable limits on handling characteristics or stability requirements when operating in the system degraded or inoperative mode are not provided in this special condition.

b. Depending upon the specific characteristics of the airplane, additional studies that go beyond the criteria provided in this special condition may be required in order to demonstrate the capability of the airplane to meet other realistic conditions, such as alternative gust or maneuver descriptions for an airplane equipped with a load alleviation system.

c. The following definitions are applicable to this special condition:

Structural performance: Capability of the airplane to meet the structural requirements of 14 CFR part 25.

Flight limitations: Limitations that can be applied to the airplane flight conditions following an in-flight occurrence and that are included in the flight manual (*e.g.*, speed limitations, avoidance of severe weather conditions, *etc.*).

Operational limitations: Limitations, including flight limitations, that can be applied to the airplane operating conditions before dispatch (*e.g.*, fuel and payload limitations).

Probabilistic terms: The probabilistic terms (probable, improbable, extremely improbable) used in this special condition are the same as those used in 14 CFR 25.1309.

Failure condition: The term failure condition is the same as that used in 14 CFR 25.1309; however, this special condition applies only to system failure conditions that affect the structural performance of the airplane (*e.g.*, failure conditions that induce loads, lower flutter margins, or change the response of the airplane to inputs, such as gusts or pilot actions).

2. *Effects of Systems on Structures.*

a. General. The following criteria will be used in determining the influence of a system and its failure conditions on the airplane structure.

b. System fully operative. With the system fully operative, the following apply:

(1) Limit loads must be derived in all normal operating configurations of the system from all the limit conditions specified in 14 CFR part 25, Subpart C, taking into account any special behavior of such a system or associated functions or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant nonlinearity (rate of displacement of control surface, thresholds, or any other system nonlinearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

(2) The airplane must meet the strength requirements of 14 CFR part 25 (static strength, residual strength) using the specified factors to derive ultimate loads from the limit loads defined above. The effect of nonlinearities must be investigated beyond limit conditions to ensure the behavior of the system presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered when it can be shown that the airplane has design features that will not allow it to exceed those limit conditions.

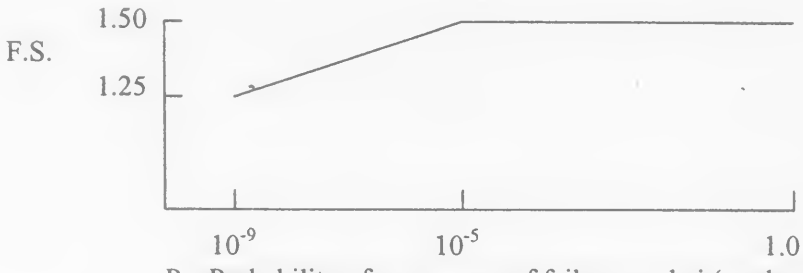
(3) The airplane must meet the aeroelastic stability requirements of 14 CFR 25.629.

c. System in the failure condition. For any system failure condition not shown to be extremely improbable, the following apply:

(1) At the time of occurrence. Starting from 1-g level flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after failure.

(i) For static strength substantiation, these loads multiplied by an appropriate factor of safety that is related to the probability of occurrence of the failure of the ultimate loads to be considered for design. The factor of safety I (FS) is defined in figure 1.

Figure 1
Factor of Safety at Time of Occurrence



(ii) For residual strength substantiation, the airplane must be able to withstand two-thirds of the ultimate loads defined in subparagraph (c)(1)(i).

(iii) Freedom from aeroelastic instability must be shown up to the speeds defined in 14 CFR 25.629(b)(2). For failure conditions that result in speed increases beyond V_c/M_c, freedom from aeroelastic instability must be shown to increased speeds, so that the margins intended by 14 CFR 25.629(b)(2) are maintained.

(iv) Failures of the system that result in forced structural vibrations (oscillatory failures) must not produce loads that could result in detrimental deformation of primary structure.

(2) For the continuation of the flight. For the airplane, in the system-failed state and considering any appropriate reconfiguration and flight limitations, the following apply:

(i) The loads derived from the following conditions at speeds up to V_c or the speed limitation prescribed for the remainder of the flight must be determined:

(A) The limit symmetrical maneuvering conditions specified in 14 CFR 25.331 and 25.345.

(B) The limit gust and turbulent conditions specified in 14 CFR 25.341 and 25.345.

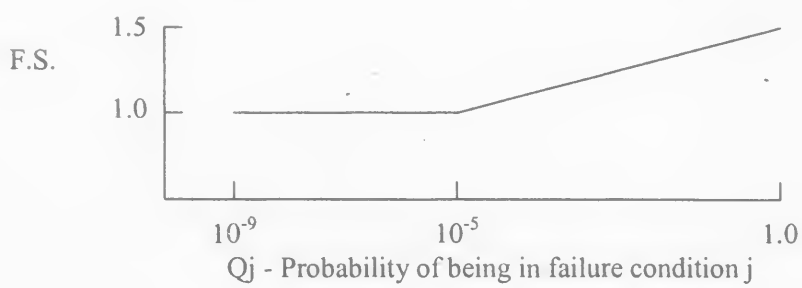
(C) The limit rolling conditions specified in 14 CFR 25.349 and the limit unsymmetrical conditions specified in 14 CFR 25.367 and 25.427(b) and (c).

(D) The limit yaw maneuvering conditions specified in 14 CFR 25.351.

(E) The limit ground loading conditions specified in 14 CFR 25.473 and 25.491.

(ii) For static strength substantiation, each part of the structure must be able to withstand the loads specified in paragraph (2)(i) above multiplied by a factor of safety depending on the probability of being in this failure state. The factor of safety is defined in figure 2.

Figure 2
Factor of Safety for Continuation of Flight



Qj = (Tj)(Pj) where:

Tj = Average time spent in failure condition j (in hours)

Pj = Probability of occurrence of failure mode j (per hour)

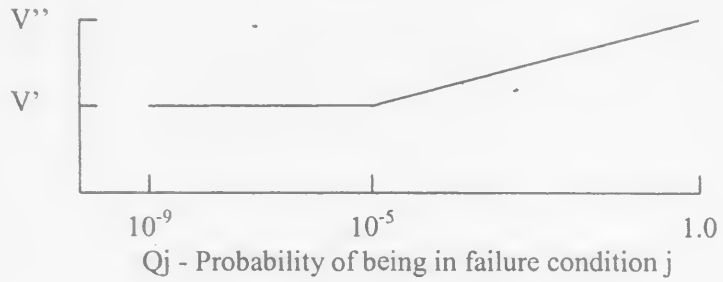
Note: If Pj is greater than 10^{-3} per flight hour, then a 1.5 factor of safety must be applied to all limit load conditions specified in 14 CFR 25, Subpart C.

(iii) For residual strength substantiation, the airplane must be able to withstand two-thirds of the ultimate loads defined in paragraph (c)(2)(ii) above.

(iv) If the loads induced by the failure condition have a significant effect on fatigue or damage tolerance then their effects must be taken into account.

(v) Freedom from aeroelastic instability must be shown up to a speed determined from figure 3. Flutter clearance speeds V′ and V″ may be based on the speed limitation specified for the remainder of the flight using the margins defined by 14 CFR 25.629(b).

Figure 3
Clearance Speed



V′ = Clearance speed as defined by 14 CFR 25.629(b)(2)
V″ = Clearance speed as defined by 14 CFR 25.629(b)(1)
Qj = (Tj)(Pj) where:
Tj = Average time spent in failure condition j (in hours)
Pj = Probability of occurrence of failure mode j (per hour)

Note: If Pj is greater than 10^{-3} per flight hour, then the flutter clearance speed must not be less than V″.

(vi) Freedom from aeroelastic instability must also be shown up to V′ in figure 3 above for any probable system failure condition combined with any damage required or selected for investigation by 14 CFR 25.571(b).

(3) Consideration of certain failure conditions may be required by other sections of 14 CFR 25, regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10^{-9}, criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

d. Warning considerations. For system failure detection and warning, the following apply:

(1) The system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level required by 14 CFR part 25 or significantly reduce the reliability of the remaining system. The flight crew must be made aware of these failures before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks in lieu of warning systems to achieve the objective of this requirement. These certification maintenance requirements must be limited to component failures that are not readily detectable by normal warning systems and where service history shows that inspections will provide an adequate level of safety.

(2) The existence of any failure condition not extremely improbable during flight—that could significantly affect the structural capability of the airplane and for which the associated reduction in airworthiness can be minimized by suitable flight limitations—must be signaled to the flight crew. For example, failure conditions that result in a factor of safety between the airplane strength and the loads of 14 CFR part 25, subpart C below 1.25 or flutter margins below V″ must be signaled to the crew during flight.

e. Dispatch with known failure conditions. If the airplane is to be dispatched in a known system failure condition that affects structural performance or affects the reliability of the remaining system to maintain structural performance, then the provisions of this special condition must be met for the dispatched condition and for subsequent failures. Flight limitations and expected operational limitations may be taken into account in establishing Qj as the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins in figures 2 and 3. These limitations must be such that the probability of being in this combined failure state and then subsequently encountering limit load conditions is extremely improbable. No reduction in these safety margins is allowed if the subsequent system failure rate is greater than 10^{-3} per flight hour.

Operation Without Normal Electrical Power

In lieu of compliance with 14 CFR 25.1351(d), the following special condition applies:

It must be demonstrated by test or by a combination of test and analysis that the airplane can continue safe flight and landing with inoperative normal engine and APU generator electrical power (in other words without electrical power from any source, except the battery and any other standby electrical sources). The airplane operation should be considered at the critical phase of flight and include the ability to restart the engines and maintain flight for the maximum diversion time capability being certified.

Electronic Flight Control System

In addition to compliance with §§ 25.143, 25.671 and 25.672, when a flight condition exists where, without being commanded by the crew, control surfaces are coming so close to their limits that return to the normal flight envelope and (or) continuation of safe flight requires a specific crew action, a suitable flight control position

annunciation shall be provided to the crew, unless other existing indications are found adequate or sufficient to prompt that action.

Note: The term suitable also indicates an appropriate balance between nuisance and necessary operation.

Automatic Takeoff Thrust Control System (ATTCS)

To use the thrust provided by the ATTCS to determine the approach climb performance limitations, the Embraer Model ERJ 190 series airplane must comply with the requirements of § 25.904 and Appendix I, including the following requirements pertaining to the go-around phase of flight:

1. *Definitions.*

a. *TOGA—(Take Off/Go-Around).* Throttle lever in takeoff or go-around position.

b. *Automatic Takeoff Thrust Control System—(ATTCS).* The Embraer Model ERJ–190 series ATTCS is defined as the entire automatic system available in takeoff when selected by the pilot and always in go-around mode, including all devices, both mechanical and electrical, that sense engine failure, transmit signals, and actuate fuel controls or power levers or increase engine power by other means on operating engines to achieve scheduled thrust or power increases and to furnish cockpit information on system operation.

c. *Critical Time Interval.* The definition of the Critical Time Interval in Appendix I, § I25.2(b) is expanded to include the following:

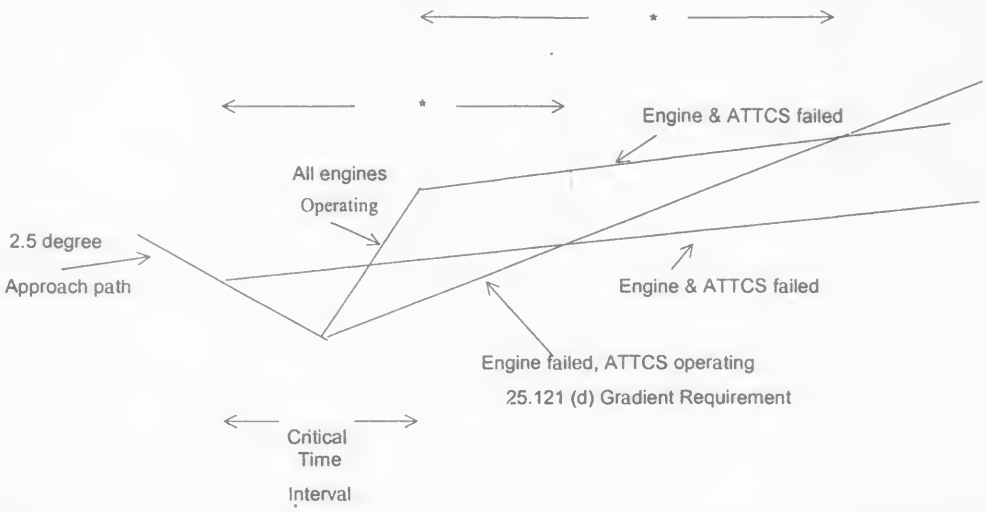
(1) When conducting an approach for landing using ATTCS, the critical time interval is defined as 120 seconds. A shorter time interval may be used if justified by a rational analysis. An accepted analysis that has been used on past aircraft certification programs is as follows:

(i) The critical time interval begins at a point on a 2.5 degree approach glide path from which, assuming a simultaneous engine and ATTCS failure, the resulting approach climb flight path intersects a flight path originating at a later point on the same approach path corresponding to the part 25 one-engine-inoperative approach climb gradient. The period of time from the point of simultaneous engine and ATTCS failure to the intersection of these flight paths must be no shorter than the time interval used in evaluating the critical time interval for takeoff, beginning from the point of simultaneous engine and ATTCS failure and ending upon reaching a height of 400 feet.

(ii) The critical time interval ends at the point on a minimum performance, all-engines-operating go-around flight path from which, assuming a simultaneous engine and ATTCS failure, the resulting minimum approach climb flight path intersects a flight path corresponding to the part 25 minimum one-engine-inoperative approach-climb-gradient. The all-engines-operating go-around flight path and the part 25 one-engine-inoperative, approach-climb-gradient flight path originate from a common point on a 2.5 degree approach path. The period of time from the point of simultaneous engine and ATTCS failure to the intersection of these flight paths must be no shorter than the time interval used in evaluating the critical time interval for the takeoff, beginning from the point of simultaneous engine and ATTCS failure and ending upon reaching a height of 400 feet.

(2) The critical time interval must be determined at the altitude resulting in the longest critical time interval for which one-engine-inoperative approach climb performance data are presented in the Airplane Flight Manual (AFM).

(3) The critical time interval is illustrated in the following figure:



The engine and ATTCS failed time interval must be no shorter than the time interval from the point of simultaneous engine and ATTCS failure to a height of 400 feet used to comply with I25.2(b) for ATTCS use during takeoff.

2. *Performance and System Reliability Requirements.* The applicant must comply with the following performance and ATTCS reliability requirements:

a. An ATTCS failure or combination of failures in the ATTCS during the critical time interval:

(1) Shall not prevent the insertion of the maximum approved go-around thrust or power or must be shown to be an improbable event.

(2) Shall not result in a significant loss or reduction in thrust or power or must be shown to be an extremely improbable event.

b. The concurrent existence of an ATTCS failure and an engine failure during the critical time interval must be shown to be extremely improbable.

c. All applicable performance requirements of part 25 must be met

with an engine failure occurring at the most critical point during go-around with the ATTCS system functioning.

d. The probability analysis must include consideration of ATTCS failure occurring after the time at which the flightcrew last verifies that the ATTCS is in a condition to operate until the beginning of the critical time interval.

e. The propulsive thrust obtained from the operating engine after failure of the critical engine during a go-around used to show compliance with the one-engine-inoperative climb requirements of § 25.121(d) may not be greater than the lesser of:

(i) The actual propulsive thrust resulting from the initial setting of power or thrust controls with the ATTCS functioning; or

(ii) 111 percent of the propulsive thrust resulting from the initial setting of power or thrust controls with the ATTCS failing to reset thrust or power and without any action by the crew to reset thrust or power.

3. *Thrust Setting.*

a. The initial go-around thrust setting on each engine at the beginning of the go-around phase may not be less than any of the following:

(1) That required to permit normal operation of all safety-related systems and equipment dependent upon engine thrust or power lever position; or

(2) That shown to be free of hazardous engine response characteristics when thrust or power is advanced from the initial go-around position to the maximum approved power setting.

b. For approval of an ATTCS for go-around, the thrust setting procedure must be the same for go-arounds initiated with all engines operating as for go-arounds initiated with one engine inoperative.

4. *Powerplant Controls.*

a. In addition to the requirements of § 25.1141, no single failure or malfunction or probable combination thereof of the ATTCS, including associated systems, may cause the failure of any powerplant function necessary for safety.

b. The ATTCS must be designed to accomplish the following:

(1) Apply thrust or power on the operating engine(s), following any single engine failure during go around, to achieve the maximum approved go-around thrust without exceeding the engine operating limits;

(2) Permit manual decrease or increase in thrust or power up to the maximum go-around thrust approved for the airplane under existing conditions through the use of the power lever. For airplanes equipped with limiters that automatically prevent the engine operating limits from being exceeded under existing ambient conditions, other means may be used to increase the thrust in the event of an ATTCS failure, provided that the means meet the following criteria:

- Are located on or forward of the power levers;
- Are easily identified and operated under all operating conditions by a single action of either pilot with the hand that is normally used to actuate the power levers, and
- Meet the requirements of § 25.777 (a), (b), and (c);

(3) Provide a means for the flightcrew to verify before beginning an approach for landing that the ATTCS is in a condition to operate (unless it can be demonstrated that an ATTCS failure combined with an engine failure during an entire flight is extremely improbable); and

(4) Provide a means for the flightcrew to deactivate the automatic function. This means must be designed to prevent inadvertent deactivation.

5. *Powerplant Instruments.* In addition to the requirements of § 25.1305, the following requirements must be met:

a. A means must be provided to indicate when the ATTCS is in the armed or ready condition; and

b. If the inherent flight characteristics of the airplane do not provide adequate warning that an engine has failed, a warning system that is independent of the ATTCS must be provided to give the pilot a clear warning of any engine failure during go-around.

Protection From Effects of HIRF

Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

For the purpose of this special condition, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on May 13, 2005.

Jeffrey Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–10367 Filed 5–24–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21302; Directorate Identifier 2004–NM–189–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–110P1 and EMB–110P2 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 all EMBRAER Model EMB–110P1 and EMB–110P2 airplanes. This proposed AD would require repetitive inspections for corrosion or cracking of the rotating cylinder assembly in the nose landing gear (NLG), and related investigative/corrective actions if necessary. This proposed AD would also require the eventual replacement of the rotating cylinder assembly with a new part, which terminates the need for the repetitive inspections. This proposed AD is prompted by reports of corrosion on the NLG rotating cylinder assembly. We are proposing this AD to prevent cracks from emanating from corrosion pits in the NLG rotating cylinder assembly, which could result in failure of the NLG.

DATES: We must receive comments on this proposed AD by June 24, 2005.

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.
- By 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.

For service information identified in this proposed AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos–SP, Brazil.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–21302; the directorate identifier for this docket is 2004–NM–189–AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

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 under **ADDRESSES.** Include "Docket No. FAA–2005–21302; Directorate Identifier 2004–NM–189–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 submitted 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 our docket 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 can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov*.

Examining the Docket

You can 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 DMS receives them.

Discussion

The Departamento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified us that an unsafe condition may exist on all EMBRAER Model EMB–110P1 and EMB–110P2 airplanes. The DAC advises that corrosion has been found on the rotating cylinder assembly in the nose landing gear (NLG). The corrosion was caused by the lack of protective compound on the internal area of the rotating cylinder assembly. Corrosion on the rotating cylinder assembly of the NLG, if not corrected, could result in cracks emanating from corrosion pits in the NLG rotating cylinder assembly, which could result in failure of the NLG.

Relevant Service Information

EMBRAER has issued Service Bulletin 110–32–0088, Revision 03, dated February 11, 2004.

Part I of the service bulletin includes procedures for performing dye penetrant inspections of the NLG rotating cylinder assembly for evidence of corrosion or cracking, and reporting any cracking to EMBRAER.

Part II of the service bulletin includes procedures for evaluation and bench inspections of the rotating cylinder assembly for evidence of corrosion or cracking; protection procedures for the rotating cylinder assembly; and corrective action if necessary. The evaluation inspection includes dye penetrant and borescope inspections. The bench inspection includes removing the rotating cylinder assembly from the airplane and performing dye penetrant and borescope inspections. The protection procedures include applying a protective material to the internal area of the rotating cylinder assembly and a borescope inspection. For airplanes on which any cracking or severe corrosion is found, the corrective action includes replacing the rotating cylinder assembly with a new rotating cylinder assembly.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DAC mandated the service information and issued Brazilian airworthiness directive 2004–04–01R1, dated July 27, 2004, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. We have examined the DAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under "Difference Between the Proposed AD and Service Information."

Clarification of Proposed Requirements

This proposed AD would only require operators to perform the actions specified in Part II of the Accomplishment Instructions of EMBRAER Service Bulletin 110–32–0088, Revision 03, dated February 11, 2004. Requiring only the actions in Part II of the Accomplishment Instructions is consistent with the Brazilian airworthiness directive. Although the Brazilian airworthiness directive does not specifically state that only the actions in Part II of the Accomplishment Instructions are required, based on a comparison of the actions identified in paragraphs (a) and (b) of the Brazilian airworthiness directive, and the actions specified in Part I and Part II of the Accomplishment Instructions, we have determined that only the actions specified in Part II of the Accomplishment Instructions are included in the Brazilian airworthiness directive. Also, the compliance times specified in paragraphs (a) and (b) of the Brazilian airworthiness directive are the same as the compliance times specified in the service bulletin for accomplishing the actions included in Part II of the Accomplishment Instructions.

Difference Between the Proposed AD and Service Information

The EMBRAER service bulletin requests that operators report any cracking or severe corrosion found during any inspection to EMBRAER. This AD would not require that action.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspections in Part II of service bulletin, per inspection cycle.	5	$65	None	$325	30	$9,750, per inspection cycle.
Application of protection compound.	2	65	None	130	30	3,900.
Replacement of rotating cylinder assembly (terminating action).	9	65	38,000	38,585	30	1,157,550.

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. 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 FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2005–21302; Directorate Identifier 2004–NM–189–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by June 24, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all EMBRAER Model EMB–110P1 and EMB–110P2 airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of corrosion on the rotating cylinder assembly in the nose landing gear (NLG). We are issuing this AD to prevent cracks from emanating from corrosion pits in the NLG rotating cylinder assembly, which could result in failure of the NLG.

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.

Service Bulletin References

(f) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of EMBRAER Service Bulletin 110–32–088, Revision 03, dated February 11, 2004.

Inspections and Related Investigative/Corrective Actions

(g) Within 150 flight hours or 4 months after the effective date of this AD, whichever is first: Perform the evaluation inspection for corrosion or cracking of the NLG rotating cylinder assembly, in accordance with Part II of the service bulletin. Depending on the results of the inspections, perform the applicable action specified in paragraph (g)(1), (g)(2), (g)(3), or (g)(4) of this AD.

(1) If no corrosion or cracking is found: Perform the detailed bench inspection required by paragraph (h) of this AD at the time specified in paragraph (h) of this AD.

(2) If only light corrosion is found: Repeat the inspection required by paragraph (g) of this AD thereafter at intervals not to exceed 150 flight hours or 4 months, whichever occurs first, until the requirements specified in paragraph (h) or (i) of this AD are accomplished.

(3) If severe corrosion is found, before further flight: Perform the detailed bench inspection of the rotating cylinder assembly, specified in paragraph (h) of this AD, for evidence of further corrosion or cracking.

Note 1: The criteria for determining light or severe corrosion are included in EMBRAER Service Bulletin 110–32–008, Revision 03. The presence of oxidation is not considered to be corrosion.

(4) If any cracking is found, before further flight: Replace the rotating cylinder assembly with a new part, in accordance with Part II of the service bulletin. Replacing the rotating cylinder assembly terminates the requirements of paragraphs (h) and (i) of this AD.

Bench Inspections, Protection Procedures, and Corrective Actions

(h) Within 600 flight hours or 12 months after the effective date of this AD, whichever occurs first: Perform the detailed bench inspection for corrosion or cracking of the NLG rotating cylinder assembly in accordance with Part II of the service bulletin.

(1) If no corrosion or cracking is found during any inspection, before further flight: Perform all of the actions specified in the protection procedure section in Part II of the service bulletin.

(2) If only light corrosion is found during any inspection, before further flight: Perform

all of the actions specified in the protection procedure section in Part II of the service bulletin. Repeat the inspection required by paragraph (g) of this AD, thereafter, at intervals not to exceed 600 flight hours or 9 months, whichever occurs first, until accomplishing paragraph (i) of this AD.

(3) If any cracking or severe corrosion is found during any inspection, before further flight: Replace the rotating cylinder assembly with a new part in accordance with Part II of the service bulletin. Replacing the rotating cylinder assembly terminates the part replacement required by paragraph (i) of this AD.

Terminating Action

(i) Within 3,000 flight hours or 36 months after the effective date of this AD, whichever occurs first: Replace the NLG rotating cylinder assembly with a new part, in accordance with Part II of the service bulletin. Replacing the rotating cylinder assembly terminates the inspections required by paragraphs (g) and (h) of this AD.

Actions Accomplished Previously

(j) Actions accomplished before the effective date of this AD in accordance with EMBRAER Service Bulletin 110–32–0088, Revision 01, dated September 1, 2003; or EMBRAER Service Bulletin 110–32–0088, Revision 02, dated October 30, 2003; are acceptable for compliance with the corresponding requirements of this AD.

Reporting Not Required

(k) Where the service bulletin states to report inspection results to EMBRAER, that action is not required by this AD.

Alternative Methods of Compliance (AMOCs)

(l) The Manager, International Branch, ANM–116, Transport Airplane Directorate, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(m) Brazilian airworthiness directive 2004–04–01R1, dated July 27, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on May 16, 2005.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–10425 Filed 5–24–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20322; Airspace Docket No. 05–ANM–1]

RIN 2120–AA66

Proposed Establishment and Revision of Area Navigation (RNAV) Routes; Western United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish three area navigation (RNAV) routes and revise two existing RNAV routes in the Western United States in support of the High Altitude Redesign (HAR) project. The FAA is proposing this action to enhance safety and to improve the efficient use of the navigable airspace.

DATES: Comments must be received on or before July 11, 2005.

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 FAA Docket No. FAA–2005–20322 and Airspace Docket No. 05–ANM–1, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov.*

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

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 (FAA Docket No. FAA–2005–20322 and Airspace Docket No. 05-ANM–1) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2005–20322 and Airspace Docket No. 05–ANM–1." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

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 **Federal Register**'s Web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington, 98055–4056.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

History

As part of the on-going National Airspace Redesign (NAR), the FAA implemented the HAR Program. This program focuses on developing and implementing improvements in navigation structure and operating methods to allow more flexible and efficient en route operations in the high

altitude airspace environment. New RNAV routes provide greater freedom to properly equipped users and achieves the economic benefits of flying user selected non-restrictive routings. The new RNAV routes will be identified by the letter prefix "Q," followed by a number consisting of from one to three digits. The International Civil Aviation Organization (ICAO) has allocated the "Q" prefix, along with the number set one through 499, for use by the U.S. for designating domestic RNAV routes.

Related Rulemaking

On April 8, 2003, by final rule the FAA published in the **Federal Register** the Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes, and Reporting Points (68 FR 16943). The purpose of the rule was to facilitate the establishment of RNAV routes in the NAS for use by aircraft with advanced navigation system capabilities. This rule adopted certain amendments proposed in Notice No. 02–20, RNAV and Miscellaneous Amendments. For example, the rule revised and adopted several definitions contained in FAA regulations, including Air Traffic Service Routes, to comport with ICAO definitions; and reorganized the structure of FAA regulations concerning the designation of Class A, B, C, D, and E airspace areas; airways; routes; and reporting points. On May 9, 2003, a final rule was published in the **Federal Register** establishing new RNAV routes (68 FR 24864). This rule, which supports Phase I of the HAR, established 11 new RNAV routes along high-density air traffic tracks in the western and north central U.S.

The Proposal

The FAA is proposing to amend Title 14 Code of Federal Regulations (14 CFR) part 71 (part 71) to establish three RNAV routes and revise two existing routes in the Western United States within the airspace assigned to the Seattle and Los Angeles Air Route Traffic Control Centers (ARTCC). These routes were developed as part of the HAR Program to allow more efficient routings. They are being proposed to enhance safety, and to facilitate the more flexible and efficient use of the navigable airspace for en route instrument flight rules (IFR) operations within the Los Angeles and Seattle ARTCC area of responsibility.

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. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (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 proposed 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, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE 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 FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 2006—Area Navigation Routes

* * * * *

Q–11 PAAGE to LAX [Revised]			
PAAGE	WP		(Lat. 46°25′22″ N., long. 121°44′44″ W.)
PAWLI	WP		(Lat. 43°10′48″ N., long. 120°55′50″ W.)
PITVE	WP		(Lat. 41°00′14″ N., long. 120°24′57″ W.)
PUSHH	WP		(Lat. 38°18′53″ N., long. 119°36′40″ W.)
PASKE	WP		(Lat. 36°08′03″ N., long. 119°00′29″ W.)
LAX	VORTAC		(Lat. 33°55′59″ N., long. 118°25′55″ W.)
Q–13 PAWLI to PRFUM [Revised]			
PAWLI	WP		(Lat. 43°10′48″ N., long. 120°55′50″ W.)
RUFUS	WP		(Lat. 41°26′00″ N., long. 120°00′00″ W.)
LOMIA	WP		(Lat. 39°13′12″ N., long. 119°06′23″ W.)
LEAHI	WP		(Lat. 37°28′58″ N., long. 117°14′57″ W.)
WODIN	WP		(Lat. 37°19′20″ N., long. 117°05′25″ W.)
TACUS	WP		(Lat. 37°05′16″ N., long. 116°54′12″ W.)
TUMBE	WP		(Lat. 36°48′20″ N., long. 116°40′03″ W.)
CENIT	WP		(Lat. 36°41′02″ N., long. 116°26′31″ W.)
PRFUM	WP		(Lat. 35°30′24″ N., long. 113°56′35″ W.)
Q–15 CHILY to LOMIA [New]			
CHILY	WP		(Lat. 34°42′49″ N., long. 112°45′42″ W.)
DOVEE	WP		(Lat. 26°26′51″ N., long. 114°48′01″ W.)
BIKKR	WP		(Lat. 36°34′00″ N., long. 116°45′00″ W.)
DOBNE	WP		(Lat. 37°14′23″ N., long. 117°15′04″ W.)
RUSME	WP		(Lat. 37°29′39″ N., long. 117°31′12″ W.)
LOMIA	WP		(Lat. 39°13′12″ N., long. 119°06′23″ W.)
Q–2 BOILE to EWM [New]			
BOILE	WPL		(Lat. 34°25′22″ N., long. 118°01′33″ W.)
HEDVI	WP		(Lat. 33°32′23″ N., long. 114°28′14″ W.)
HOBOL	WP		(Lat. 33°11′30″ N., long. 112°20′00″ W.)
ITUCO	WP		(Lat. 32°26′30″ N., long. 109°46′26″ W.)
EWM	VORTAC		(Lat. 31°57′06″N., long. 106°16′21″ W.)

Q–4 BOILE to ELP [New]

BOILE	WP	(Lat. 34°25′22″ N., long. 118°01′33″ W.)
HEDVI	WP	(Lat. 33°32′23″ N., long. 114°28′14″ W.)
SCOLE	WP	(Lat. 33°27′46″ N., long. 114°04′54″ W.)
SPTFR	WP	(Lat. 33°23′49″ N., long. 113°43′29″ W.)
ZEBOL	WP	(Lat. 33°03′30″ N., long. 112°31′00″ W.)
SKTTR	WP	(Lat. 32°17′38″ N., long. 109°50′44″ W.)
ELP	VORTAC	(Lat. 31°48′57″ N., long. 106°16′55″ W.)

Issued in Washington, DC, on May 19, 2005.

Edith V. Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–10413 Filed 5–24–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket FAA 2005–21000; Airspace Docket 05–ANM–05]

Proposed Establishment of Class E Airspace; Chehalis, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal would establish Class E airspace at Chehalis, WA. Additional Class E airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Chehalis-Centralia Airport. This action is proposed to improve the safety of Instrument Flight Rules (IFR) aircraft executing the new RNAV GPS SIAP at Chehalis-Centralia Airport, Chehalis, WA.

DATES: Comments must be received by July 11, 2005.

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 2005–2100; Airspace Docket 05–ANM–05, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final dispositions in person in the Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone number 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 Federal Aviation Administration, Air Traffic Organization, Western En Route and Oceanic Area Office, Airspace Branch, 1601 Lind Avenue, SW., Renton, WA 98055.

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 Docket No. FAA 2005–21000; Airspace Docket 05–ANM–05, and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: "Comments to Docket FAA 2005–21000; Airspace Docket 05–ANM–5". The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

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, Western En Route and Oceanic Area Office, Airspace Branch, 1601 Lind Avenue, S.W., Renton, WA 98055. Communications must identify both document numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs 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 procedures.

The Proposal

This action would amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by establishing Class E airspace at Chehalis-Centralia Airport, Chehalis, WA. The establishment of a new RNAV GPS SIAP requires additional Class E controlled airspace. Additional Class E airspace extending upward from 700 feet above the surface of the earth is necessary for the safety of IFR aircraft executing the new RNAV GPS SIAPs at Chehalis-Centralia Airport. Controlled airspace is necessary where there is a requirement for IFR services, which includes arrival, departure, and transitioning to/from the terminal or en route environment.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this 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. Therefore, this proposed regulation; (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would 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

Accordingly, pursuant to the authority delegated to me, 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 14 CFR 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 part 71.1 of the Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004 is amended as follows:

3. Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WA E5 Chehalis, WA [New]

Chehalis-Centralia Airport, WA
(Lat. 46°40′37″ N., long. 122°58′58″ W.)

The airspace extending upward from 700 feet above the surface within a 9.0 mile radius of Chehalis-Centralia Airport.

* * * * *

Issued in Seattle, Washington, on May 13, 2005.

Danial Mawhorter,

Acting Area Director, Western En Route and Oceanic Operations.

[FR Doc. 05–10374 Filed 5–24–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21103; Airspace Docket No. 05–AEA–10]

Proposed Amendment to Class E Airspace; Blairstown, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area at Blairstown, NJ. The development of a Standard Instrument Approach Procedure (SIAP) based on area navigation (RNAV) to serve flights into Blairstown Airport, Blairstown, NJ under Instrument Flight Rules (IFR) has made this proposal necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before June 24, 2005.

ADDRESSES: Send comments on the 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–2005–21103; Airspace Docket No. 05–AEA–10 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, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, Eastern Region, I Aviation Plaza, Jamaica, NY 11434–4809, telephone: (718) 553–4521.

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, 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–2005–21103; Airspace Docket No. 05–AEA–10." The postcard will be date/time stamped and returned to the commenter.

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 Documents 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 NPRMs 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 amend the Class E airspace area at Blairstown, NJ. The development of a SIAP to serve flights operating IFR into Blairstown Airport make this action necessary. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAPs. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation 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. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule

would not have 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—[AMENDED]

1. The authority citation for 14 CFR 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 7400.9M, dated August 30, 2004, and effective September 16, 2004, is proposed to be amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA NJ E5 Blairstown, NJ (Revised)

Blairstown Airport, NJ
(Lat. 40°58′16″ N., long. 74°59′51″ W.)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of Blairstown Airport, excluding that airspace that coincides with the New York, NY, and East Stroudsburg, PA, Class E airspace areas.

* * * * *

Issued in Jamaica, New York.

John G. McCartney,

Acting Area Director, Eastern Terminal Operations.

[FR Doc. 05–10372 Filed 5–24–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20387; Airspace Docket No. 05–ANM–2]

RIN 2120–AA66

Proposed Amendment to VOR Federal Airway V–536; MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Federal Airway V–536 by adding a route from the Great Falls, MT, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) to the SWEDD intersection. The purpose of the proposed airway segment is to enhance the management of aircraft transiting between Great Falls, MT, and Bozeman, MT.

DATES: Comments must be received on or before July 11, 2005.

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 FAA Docket No. FAA–2005–20387 and Airspace Docket No. 05–ANM–2, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov.*

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

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 (FAA Docket No. FAA–2005–20387 and Airspace Docket No. 05–ANM–2) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2005–20387 and Airspace Docket No. 05–ANM–2." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

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 **Federal Register**'s web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 1601 Lind Avenue, SW., Renton, Washington, 98055–4056.

Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On April 29, 2003, the Salt Lake City Air Route Traffic Control Center (ARTCC) requested an airway segment be added to V–536 because of their reliance on non-radar procedures to separate aircraft in the area between Great Falls, Helena, and Bozeman, MT. Modifying this route will provide ARTCC a more efficient means of handling aircraft over flights going to Bozeman, MT and points beyond, as well as navigating into/out of Helena, MT. This action addresses that request.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to modify V–536 by adding a route from the Great Falls, MT, VORTAC to the SWEDD intersection. The purpose of the proposed airway segment is to enhance the management of aircraft transiting between Great Falls, MT, and Bozeman, MT.

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. Therefore, this proposed regulation: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (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 proposed 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, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE 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 FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–536 [Revised]

From North Bend, OR; INT North Bend 023° and Corvallis, OR, 235° radials; Corvallis; Deschutes, OR; 32 miles, 58 miles, 71 MSL, Pendleton, OR; Walla Walla, WA; Pullman, WA; 27 miles, 85 MSL, Mullan Pass, ID; 5 miles, 34 miles, 95 MSL, Kalispell, MT; 20 miles, 41 miles, 115 MSL, Great Falls, MT. INT Great Falls 185° and Bozeman, MT 338° radials; Bozeman, From Sheridan, WY; Gillette, WY; New Castle, WY; to Rapid City, SD.

* * * * *

Issued in Washington, DC, on May 16, 2005.

Edith V. Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–10376 Filed 5–24–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20551; Airspace Docket No. 04–AWP–8]

RIN 2120–AA66

Amendment to Proposed Revision of VOR Federal Airway 363, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); correction.

SUMMARY: This action corrects an error in the airspace description of a notice of proposed rulemaking that was published in the **Federal Register** on March 14, 2005 (70 FR 12428), Airspace Docket No. 04–AWP–08.

DATES: Comments must be received on or before July 11, 2005.

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

SUPPLEMENTARY INFORMATION:

History

On March 14, 2005, Airspace Docket No. 04–AWP–8, was published in the **Federal Register** (70 FR 12428), revising VOR Federal Airway 363 (V–363), CA. In that NPRM, the airspace description was incomplete. This action corrects that error.

Correction to NPRM

Accordingly, pursuant to the authority delegated to me, the legal description for V–363, as published in the **Federal Register** on March 14, 2005 (70 FR 12428), on page 12428 and incorporated by reference in 14 CFR 71.1, is corrected as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

§ 71.1 [Amended]

Paragraph 6010—Federal Airways.

* * * * *

V–363 [Corrected]

From Mission Bay, CA; INT Mission Bay, CA, 326°(M)/341°(T) and Santa Catalina, CA, 088°(M)/103°(T) radials; to INT Santa Catalina, CA, 088°(M)/103°(T) and Mission Bay, CA, 312°(M)/327°(T) radials; to INT Mission Bay, CA, 312°(M)/327°(T) and El Toro, CA, 158°(M)/172°(T) radials; to El Toro, CA; to INT El Toro, CA, 325°(M)/339°(T) and Pomona, CA,164°(M)/179°(T) radials; to Pomona, CA.

* * * * *

Issued in Washington, DC, on May 19, 2005.

Edith V. Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–10414 Filed 5–24–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–127740–04]

RIN 1545–BD46

Application of Section 367 in Cross Border Section 304 Transactions; Certain Transfers of Stock Involving Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the regulations under section 367 relating to certain transfers of stock involving foreign corporations in transactions governed by section 304. Specifically, these proposed regulations provide that if, pursuant to section 304(a)(1), a U.S person is treated as transferring stock of a domestic or foreign corporation to a foreign corporation in exchange for stock of such foreign corporation in a transaction to which section 351(a) applies, such deemed section 351 exchange is not a transfer to a foreign corporation subject to section 367(a). These proposed regulations also provide that if, pursuant to section 304(a)(1), a foreign acquiring corporation is treated as acquiring the stock of a foreign acquired corporation in a transaction to which section 351(a) applies, such deemed section 351 acquisition is not an acquisition subject to section 367(b).

DATES: Written or electronic comments and requests for a public hearing must be received by August 23, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–127740–04), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington,

DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–127740–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS and REG–127740–04).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Tasheaya L. Warren Ellison, (202) 622–3870; concerning submissions of comments, Sonya Cruse, (202) 622–4693 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

A. Section 367(a)

A U.S. person's transfer of appreciated property (including stock) to a foreign corporation in connection with any exchange described in sections 332, 351, 354, 356, or 361 generally is treated under section 367(a)(1) as a taxable transaction, unless an exception applies. Congress enacted section 367(a) to prevent the avoidance of U.S. tax on transfers of appreciated property outside the United States in nonrecognition transfers involving foreign corporations. S.R. Rep. No. 169, Vol. 1, 98th Cong. 2d Sess., at 360 (Apr. 2, 1984).

In the case of a U.S. person's transfer of stock to a foreign corporation in an exchange described in section 367(a)(1), § 1.367(a)–3 provides exceptions to the general gain recognition rule of section 367(a)(1), if certain conditions are satisfied including, in some instances, the filing of a gain recognition agreement (GRA). See § 1.367(a)–3(b) (transfer of stock in a foreign corporation) and (c) (transfer of stock in a domestic corporation).

B. Section 367(b)

Section 367(b) addresses transactions covered by sections 332, 351, 354, 355, 356, and 361 in which there is no transfer of property described in section 367(a). Section 367(b) provides that a foreign corporation shall be considered to be a corporation for purposes of these subchapter C provisions, except to the extent provided in regulations. The status of a foreign corporation as a corporation for these purposes may allow various participants to the transaction to qualify for nonrecognition treatment.

One of the underlying policies of section 367(b) is the preservation of the potential application of section 1248. H. R. Rep. No. 94–658, 94th Cong., 1st Sess., at 242 (November 12, 1975). Section 1248 generally recharacterizes gain recognized by a U.S. person (a section 1248 shareholder) that owns 10 percent or more of the total combined voting power of a controlled foreign corporation, as defined in section 957, or, in certain instances, stock of a former controlled foreign corporation, upon the disposition of the stock of such corporation as dividend income to the extent of the earnings and profits that are attributable to such stock (section 1248 amount).

Consequently, § 1.367(b)–4(b)(1) generally requires a section 1248 shareholder (or, in certain instances, a foreign corporation that has a section 1248 shareholder) to include in income its section 1248 amount as a result of certain section 367(b) transactions, including certain section 351 exchanges, if as a result of the transaction section 1248 shareholder status or controlled foreign corporation status is lost.

C. Section 304

Section 304 was enacted to prevent withdrawals of corporate earnings by controlling shareholders in transactions that result in capital gains treatment. See H.R. Rep. No. 2014, 105th Cong. 1st Sess., at 465 (June 24, 1997). Section 304(a)(1) generally provides that, for purposes of sections 302 and 303, if one or more persons are in control of each of two corporations and in return for property one of the corporations (the acquiring corporation) acquires stock in the other corporation (the issuing corporation) from the person (or persons) so in control, then such property shall be treated as a distribution in redemption of the acquiring corporation stock.

Prior to 1997, section 304(a)(1) provided that, to the extent of a distribution treated as a distribution to which section 301 applies, the issuing corporation stock would be treated as having been transferred by the person from whom acquired, and as having been received by the acquiring corporation as a contribution to the capital of the acquiring corporation. Section 304 was amended by section 1013 of the Taxpayer Relief Act of 1997, Pub. L. 105–34 (111 Stat. 788, 918) (August 5, 1997) to provide that, to the extent that a stock acquisition covered by section 304(a)(1) is treated as a distribution to which section 301 applies, the transferor and the acquiring corporation are treated as if (1) the transferor transferred the stock of the issuing corporation to the acquiring corporation in exchange for stock of the acquiring corporation in a transaction to which section 351(a) applies, and (2) the acquiring corporation then redeemed the stock it is treated as having issued. Because the acquiring corporation is treated as receiving the stock of the issuing corporation in a transaction to which section 351 applies, the transferor's basis in the stock of the issuing corporation carries over to the acquiring corporation under section 362.

In the case of an acquisition to which section 304(a) applies, section 304(b)(2) generally provides that the determination of the amount that is a dividend (and the source thereof) is made as if the property were distributed first by the acquiring corporation to the extent of its earnings and profits, and then by the issuing corporation to the extent of its earnings and profits. In a transaction involving a foreign acquiring corporation, section 304(b)(5) may limit the amount of the earnings and profits of the foreign acquiring corporation that will be taken into account for purposes of section 304(b)(2)(A).

D. Application of Section 367 to Section 304(a)(1) Transactions

The application of section 367(a) and (b) to certain section 304(a)(1) transactions involving a foreign corporation has been addressed in various published guidance. *See, e.g.*, Rev. Rul. 91–5 (1991–1 C.B. 114) (holding that section 367 applied to the deemed contribution to capital of target corporation stock under prior law because section 367(c)(2) resulted in the stock transfer constituting a section 351 exchange). Moreover, in the preamble to the proposed regulations regarding redemptions taxable as dividends (REG–150313–01, 67 FR 64331 October 18, 2002), the IRS and Treasury indicated that certain international provisions may apply to section 304(a)(1) transfers, and provided as an example the application of section 367 and the regulations promulgated thereunder to a deemed section 351 exchange involving foreign corporations. The IRS and Treasury also stated that further guidance on the application of the international provisions to section 304(a)(1) transactions would be forthcoming.

The IRS and Treasury have determined that the policies underlying section 304 (prevention of withdrawals of corporate earnings through the use of transactions that result in capital gains treatment), section 367(a) (prevention of U.S. tax avoidance through transfers of appreciated property to foreign corporations), and section 367(b) (inter alia, preservation of the potential application of section 1248) are

preserved if section 367(a) and (b) are not applied to a deemed section 351 exchange resulting from a section 304(a)(1) transaction. In addition, the IRS and Treasury believe that the interests of sound tax administration are served by not applying section 367(a) and (b) to a deemed section 351 exchange resulting from a section 304(a)(1) transaction. Consequently, these proposed regulations provide that section 367(a) and (b) will not apply to a deemed section 351 exchange resulting from a section 304(a)(1) transaction. These proposed regulations do not address section 351 transactions other than those exchanges treated as section 351 exchanges by reason of section 304(a)(1).

1. Application of Section 367(a)

In a section 304(a)(1) transaction in which a U.S. person transfers the stock of an issuing corporation to a foreign acquiring corporation, without the application of section 367(a), the U.S. person will nevertheless recognize an amount of income that is at least equal to the inherent gain in the stock of the issuing corporation that is being transferred to the foreign acquiring corporation. This income recognition results from the construct of the transaction as a distribution in redemption of the acquiring corporation shares. The income recognized may be in the form of dividend income, gain on the disposition of stock, or both. Section 301(c)(1), (3). Thus, the policy underlying section 367(a), which is to prevent the avoidance of U.S. tax on transfers of appreciated property to a foreign corporation in certain nonrecognition transactions, is maintained through the operation of subchapter C principles even if section 367(a) is not applied to a section 304(a)(1) transaction. Moreover, as discussed below, the application of section 367(a) to a section 304(a)(1) transaction may, in certain instances where the U.S. transferor files a GRA, result in a total income inclusion that is greater than the fair market value of the stock being transferred. The IRS and Treasury believe that this result is inconsistent with the policies of section 367.

For instance, in order to avoid recognizing gain on a section 351 transfer of appreciated foreign stock to a foreign corporation under section 367(a)(1), a U.S. person may be required to enter into a GRA. *See* § 1.367(a)–3(b)(1)(ii). As noted, when a U.S. person transfers stock of a wholly owned foreign corporation (the foreign issuing corporation) to a wholly owned foreign acquiring corporation in exchange for property, section 304(a)(1) treats the U.S. person as having received foreign acquiring corporation stock in a deemed section 351 exchange, and then as having that stock immediately redeemed by the foreign acquiring corporation. If the U.S. person were to enter into a GRA, the application of section 367(a) to such a transaction will likely result in the GRA remaining in existence after the deemed redemption of the foreign acquiring corporation's stock. A U.S. person may, in fact, recognize income but, as a result of the GRA, not recognize any gain in the section 304(a)(1) transaction (*e.g.*, the section 304(a)(1) transaction results in dividend income to the U.S. corporate transferor equal to the consideration paid by the foreign acquiring corporation). In such a case, because the U.S. person has not recognized the inherent gain in the transferee foreign corporation's stock deemed to be received in the section 304(a)(1) transaction, the GRA will not be terminated. *See* § 1.367(a)–8(h)(1) (requiring a transaction in which all realized gain (if any) is recognized currently to terminate a GRA). As a result, the U.S. transferor would remain subject to the GRA provisions contained in § 1.367(a)–8. If the GRA subsequently were triggered pursuant to § 1.367(a)–8(e) (*e.g.*, if the foreign issuing corporation disposes of substantially all of its assets to an unrelated party during the 5-year GRA period), the U.S. transferor may be subject to a total income inclusion that is greater than the fair market value of the stock being transferred.

The application of section 367(a) to the transaction described above also results in administrative burdens for both the IRS and taxpayers. For instance, the conditions contained in § 1.367(a)–3(b) and (c) require a determination of the value and class of stock either received by the U.S. person in the transaction or owned by the U.S. person immediately after the transfer. *See, e.g.*, § 1.367(a)–3(b)(1)(i) and (ii) and (c)(1)(i), (ii), and (iii). To the extent the transaction is described in section 304(a)(1), the foreign acquiring corporation does not actually issue any stock to the U.S. person. Therefore, in order to apply the above provisions, the IRS and taxpayers must make determinations based on the stock that is deemed to be issued by the foreign acquiring corporation.

For the reasons stated above, the IRS and Treasury have decided to exercise their regulatory authority under section 367(a) such that section 367(a) will not apply to deemed section 351 exchanges resulting from section 304(a)(1) transactions.

2. Application of Section 367(b)

As discussed above in the preamble under heading B, § 1.367(b)–4(b)(1) provides that, in the case of a section 351 exchange of stock of a foreign acquired corporation by a U.S. person that is a section 1248 shareholder of such corporation (or a controlled foreign corporation that has a section 1248 shareholder) to a foreign acquiring corporation, the section 1248 shareholder (or a controlled foreign corporation that has a section 1248 shareholder) must include in income its section 1248 amount, unless the requisite section 1248 shareholder status or controlled foreign corporation status is maintained immediately after the exchange. However, in a section 304(a)(1) transaction in which section 1248 shareholder status and controlled foreign corporation status is maintained immediately after the deemed section 351 exchange, such that there is no section 1248 inclusion, the transferor may be treated as receiving a dividend from the foreign acquired corporation pursuant to section 304(b)(2)(B). Thus, in a section 304(a)(1) transaction, some or all of the earnings that make up the section 1248 amount that section 367(b) seeks to preserve may be immediately included in income by the exchanging shareholder.

Additionally, application of § 1.367(b)–4(b)(1) can, in some instances, create administrative burdens and be problematic. Section 1.367(b)–4(b)(1) requires a determination of the type and amount of stock received in the deemed section 351 exchange to determine whether the necessary section 1248 shareholder status and controlled foreign corporation status is maintained. Moreover, the application of § 1.367(b)–4(b)(1) to a section 304(a)(1) transaction often can be problematic because the necessary section 1248 shareholder status and controlled foreign corporation status may be treated as satisfied in the construct of the deemed section 351 exchange even though such status is immediately lost as a result of the deemed redemption transaction. For instance, the necessary section 1248 shareholder status and controlled foreign corporation status may be satisfied immediately after the deemed section 351 exchange when a U.S. corporation transfers a controlled foreign corporation (the foreign issuing corporation) to a foreign acquiring corporation in a section 304(a)(1) transaction, by taking into consideration the deemed issued stock by the foreign acquiring corporation. However, if both the U.S. corporate transferor and the

foreign acquiring corporation are wholly owned by the same foreign parent, the necessary section 1248 shareholder status and controlled foreign corporation status will not be satisfied immediately after the deemed redemption transaction.

For the reasons listed above, the IRS and Treasury have decided to exercise their regulatory authority under section 367(b) such that section 367(b) will not apply to deemed section 351 exchanges resulting from section 304(a)(1) transactions.

E. Request for Comments

Section 304(b)(6) grants the Secretary authority to prescribe regulations that are appropriate in order to eliminate multiple inclusions of any item of income by reason of section 304(a) and to provide appropriate basis adjustments (including modifications to the application of sections 959 and 961) in section 304(a) transactions in which the acquiring or issuing corporation is a foreign corporation. The IRS and Treasury are considering whether to issue regulations under section 304(b)(6) to adjust (1) the acquiring corporation's basis of the issuing corporation stock it acquires in the transaction, and (2) the transferor's basis of the issuing corporation stock in situations in which the transferor continues to own issuing corporation stock immediately after the transaction, to the extent that the transferor is treated under section 304(b)(2)(B) as receiving a distribution from the earnings and profits of the issuing corporation. Comments are requested regarding how such adjustments should be made, particularly if different classes of issuing corporation stock are acquired or retained in the section 304(a)(1) transaction. Comments also are requested as to how, and to what extent, these types of adjustments should be made outside the context of section 304(b)(6) (*e.g.*, in a section 304(a)(1) transaction in which both the acquiring corporation and issuing corporation are domestic corporations).

Effective Dates

The proposed regulations are proposed to apply to section 304(a)(1) transactions occurring on or after the date of publication of these regulations as final in the **Federal Register**.

Effect on Other Documents

If these proposed regulations are adopted as final regulations, Rev. Rul. 91–5 (1991–1 C.B. 114) and Rev. Rul. 92–86 (1992–2 C.B. 199) will be modified to the extent inconsistent with such final 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 has also 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 these regulations do not impose a collection of information on small entities, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact.

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 rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place of the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Tasheaya L. Warren Ellison, Office of the 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.

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 1.367(a)–3 is amended as follows:

1. A sentence is added to paragraph (a) immediately following the second sentence.

2. The new fourth sentence of paragraph (a) is amended by removing the language "However" and adding "Additionally" in its place.

3. The first sentence of paragraph (e)(1) is removed and two sentences are added in its place.

The additions read as follows:

§ 1.367(a)–3 Treatment of transfers of stock or securities to foreign corporations.

(a) *In general.* * * * However, if, pursuant to section 304(a)(1), a U.S. person is treated as transferring stock of a domestic or foreign corporation to a foreign corporation in exchange for stock of such foreign corporation in a transaction to which section 351(a) applies, such deemed section 351 exchange is not a transfer to a foreign corporation subject to section 367(a). * * *

* * * * *

(e) *Effective dates*—(1) *In general.* The rules in paragraphs (a), (b) and (d) of this section generally apply to transfers occurring on or after July 20, 1998. However, the third sentence of paragraph (a) of this section shall apply to section 304(a)(1) transactions occurring on or after the date these regulations are published as final regulations in the **Federal Register**. * * *

* * * * *

Par. 3. In § 1.367(b)–4, a sentence is added to the end of paragraph (a) to read as follows:

§ 1.367(b)–4 Acquisition of foreign corporate stock or assets by a foreign corporation in certain nonrecognition transactions.

(a) *Scope.* * * * However, if pursuant to section 304(a)(1), a foreign acquiring corporation is treated as acquiring the stock of a foreign acquired corporation in a transaction to which section 351(a) applies, such deemed section 351 exchange is not an acquisition subject to section 367(b).

* * * * *

Par. 4. Section 1.367(b)–6 is amended by revising paragraph (a)(1) to read as follows:

§ 1.367(b)–6 Effective dates and coordination rules.

(a) *Effective date.*—(1) *In general.* Sections 1.367(b)–1 through 1.367(b)–5, and this section, generally apply to section 367(b) exchanges that occur on or after February 23, 2000. However, the last sentence of paragraph (a) in § 1.367(b)–4 shall apply to section 304(a)(1) transactions occurring on or

after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

Cono R. Namorato,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–10267 Filed 5–20–05; 2:48 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–05–042]

RIN 1625–AA00

Safety Zone; Town of Hingham Fourth of July Fireworks Display, Hingham Inner Harbor, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a temporary safety zone for the Hingham Fourth of July Fireworks Display in Hingham, Massachusetts. This safety zone is necessary to protect the life and property of the maritime public from the potential hazards associated with a fireworks display. The safety zone would temporarily prohibit entry into or movement within a portion of Hingham Harbor during the closure period.

DATES: Comments and related material must reach the Coast Guard on or before June 24, 2005.

ADDRESSES: You may mail comments and related material to Sector Boston 427 Commercial Street, Boston, MA. Sector Boston maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket are part of docket CGD01–05–042 and are available for inspection or copying at Sector Boston, 427 Commercial Street, Boston, MA, between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Paul English, Sector Boston, Waterways Management Division, at (617) 223–3010.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for the rulemaking (CGD01–05–042), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related materials in an unbound format, no larger than 8.5 by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. But you may submit a request for a meeting by writing to Sector Boston at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

This rule proposes to establish a safety zone on the waters of Hingham Harbor within a 400-yard radius of Button Island located at approximate position 42°15′5″ N, 070°53′5″ W. The safety zone would be in effect from 9 p.m. until 10:30 p.m. on July 2, 2005. The rain date for the fireworks event is from 9 p.m. until 10:30 p.m. on July 3, 2005.

The safety zone would temporarily restrict movement within this portion of Hingham Harbor and is needed to protect the maritime public from the potential dangers posed by a fireworks display. Marine traffic may transit safely outside the zone during the effective period. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period of this proposed rule via safety marine information broadcasts and Local Notice to Mariners.

Discussion of Proposed Rule

The Coast Guard is establishing a temporary safety zone in Hingham Harbor Inner, Hingham, Massachusetts. The safety zone would be in effect from 9 p.m. until 10:30 p.m. on July 2, 2005, with a rain date of 9 p.m. until 10:30 p.m. on July 3, 2005. Marine traffic may transit safely outside of the zone in the majority of Hingham Harbor during the event. This safety zone will control vessel traffic during the fireworks display to protect the safety of the maritime public.

Due to the limited time frame of the firework display, the Captain of the Port anticipates minimal negative impact on vessel traffic due to this event. Public notifications will be made prior to the effective period via local media, Local Notice to Mariners and marine information broadcasts.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this rule would prevent traffic from transiting a portion of Marblehead Harbor during the effective period, the effects of this rule will not be significant for several reasons: Vessels will be excluded from the proscribed area for only one and one half hours, vessels will be able to operate in the majority of Hingham Harbor during the effective period, and advance notifications will be made to the local maritime community by marine information broadcasts and Local Notice to Mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the effected portion of Hingham Harbor from 9 p.m. to 10:30

p.m. on July 2, 2005 or during the same hours on July 3, 2005.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: This proposed rule would be in effect for only one and one half hours, vessel traffic can safety pass around the safety zone during the effected period, and advance notifications will be made to the local maritime community via marine informational broadcasts and Local Notice to Mariners.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would effect your small business, organization, and government jurisdiction and you have questions concerning its provisions or options for compliance, please contact Chief Petty Officer English at the address listed under **ADDRESSES.** The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Coast Guard Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under 2.B.2 of the Instruction. Therefore, we believe that this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation. A preliminary "Environmental Analysis Check List" is available in the docket where indicated under **ADDRESSES.** This rule fits the category selected from paragraph (34) (g), as it would establish a safety zone. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add temporary section 165.T01–042 to read as follows:

§165.T01–042 Safety Zone; Town of Hingham Fourth of July Fireworks Display, Hingham, Massachusetts.

(a) *Location.* The following area is a safety zone: All waters of Hingham Harbor within a 400-yard radius of Button Island located at approximate position 42°15′5″ N, 070°53′5″ W.

(b) *Effective Date.* This section is effective from 9 p.m. until 10:30 p.m. on July 2, 2005, with a rain date of 9 p.m. until 10:30 p.m. on July 3, 2005.

(c) *Regulations.*

(1) In accordance with the general regulations in 33 CFR 165.23, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, State, and Federal law enforcement vessels.

Dated: May 16, 2005.

James L. McDonald,

Captain, U.S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 05–10421 Filed 5–24–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 207

RIN 0710–AA62

Navigation Regulations

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers is proposing to establish a procedure for modifying scheduled operational hours at the Lake Washington Ship Canal, Hiram M. Chittenden Locks in Seattle, Washington. This procedure would allow the district engineer to change the scheduled operational hours of the locks after issuing a public notice and providing a 30-day comment period for any proposed change. Corrections are also made to two citations.

DATES: Comments must be submitted on or before July 25, 2005.

ADDRESSES: Written comments should be sent to the U.S. Army Corps of Engineers, Attn: CENWS–OD–TS–PS (Robert M. Rawson), P.O. Box 3755, Seattle, Washington 98124–3755, or by e-mail to *robert.m.rawson@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. John Post, Operations Manager, Hiram M. Chittenden Locks, at (206) 789–2622, Ms. Patricia Graesser, Public Affairs Office, (206) 764–3760, or Mr. Michael Kidby, Operations and Regulatory Community of Practice, Directorate of Civil Works, at (202) 761–0250.

SUPPLEMENTARY INFORMATION: This regulation has not been revised in over 40 years. Corrections need to be made to reflect current situation and changes to referenced regulations. Furthermore, there is a need to have a public notice and comment process in place to allow for changes in scheduled operation. The proposed change does not change the present operation but adds a process to allow for a change in schedule similar to that on the Columbia River. Note that the addition of this proposed schedule provision does not negate or limit the Corps' existing authority to restrict or reduce lockage operations.

Administrative Requirements

Plain Language

In compliance with the principles in the President's Memorandum of June 1, 1998, (63 FR 31855) regarding plain language, this preamble is written using plain language. The use of "we" in this notice refers the Corps. We have also used the active voice, short sentences, and common everyday terms except for necessary technical terms.

Paperwork Reduction Act

This proposed action will not impose any new information collection burden under the provisions of the Paperwork Production Act (44 U.S.C. 3501 *et seq.*). Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to, or for, a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Since the proposed rule does not involve any collection of information from the public, this action is not subject to the Paperwork Reduction Act.

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), an agency must determine whether the regulatory action is "significant" and therefore subject to review by OMB and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that the proposed rule is not a "significant regulatory action" because it does not meet any of these four criteria.

Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires an agency to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." The phrase "policies that have Federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The proposed rule does not have Federalism implications. We do not believe that amending this regulation will have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed rule

does not impose new substantive requirements. In addition, the proposed changes will not impose any additional substantive obligations on State or local governments. Therefore, Executive Order 13132 does not apply to this proposed rule.

Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, a small entity is defined as: (1) A small business based on Small Business Administration size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the proposed rule on small entities, we believe that this action will not have a significant economic impact on a substantial number of small entities. The proposed rule is consistent with current agency practice, does not impose new substantive requirements, and therefore would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under Section 202 of the UMRA, the agencies generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a rule for which a written statement is needed, Section 205 of the UMRA generally requires the agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows an agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted. Before an agency establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed, under Section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. The proposed rule is consistent with current agency practice, does not impose new substantive requirements and therefore does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Therefore, the proposed rule is not subject to the requirements of Sections 202 and 205 of the UMRA. For the same reasons, we have determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, the proposed rule is not subject to the requirements of Section 203 of UMRA.

Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the proposed rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives.

The proposed rule is not subject to this Executive Order because it is not economically significant as defined in Executive Order 12866. In addition, it does not concern an environmental or safety risk that we have reason to believe may have a disproportionate effect on children.

Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires agencies to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The phrase "policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

The proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. It is generally consistent with current agency practice and does not impose new substantive requirements. Therefore, Executive Order 13175 does not apply to this proposed rule.

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. We 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. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The proposed rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Executive Order 12898

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

The proposed rule is not expected to negatively impact any community, and therefore is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities.

Executive Order 13211

The proposed rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The proposed rule is consistent with current agency practice, does not impose new substantive requirements and therefore will not have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 33 CFR Part 207

Navigation (water), Vessels, Water transportation.

Dated: May 19, 2005.

Michael B. White,

Chief, Operations, Directorate of Civil Works.

For the reasons stated above, the Corps proposes to amend 33 CFR part 207 as follows:

PART 207—NAVIGATION REGULATIONS

1. The authority citation for part 207 continues to read as follows:

Authority: 33 U.S.C. 1.

2. Amend § 207.750 by revising paragraph (b)(4) and the note to (b)(5)(i), and adding (b)(7) to read as follows:

§ 207.750 Lake Washington Ship Canal; use, administration and navigation.

* * * * *

(b) * * *

(4) *Traffic signal lights.* In addition to the lock signal lights described in paragraph (b)(5)(ii) of this section, a red light, and a green light are installed on the west side of the Ballard Bridge, on the east side of the Fremont Bridge, 1,000 feet west of the Montlake Bridge, and 1,000 feet east of the Montlake Bridge, for the guidance of vessels approaching the sections of the canal between Salmon Bay and Lake Union and between Lake Union and Lake Washington, respectively.

(5) * * *

(i) * * *

Note: The term "long blasts" means blasts of four seconds duration, and the term "short blasts" means blasts of one second duration. Signals for the opening of drawbridges are prescribed in 46 CFR Part 117. * * *

(6) * * *

(7) *Schedule.* The district engineer may, after issuing a public notice and providing a 30-day opportunity for public comment, set (issue) a schedule for the daily lockage of recreational and commercial vessels. Recreational vessels are pleasure boats such as a row, sail, or motorboats used for recreational purposes. Commercial vessels include cargo ships; fishing vessels; and licensed commercial passenger vessels operating on a published schedule or regularly operating in the "for hire" trade. Each schedule and any changes to the schedule will be issued at least 30 days prior to implementation. Prior to issuing any schedule, or any change to the schedule, the district engineer will consider all public comments and will evaluate operational efficiencies, commercial needs, the water situation, recreational use of the locks, and other public interests to determine the need for a change in schedule. The district engineer's representative at the locks shall be the Operations Manager, who shall issue orders and instructions to the lockmaster in charge of the locks. Hereinafter, the term "lockmaster" shall be used to designate the person in immediate charge of the locks at any given time. In case of emergency, and on all routine work in connection with the operation of the locks, the lockmaster shall have authority to take action without waiting for instructions from the Operations Manager.

* * * * *

[FR Doc. 05–10432 Filed 5–24–05; 8:45 am]

BILLING CODE 3710–92–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98–170 and CG Docket No. 04–208; FCC 05–55]

Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on where to draw the line between the Commission's jurisdiction and states' jurisdiction over the billing practices of Commercial Mobile Radio Service (CMRS) and other interstate carriers. In addition, the proposed rules seek comment on how the Commission should define the distinction between mandated and non-mandated charges for truth-in-billing purposes, and how states can be involved in enforcing point of sale disclosure rules the Commission has proposed.

DATES: Comments are due on or before June 24, 2005, and reply comments are due July 25, 2005. Written comments on the proposed information collection(s) must be submitted by the public, Office of Management and Budget (OMB) and other interested parties on or before July 25, 2005.

ADDRESSES: You may submit comments, identified by [docket number and/or rulemaking number], by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: *http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Michael Jacobs, Consumer & Governmental Affairs Bureau at (202) 418–2512 (voice), or e-mail *Michael.Jacobs@fcc.gov*. For additional

information concerning the PRA information collection requirements contained in this document, contact Leslie Smith at (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: This Second Further Notice of Proposed Rulemaking (*Second Further Notice*), *Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing,* CC Docket No. 98–170 and CG Docket No. 04–208, FCC 05–55, contains proposed information collection requirements subject to the PRA of 1995, Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under § 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection requirements contained in this proceeding.

This is a summary of the Commission's *Second Further Notice,* adopted March 10, 2005, and released March 18, 2005. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the website for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

People with Disabilities: Contact the FCC to request materials in accessible formats (braille, large print, electronic files, audio format, etc.) by e-mail at *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0531 (voice), 202–418–7365 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

This *Second Further Notice* contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this *Second Further Notice,* as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due July 25, 2005. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

OMB Control Number: 3060–0854.

Title: Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing, CC Docket No. 98–170 and CG Docket No. 04–208, FCC 05–55.

Form Number: N/A.

Type of Review: Revision of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 5309.

Estimated Time per Response: 49–243 hours per response.

Frequency of Responses: On occasion; Third party disclosure reporting requirement.

Total Annual Burden: 2,335,960 burden hours.

Total Annual Cost: $0.

Privacy Impact Assessment: No.

Needs and Uses: On March 18, 2005, the Commission released a *Second Further Notice, Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Truth-in-Billing,* which proposes and seeks comment on measures to enhance the ability of consumers to make informed choices among competitive telecommunications providers. These proposed measures include, among others, carriers separating government mandated charges from other charges on bills, and disclosing the full rate to the consumer at the point of sale before the consumer signs any contract for the carrier's services.

Synopsis

In soliciting comment on the NASUCA Petition, the Commission noted that the NASUCA Petition raised issues implicated in the Commission's Truth-in-Billing proceeding. However, the broader issue of the role of states in regulating billing was addressed primarily in reply comments and *ex parte* submissions, and received only cursory treatment in comments on the NASUCA Petition. Given the importance and complexity of this broader issue, this *Second Further Notice of Proposed Rulemaking* is

appropriate in order to garner as complete and up-to-date a record as possible and invite commenters to refresh the record on any issues from the *Truth-in-Billing Order Further Notice*, published at 64 FR 34499, June 25, 1999, that we have not addressed. In the *Truth-in-Billing Order*, published at 64 FR 34488, June 25, 1999, the Commission required carriers that list charges in separate line items to identify certain of such line item charges through standard industry-wide labels and to provide full, clear and non-misleading descriptions of the nature of the charges. The Commission sought comment on the specific labels that carriers should adopt, while tentatively concluding that such labels will, without unduly burdening carriers, identify adequately the charges and provide consumers with a basis for comparison among carriers. In addition, while declining to formulate standardized descriptions for billed services, the Commission encouraged carriers to develop uniform terminology for such descriptions. The Commission also encouraged industry and consumer groups to consider further whether some categorization of charges would be advisable. Nearly six years after adoption of the *Truth-in-Billing Order*, the record reflects that consumers still experience a tremendous amount of confusion regarding their bills, which inhibits their ability to compare carriers' service and price offerings, in contravention of the pro-competitive framework of the Telecommunications Act of 1996 ("1996 Act"). To help alleviate this situation, consistent with the recommendations of commenters such as the Ohio PUC, the Commission tentatively concludes that where carriers choose to list charges in separate line items on their customers' bills, government mandated charges must be placed in a section of the bill separate from all other charges. The Commission also solicits comment on how it should define the distinction between mandated and non-mandated charges for truth-in-billing purposes. The Commission also encourages commenters to assess the ease or difficulty of administering any proposed distinction between government mandated and non-mandated charges. In the *Truth-in-Billing Further Notice*, the Commission sought comment on how carriers should identify line items that combine two or more federal regulatory charges into a single charge. However, in the *Truth-in-Billing Order*, the Commission also expressed concern that where regulatory-related charges are not broken down into line items, it facilitates carriers' ability to bury costs in lump figures. In light of these conflicting considerations, as well as the record developed in response to the NASUCA Petition, the Commission now refines its proposal to seek comment on whether it is unreasonable under section 201(b) of the Act to combine federal regulatory charges into a single line item. The Commission also tentatively concludes that it should reverse its prior pronouncement that states may enact and enforce more specific truth-in-billing rules than the Commission's. The Commission solicits comment on this tentative conclusion. In addition, the Commission seeks comment on, if the Commission does adopt this tentative conclusion, whether it should limit the scope of what constitutes "consistent truth-in-billing requirements by the states" under 47 CFR 64.2400(c), eliminate § 64.2400(c) from the Commission's rules altogether, or adopt an enforcement regime where states are permitted to enforce rules developed by the Commission. The Commission believes that limiting state regulation of CMRS and other interstate carriers' billing practices, in favor of a uniform, nationwide, federal regime, will eliminate inconsistent state regulation, making nationwide service less expensive for carriers to provide and lowering the cost of service to consumers. Accordingly, the Commission asks commenters to address the proper boundaries of "other terms and conditions" under section 332(c)(3)(A) of the Act, and generally to delineate what they believe should be the relative roles of the Commission and the states in defining carriers' proper billing practices. The Commission also tentatively concludes that it should adopt point of sale disclosure rules, requiring that the carrier disclose to the consumer the full rate, including any non-mandated line items and a reasonable estimate of government mandated surcharges, before the consumer signs any service contract. Finally, the Commission solicits comment on whether and how to adopt an enforcement regime in which states are permitted to enforce rules developed by the Commission regarding point of sale disclosures. For example, Commission rules against slamming provide that state commissions may elect to administer these slamming rules. In adopting the slamming rules, however, the Commission recognized that not all states have the resources to resolve slamming complaints, or may not choose to take on such primary responsibility for administering them, so the Commission also adopted rules allowing consumers in those states to file slamming complaints with the Commission. In this regard, the Commission asks whether its slamming rules provide a good model for rules that it may develop for point of sale disclosures. The Commission also asks whether, if it adopts an enforcement regime akin to that in the Commission's slamming rules, it should also establish rules prescribing specific penalty amounts and procedures for point of sale disclosure violations, like the penalty provisions in the Commission's slamming rules? The Commission encourages commenters to address how states can administer the process of any penalty scheme that it establishes.

Initial Regulatory Flexibility Analysis (IRFA)

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), (*see* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law Number 104–121, Title II, 110 Statute 857 (1996)), the Commission has prepared this present Initial Regulatory Flexibility Analysis (*IRFA*) of the possible significant economic impact on small entities by the policies and rules proposed in this *Second Further Notice*. Written public comments are requested on this *IRFA*. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Second Further Notice* provided above in section VI (D). The Commission will send a copy of the *Second Further Notice*, including this *IRFA*, to the Chief Counsel for Advocacy of the Small Business Administration. See 5 U.S.C. 603(a). In addition, this *Second Further Notice* and the *IRFA* (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

The Commission determined that significant consumer concerns with the billing practices of wireless and other interstate providers raised in this proceeding, and outstanding issues from the 1999 *Truth-in-Billing Order and Further Notice*, require that the Commission clarify certain aspects of its existing rules and policies affecting billing for telephone service. Consumer confusion over telephone bills inhibits the ability of consumers to compare carriers' price and service offerings, thus undermining the proper functioning of competitive markets for telecommunications services, in contravention of the pro-competitive

framework prescribed by Congress in the 1996 Act. Therefore, the Commission proposes and seeks comment on additional measures to facilitate the ability of telephone consumers to make informed choices among competitive telecommunications service offerings.

In particular, the Commission seeks comment on the distinction between government "mandated" and other charges, and tentatively concludes that where carriers choose to list charges in separate line items on their customers' bills, government mandated charges must be placed in a section of the bill separate from all other charges. The Commission also seeks comment on whether it is unreasonable to combine federal regulatory charges into a single line item, though any commenter who still believes that carriers should be able to combine two or more of these charges into a single charge is welcome to refresh the record on how carriers should identify such line items.

Furthermore, the Commission tentatively concludes that carriers must disclose the full rate, including any non-mandated line items and a reasonable estimate of government mandated surcharges, to the consumer at the point of sale, and that such disclosure must occur before the customer signs any contract for the carrier's services.

These proposed rules are designed to discourage misleading billing practices, and thereby aid consumers in understanding their telecommunications bills, and to provide consumers with the tools they need to make informed choices in the market for telecommunications service.

Legal Basis

The legal basis for any action that may be taken pursuant to this *Second Further Notice* is contained in sections 1–4, 201, 202, 206–208, 258, 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 201, 202, 206–208, 258, 303(r), and 332; § 601(c) of the Telecommunications Act of 1996; and §§ 1.421, 64.2400, and 64.2401 of the Commission's rules, 47 CFR 1.421, 64.2400, and 64.2401.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. (*See* 5 U.S.C. 603(b)(3)). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." (*See* 5 U.S.C. 601(6)). In addition, the term "small business" has the same meaning as the term "small business concern" under § 3 of the Small Business Act. (*See* 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definitions(s) in the **Federal Register**.") Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). (*See* 15 U.S.C. 632).

The Commission has included small incumbent LECs in this RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a wireline telecommunications business having 1,500 or fewer employees), and "is not dominant in its field of operation." (*See* 13 CFR 121.201, NAICS code 517110) The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. (*See* Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to Chairman William E. Kennard, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 5 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b)). The Commission therefore has included small incumbent LECs in this RFA analysis, although the Commission emphasizes that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

Incumbent Local Exchange Carriers. Neither the Commission nor the SBA has developed a small business size standard for providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. (*See* 13 CFR 121.201, NAICS code 517110) According to the FCC's *Telephone Trends Report* data, 1,310 incumbent local exchange carriers reported that they were engaged in the provision of local exchange services. (*See* FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service*, at Table 5.3, p. 5–5 (May 2004) (*Telephone Trends Report*). This source uses data that are current as of October 22, 2003). Of these 1,310 carriers, an estimated 1,025 have 1,500 or fewer employees and 285 have more than 1,500 employees. Consequently, the Commission estimates that the majority of providers of local exchange service are small entities that may be affected by the rules and policies adopted herein.

Competitive Local Exchange Carriers and Competitive Access Providers. Neither the Commission nor the SBA has developed specific small business size standards for providers of competitive local exchange services or competitive access providers (CAPs). The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. (*See* 13 CFR 121.201, NAICS code 517110) According to the FCC's *Telephone Trends Report* data, 563 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. (*See Telephone Trends Report*, Table 5.3. The data are grouped together in the *Telephone Trends Report*). Of these 563 companies, an estimated 472 have 1,500 or fewer employees, and 91 have more than 1,500 employees. Consequently, the Commission estimates that the majority of providers of competitive local exchange service and CAPs are small entities that may be affected by the rules.

Local Resellers. The SBA has developed a specific size standard for small businesses within the category of Telecommunications Resellers. Under that standard, such a business is small if it has 1,500 or fewer employees. (*See* 13 CFR 121.201, NAICS code 517310). According to the FCC's *Telephone Trends Report* data, 127 companies reported that they were engaged in the provision of local resale services. (*See Telephone Trends Report*, Table 5.3). Of these 127 companies, an estimated 121 have 1,500 or fewer employees, and six have more than 1,500 employees. Consequently, the Commission

estimates that the majority of local resellers may be affected by the rules.

Toll Resellers. The SBA has developed a specific size standard for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. (*See* 13 CFR 121.201, NAICS code 517310). According to the FCC's *Telephone Trends Report* data, 645 companies reported that they were engaged in the provision of toll resale services. (*See Telephone Trends Report*, Table 5.3). Of these 645 companies, an estimated 619 have 1,500 or fewer employees, and 26 have more than 1,500 employees. Consequently, the Commission estimates that a majority of toll resellers may be affected by the rules.

Interexchange Carriers. Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to providers of interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. (*See* 13 CFR 121.201, NAICS code 517110). According to the FCC's *Telephone Trends Report* data, 281 carriers reported that their primary telecommunications service activity was the provision of interexchange services. (*See Telephone Trends Report*, Table 5.3). Of these 281 carriers, an estimated 254 have 1,500 or fewer employees, and 27 have more than 1,500 employees. Consequently, we estimate that a majority of interexchange carriers may be affected by the rules.

Operator Service Providers. Neither the Commission nor the SBA has developed a size standard for small entities specifically applicable to operator service providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. (*See* 13 CFR 121.201, NAICS code 517110). According to the FCC's *Telephone Trends Report* data, 21 companies reported that they were engaged in the provision of operator services. (*See Telephone Trends Report*, Table 5.3). Of these 21 companies, an estimated 20 have 1,500 or fewer employees, and one has more than 1,500 employees. Consequently, the Commission estimates that a majority of operator service providers may be affected by the rules.

Other Toll Carriers. Neither the Commission nor the SBA has developed a size standard for small entities specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. (*See* 13 CFR 121.201, NAICS code 517110). According to the FCC's *Telephone Trends Report* data, 65 carriers reported that they were engaged in the provision of "Other Toll Services." (*See Telephone Trends Report*, Table 5.3). Of these 65 carriers, an estimated 62 have 1,500 or fewer employees, and three have more than 1,500 employees. Consequently, the Commission estimates that a majority of "Other Toll Carriers" may be affected by the rules.

Wireless Service Providers. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging" (*See* 13 CFR 121.201, NAICS code 517211) and "Cellular and Other Wireless Telecommunications." (*See* 13 CFR 121.201, NAICS code 517212). Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. (*See* U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000). Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. (*See* U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513321 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more.") Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. (*See* U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. (*See* U.S. Census Bureau, 1997 Economic Census, Subject Series: "Information," Table 5, Employment Size of Firms Subject to Federal Income Tax: 1997, NAICS code 513322 (issued October 2000). The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1000 employees or more."). Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

As noted, the Commision tentatively concludes that where carriers choose to list charges in separate line items on their customers' bills, government mandated charges must be placed in a section of the bill separate from all other charges; and that carriers must disclose the full rate, including any non-mandated line items and a reasonable estimate of government mandated surcharges, to the consumer at the point of sale. Furthermore, the Commission seeks comment on whether it is unreasonable to combine federal regulatory charges into a single line item. However, the Commission also tentatively concludes that it should reverse its prior holding permitting states to enact and enforce telecommunications carrier-specific truth-in-billing rules. This tentative conclusion is designed to address the potential for inconsistent state regulation of CMRS and other interstate carrier billing practices, and thereby simplify the requirements for such carriers' compliance with potentially disparate billing regulations. Aside from simplifying procedural compliance requirements for small entities, we expect that this measure also will alleviate some compliance costs for small entities.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting

requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. (*See* 5 U.S.C. 603(c)(1)–(c)(4)).

As described above, the Commission seeks comment on the distinction between government "mandated" and other charges, and tentatively concludes that where carriers choose to list charges in separate line items on their customers' bills, government mandated charges must be placed in a section of the bill separate from all other charges. The Commission also seeks comment on whether it is unreasonable to combine federal regulatory charges into a single line item, though any commenter who still believes that carriers should be able to combine two or more of these charges into a single charge is welcome to refresh the record on how carriers should identify such line items. Furthermore, the Commission tentatively concludes that carriers must disclose the full rate, including any non-mandated line items and a reasonable estimate of government mandated surcharges, to the consumer at the point of sale, and that such disclosure must occur before the customer signs any contract for the carrier's services. For each of these issues and tentative conclusions, the Commission seeks comment on the effects its proposals would have on small entities, and whether any rules it adopts should apply differently to small entities.

For instance, the *Second Further Notice* seeks comment on whether the Commission should require standardized labeling of categories of charges on consumers' bills, and what the monetary costs of such a requirement would be. The Commission particularly seeks comment on the nature of the economic impact of such a requirement on small entities, and whether the proposed requirement should be applied to them in any manner different from its application to entities that do not qualify as small entities. In addition, the Commission tentatively concludes that carriers must disclose the full rate, including any non-mandated line items and a reasonable estimate of government mandated surcharges, to the consumer at the point of sale, and that such disclosure must occur before the customer signs any contract for the carrier's services. The Commission specifically seeks comment on the effect of these tentative conclusions on small entities, and on whether it would be appropriate to apply whatever provisions the Commission adopts to small entities in the same manner that it applies them to entities that do not qualify as small.

The Commission does not have any evidence before it at this time regarding whether proposals outlined in this *Second Further Notice* would, if adopted, have a significant economic impact on a substantial number of small entities. However, the Commission recognizes that mandating changes to the format of consumers' bills, and specific point of sale disclosures, likely would result in additional burdens on small CMRS providers and other interstate carriers. The Commission therefore seeks comment on the potential impact of these proposals on small entities, and whether there are any less burdensome alternatives that it should consider.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

In seeking comment on its tentative conclusion that government mandated charges should be placed in a section of the bill separate from all other charges, where carriers choose to list charges in separate line items on their customers' bills, the Commission notes that: (1) § 64.2400(a) of the Commission's rules provides that the truth-in-billing rules are intended "to aid customers in understanding their telecommunications bills, and to provide them with the tools they need to make informed choices in the market for telecommunications service"; and (2) § 64.2401(b) requires that descriptions of billed charges be brief, clear, non-misleading, and in plain language. The Commission seeks comment on its stated belief that separating government mandated charges from all other charges satisfies the policy goals embedded in these rules. Though any rules that the Commission may adopt to implement this tentative conclusion may overlap somewhat with 47 CFR 64.2400(a) and 64.2401(b), the Commission believes that these new rules would complement the existing rules, rather than duplicating them or conflicting with them.

In tentatively concluding that bases other than the rate regulation proscription of § 332(c)(3)(A) exist for the Commission to preempt state regulation of carriers' billing practices, the Commission tentatively concludes further that it should reverse its prior pronouncement that states may enact and enforce more specific truth-in-billing rules than the Commission's. In large part, this pronouncement has been embodied by the substance of 47 CFR 64.2400(c). The Commission seeks comment on, if it does adopt this further tentative conclusion, whether it should limit the scope of what constitutes "consistent truth-in-billing requirements by the states" under 47 CFR 64.2400(c), eliminate § 64.2400(c) from its rules altogether, or adopt an enforcement regime where states are permitted to enforce rules developed by the Commission. Thus, the Commission's tentative conclusions may conflict with 47 CFR 64.2400(c), or may overlap with that rule in a manner in which the existing rule may be harmonized with the Commission's tentative conclusions.

Ordering Clauses

Pursuant to the authority contained in sections 1–4, 201, 202, 206–208, 258, 303(r), and 332 of the Communications Act of 1934, as amended; 47 U.S.C. 151–154, 201, 202, 206–208, 258, 303(r), and 332; section 601(c) of the Telecommunications Act of 1996; and §§ 1.421, 64.2400 and 64.2401 of the Commission's Rules, 47 CFR 1.421, 64.2400, and 64.2401, the *second further notice of proposed rulemaking is adopted.*

The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of the *Second Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–10118 Filed 5–24–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1305; MB Docket No. 04–80, RM–10875]

Radio Broadcasting Services; St. Florian, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: The Audio Division denies a Petition for Rule Making filed by American Family Association proposing the reservation of vacant Channel 274A at St. Florian, Alabama for noncommercial educational use because

reserved Channel 213 is available for noncommercial broadcasting at St. Florian. *See* 69 FR 18860, April 9, 2004.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 04–280, adopted May 4, 2005, and released May 9, 2005. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the proposed rule was denied.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–10108 Filed 5–24–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1299; MB Docket No. 05–184]

Radio Broadcasting Services; Aspen and Leadville, CO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on the removal of two mutually exclusive vacant allotments, Channel 228A at Aspen, Colorado and Channel 228A at Leadville, Colorado. The allotments are not in compliance with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules. These vacant allotments are short-spaced by 45.3 kilometers, whereas the minimum distance spacing requirement for these allotments is 115 kilometers. Channel 228A at Aspen, Colorado was allotted in 2001, as the community's third local FM commercial service without a site restriction at coordinates 39–11–24 NL and 106–49–06 WL. Channel 228A at Leadville, Colorado is a vacant allotment resulting from the cancellation of the Station KRMH–FM license in 1997. *See* BLH–19860207KD. The reference coordinates for vacant Channel 228A at Leadville are 39–14–51 NL and 106–17–57 WL. Interest parties should file comments expressing an interest in the vacant allotments to prevent removal.

DATES: Comments must be filed on or before June 30, 2005 and reply comments on or before July 15, 2005.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 05–184, adopted May 4, 2005 and released May 9, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 228A at Aspen and Leadville, Channel 228A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–10115 Filed 5–24–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1311; MB Docket No. 05–185, RM–11236]

Radio Broadcasting Services; Tenino, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Dr. Sandra L. Woodruff proposing the allotment of Channel 229C3 at Tenino, Washington, as the community's first local service. Channel 229C3 can be allotted to Tenino, consistent with the minimum distance separation requirements of the Commission's rules at a restricted site located 1.9 kilometers (1.1 miles) west of the community. The reference coordinates for Channel 229C3 at Tenino are 46–51–22 North Latitude and 122–52–30 West Longitude.

DATES: Comments must be filed on or before June 27, 2005, and reply comments on or before July 12, 2005.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the Petitioner, as follows: Dr. Sandra L.

Woodruff, 2708 Hampton Ct. SE, Olympia, WA 98501.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, MB Docket No. 05–185, adopted May 4, 2005, and released May 6, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Tenino, Channel 229C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–10116 Filed 5–24–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 578

[Docket No. NHTSA–05–21161; Notice 1]

RIN 2127–AJ62

Civil Penalties

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to increase the maximum aggregate civil penalties for violations of statutes and regulations administered by NHTSA pertaining to odometer tampering and disclosure requirements and for vehicle theft protection violations. This action would be taken pursuant to the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, which requires us to review and, as warranted, adjust penalties based on inflation at least every four years.

DATES: Comments on the proposal are due July 25, 2005.

Proposed effective date: 30 days after date of publication of the final rule in the **Federal Register.**

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

- Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- 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: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Request for Comments heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading under Rulemaking Analyses and Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Michael Kido, Office of Chief Counsel, NHTSA, telephone (202) 366–5263, facsimile (202) 366–3820, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

In order to preserve the remedial impact of civil penalties and to foster compliance with the law, the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (28 U.S.C. 2461 Notes, Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104–134) (referred to collectively as the "Adjustment Act" or, in context, the "Act"), requires us and other Federal agencies to regularly adjust civil penalties for inflation. Under the Adjustment Act, following an initial adjustment that was capped by the Act, these agencies must make further adjustments, as warranted, to the amounts of penalties in statutes they administer at least once every four years.

NHTSA's initial adjustment of civil penalties under the Adjustment Act was published on February 4, 1997. 62 FR 5167. At that time, we codified the adjustments in 49 CFR part 578, Civil Penalties. On July 14, 1999, we further adjusted certain penalties involving odometer requirements and disclosure, consumer information, motor vehicle safety, and bumper standards. 64 FR 37876.

On August 7, 2001, we also adjusted certain penalty amounts pertaining to odometer requirements and disclosure and vehicle theft prevention. 66 FR 41149. In addition to increases in authorized penalties under the Adjustment Act, the Transportation Recall Enhancement, Accountability, and Documentation ("TREAD") Act increased penalties under the National Traffic and Motor Vehicle Safety Act as

amended (sometimes referred to as the "Motor Vehicle Safety Act"). We codified those amendments on November 14, 2000. 65 FR 68108. Most recently, on September 28, 2004, we adjusted the maximum penalty amounts for a related series of violations involving the agency's vehicle safety, bumper standards, and consumer information provisions. 69 FR 57864.

We have reviewed the civil penalty amounts authorized in part 578 and propose in this notice to adjust those penalties where warranted under the Adjustment Act. Those civil penalties that we are proposing to adjust address violations pertaining to odometer tampering and disclosure requirements and to vehicle theft protection provisions.

Method of Calculation

Under the Adjustment Act, we determine the inflation adjustment for each applicable civil penalty by increasing the maximum civil penalty amount per violation by a cost-of-living adjustment, and then applying a rounding factor. Section 5(b) of the Adjustment Act defines the "cost-of-living" adjustment as:

The percentage (if any) for each civil monetary penalty by which—

(1) The Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds

(2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

Since the proposed adjustment is intended to be effective before December 31, 2005, the "Consumer Price Index [CPI] for the month of June of the calendar year preceding the adjustment" would be the CPI for June 2004. This figure, based on the Adjustment Act's requirement of using the CPI "for all-urban consumers published by the Department of Labor" is 568.2.[1] The penalty amounts that NHTSA seeks to adjust based on the Act's requirements were last adjusted in 2001 for the odometer tampering and disclosure and vehicle theft protection provisions. The CPI figure for June 2001 is 533.3. Accordingly, the factor that we are using in calculating the proposed increases is 1.07 (568.2/533.3) for violations involving the odometer tampering and disclosure and vehicle theft protection provisions. Using 1.07 as the inflation factor, calculated increases under these adjustments are then subject to a specific rounding formula set forth in Section 5(a) of the Adjustment Act. 28 U.S.C. 2461, Notes. Under that formula:

Any increase shall be rounded to the nearest

(1) multiple of $10 in the case of penalties less than or equal to $100;

(2) multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

(3) multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;

(4) multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;

(5) multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and

(6) multiple of $25,000 in the case of penalties greater than $200,000.

Review of Civil Penalties Prescribed by Section 578.6

Section 578.6 contains the civil penalties authorized for the statutes that we enforce. We have reviewed these penalties, applied the formula using the appropriate CPI figures, considered the nearest higher multiple specified in the rounding provisions, and tentatively concluded that only the penalties discussed below may be increased.

Odometer Tampering and Disclosure, 49 U.S.C. Chapter 327 (49 CFR 578.6(f)(1))

The maximum civil penalty for a related series of violations of 49 U.S.C. § 32709 is $120,000, as specified in 49 CFR 578.6(f)(1). Applying the appropriate inflation factor (1.07) to the calculation raises this figure to $128,400, an increase of $8,400. Under the rounding formula, any increase in a penalty's amount shall be rounded to the nearest multiple of $10,000 in the case of penalties greater than $100,000. In this case, the increase would be $10,000. Accordingly, we propose that Section 578.6(f)(1) be amended to increase the maximum civil penalty to $130,000 for a related series of odometer tampering and disclosure violations. However, the maximum civil penalty for a single violation remains at $2,200 because the inflation-adjusted figure is not yet at a level to be increased. Similarly, the penalty amount prescribed in Section 578.6(f)(2) for a violation that involves the intent to defraud (the greater of three times actual damages or $2,000) remains the same.

Vehicle Theft Protection, 49 U.S.C. Chapter 331 (Section 578.6(g)(1)–(2))

Under 49 CFR 578.6(g)(1), the maximum civil penalty for a related series of violations of 49 U.S.C. 33114(a)(1)–(4) is $300,000. Applying the appropriate inflation factor (1.07) raises this figure to $321,000, which is an increase of $21,000. Under the formula, any increase in a penalty's amount shall be rounded to the nearest multiple of $25,000 in the case of penalties greater than $200,000. In this instance, the rounding rules provide for an increase of $25,000. Accordingly, we propose that Section 578.6(g)(1) be amended to increase the maximum civil penalty to $325,000 for a related series of violations that pertain to NHTSA's vehicle theft protection provisions found at 49 U.S.C. 33114(a)(1)–(4).

With regard to the maximum penalty for a single violation of 49 U.S.C. 33114(a)(5), as provided in 49 CFR 578.6(g)(2), applying the appropriate inflation factor (1.07) raises this amount to $128,400, an increase of $8,400. Using the rounding formula, which dictates rounding to the nearest $10,000 for penalty amounts greater than $100,000 but less than or equal to $200,000, the new adjusted amount changes to $130,000. Accordingly, we propose to amend the maximum civil penalty for a single daily violation of Section 578.6(g)(2) to $130,000.

However, the maximum penalty for a single violation of 49 U.S.C. 33114(a)(1)–(4) remains at $1,100 because the inflation-adjusted figure is not yet at a level to be increased.

Other Issues—Technical Correction

Finally, the agency is proposing to amend the language in Section 578.6(g)(2) to achieve consistency within the text of the regulation. Specifically, the word "government" after "United States" will be capitalized to reflect that word's usage within other parts of Section 578.6.

Effective Date

The amendments would be effective 30 days after publication of the final rule in the **Federal Register**. The adjusted penalties would apply to violations occurring on and after the effective date.

Request for Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket

[1] Individuals interested in deriving the CPI figures used by the agency may visit the Department of Labor's Consumer Price Index Home Page at *http://www.bls.gov/cpi/home.htm*. Scroll down to "Most Requested Statistics" and select the "All Urban Consumers (Current Series)" option, select the "U.S. ALL ITEMS 1967=100—CUUR0000AA0" box, and click on the "Retrieve Data" button.

number of this document in your comments.

Your comments must not be more than 15 pages long (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the beginning of this document, under **ADDRESSES**. You may also submit your comments electronically to the docket following the steps outlined under **ADDRESSES**.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit the following to the Chief Counsel (NCC–110) at the address given at the beginning of this document under the heading **FOR FURTHER INFORMATION CONTACT:** (1) A complete copy of the submission; (2) a redacted copy of the submission with the confidential information removed; and (3) either a second complete copy or those portions of the submission containing the material for which confidential treatment is claimed and any additional information that you deem important to the Chief Counsel's consideration of your confidentiality claim. A request for confidential treatment that complies with 49 CFR part 512 must accompany the complete submission provided to the Chief Counsel. For further information, submitters who plan to request confidential treatment for any portion of their submissions are advised to review 49 CFR part 512, particularly those sections relating to document submission requirements. Failure to adhere to the requirements of Part 512 may result in the release of confidential information to the public docket. In addition, you should submit two copies from which you have deleted the claimed confidential business information, to Docket Management at the address given at the beginning of this document under **ADDRESSES**.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated at the beginning of this notice under **DATES**. In accordance with our policies, to the extent possible, we will also consider comments that Docket Management receives after the specified comment closing date. If Docket Management receives a comment too late for us to consider in developing the proposed rule, we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address and times given near the beginning of this document under **ADDRESSES**.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on "search."

(3) On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the heading of this document. Example: if the docket number were "NHTSA–2001–1234," you would type "1234."

(4) After typing the docket number, click on "search."

(5) The next page contains docket summary information for the docket you selected. Click on the comments you wish to see.

You may download the comments. The comments are imaged documents, in either TIFF or PDF format. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under Executive Order 12866, "Regulatory Planning and Review." This action is limited to the proposed adoption of adjustments of civil penalties under statutes that the agency enforces, and has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures.

Regulatory Flexibility Act

We have also considered the impacts of this notice under the Regulatory Flexibility Act. I certify that a final rule based on this proposal will not have a significant economic impact on a substantial number of small entities. The following provides the factual basis for this certification under 5 U.S.C. 605(b). The proposed amendments almost entirely potentially affect manufacturers of motor vehicles and motor vehicle equipment.

The Small Business Administration's regulations define a small business in part as a business entity "which operates primarily within the United States." 13 CFR 121.105(a). SBA's size standards were previously organized according to Standard Industrial Classification ("SIC") Codes. SIC Code 336211 "Motor Vehicle Body Manufacturing" applied a small business size standard of 1,000 employees or fewer. SBA now uses size standards based on the North American Industry Classification System ("NAICS"), Subsector 336—Transportation Equipment Manufacturing, which provides a small business size standard of 1,000 employees or fewer for automobile manufacturing businesses. Other motor vehicle-related industries have lower size requirements that range between 500 and 750 employees.[2]

Many small businesses are subject to the penalty provisions of 49 U.S.C. Chapters 327 (odometer disclosure and tampering) or 331 (vehicle theft protection) and therefore may be affected by the adjustments that this NPRM proposes to make. For example, based on comprehensive reporting pursuant to the early warning reporting (EWR) rule under the Motor Vehicle Safety Act, 49 CFR Part 579, of the more than 60 light vehicle manufacturers reporting, over half are small

[2] For example, according to the new SBA coding system, businesses that manufacture truck trailers, travel trailers/campers, carburetors, pistons, piston rings, valves, vehicular lighting equipment, motor vehicle seating/interior trim, and motor vehicle stamping qualify as small businesses if they employ 500 or fewer employees. Similarly, businesses that manufacture gasoline engines, engine parts, electrical and electronic equipment (non-vehicle lighting), motor vehicle steering/suspension components (excluding springs), motor vehicle brake systems, transmissions/power train parts, motor vehicle air-conditioning, and all other motor vehicle parts qualify as small businesses if they employ 750 or fewer employees. *See http://www.sba.gov/size/sizetable.pdf* for further details.

businesses. Additionally, many of the roughly 80 manufacturers of medium-heavy medium heavy vehicles and buses, the more than 200 trailer manufacturers, and the approximately 12 motorcycle manufacturers providing comprehensive EWR reports are small businesses. Also, there are other, relatively low production light vehicle manufacturers that are not subject to comprehensive EWR reporting. There are approximately 15 manufacturers of child restraints and over 20 tire manufacturers that are reporting pursuant to the EWR rule. Also, there are numerous other low-volume specialty tire manufacturers that do not provide comprehensive EWR reports. Furthermore, there are about 130 registered importers. Equipment manufacturers are also subject to penalties under 49 U.S.C. 30165.

The odometer tampering and disclosure and vehicle theft protection statutes addressed by this proposal cover passenger motor vehicles, which are within the compass of the Motor Vehicle Safety Act. As a result, the discussion of the numbers and sizes of light vehicle manufacturers above also covers those statutes.

As noted throughout this preamble, this proposed rule would only increase the maximum penalty amounts that the agency could obtain for violations of provisions related to the odometer and theft protection provisions enforced by NHTSA. The proposed rule does not set the amount of penalties for any particular violation or series of violations. Under the vehicle theft protection statute, the penalty provision requires the agency to take into account the size of a business when determining the appropriate penalty in an individual case. See 49 U.S.C. 33115(a)(3) (vehicle theft protection—entity's size shall be considered). While the odometer disclosure and tampering statutory penalty provision does not specifically require the agency to consider the size of the business, the statute requires the agency to consider the impact of the penalty on an entity's ability to continue doing business. 49 U.S.C. 32709(a)(3)(B). The agency would also consider business size under its civil penalty policy when determining the appropriate civil penalty amount. See 62 FR 37115 (July 10, 1997) (NHTSA's civil penalty policy under the Small Business Regulatory Enforcement Fairness Act ("SBREFA")). The penalty adjustments that are being proposed would not affect our civil penalty policy under SBREFA. As a matter of policy, we intend to continue to consider the appropriateness of the penalty amount to the size of the business charged.

Since this regulation would not establish penalty amounts, this proposal will not have a significant economic impact on small businesses.

Further, small organizations and governmental jurisdictions would not be significantly affected as the price of motor vehicles and equipment ought not to change as the result of this proposed rule. As explained above, this action is limited to the proposed adoption of a statutory directive, and has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures.

Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation with Federalism implications and that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

We have analyzed this proposed rule in accordance with the principles and criteria set forth in Executive Order 13132 and have determined that this proposal does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. The proposal would not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this rule will not have a $100 million effect, no Unfunded Mandates assessment will be prepared.

National Environmental Policy Act

We have also analyzed this rulemaking action under the National Environmental Policy Act and determined that it has no significant impact on the human environment.

Executive Order 12778 (Civil Justice Reform)

This proposed rule does not have a retroactive or preemptive effect. Judicial review of a rule based on this proposal may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, we state that there are no requirements for information collection associated with this rulemaking action.

Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov*.

List of Subjects in 49 CFR Part 578

Imports, Motor vehicle safety, Motor vehicles, Penalties, Rubber and rubber products, Tires.

1. The authority citation for 49 CFR Part 578 would continue to read as follows:

Authority: Pub. L. 101–410, Pub. L. 104–134, 49 U.S.C. 30165, 30170, 30505, 32308, 32309, 32507, 32709, 32710, 32912, and 33115; delegation of authority at 49 CFR 1.50.

2. Section 578.6 would be amended by revising paragraphs (f)(1), (g)(1), and (g)(2) to read as follows:

PART 578—CIVIL AND CRIMINAL PENALTIES

§ 578.6 Civil penalties for violations of specified provisions of Title 49 of the United States Code.

* * * * *

(f) *Odometer tampering and disclosure.* (1) A person that violates 49 U.S.C. Chapter 327 or a regulation prescribed or order issued thereunder is liable to the United States Government for a civil penalty of not more than $2,200 for each violation. A separate violation occurs for each motor vehicle or device involved in the violation. The maximum civil penalty under this paragraph for a related series of violations is $130,000.

* * * * *

(g) *Vehicle theft protection.* (1) A person that violates 49 U.S.C. 33114(a)(1)–(4) is liable to the United States Government for a civil penalty of not more than $1,100 for each violation. The failure of more than one part of a single motor vehicle to conform to an applicable standard under 49 U.S.C. 33102 or 33103 is only a single violation. The maximum penalty under this paragraph for a related series of violations is $325,000.

(2) A person that violates 49 U.S.C. 33114(a)(5) is liable to the United States Government for a civil penalty of not more than $130,000 a day for each violation.

* * * * *

Issued on: May 19, 2005.

Jacqueline Glassman,

Chief Counsel.

[FR Doc. 05–10366 Filed 5–24–05; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 70, No. 100
Wednesday, May 25, 2005

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

DEPARTMENT OF AGRICULTURE

Forest Service

Canyon Lakes Ranger District, Arapaho and Roosevelt National Forests and Pawnee National Grassland, Colorado Re-issuance of Long Draw Reservoir Special Use Authorization to Occupy National Forest System Land

AGENCY: Forest Service, USDA.

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

SUMMARY: The Arapaho and Roosevelt National Forests and Pawnee National Grassland (Forest) is proposing to reissue a special use authorization in the form of an easement to Water Supply and Storage Company of Fort Collins, Colorado for Long Draw Reservoir and Dam to occupy National Forest System (NFS) lands. The authorization would allow for use of approximately 54 acres of NFS land surrounding a United States Department of Interior Easement, the occupancy of which resulted from a 1975 expansion of the original reservoir. The facility stores and releases water as part of a network of water facilities.

DATES: Comments concerning the scope of the analysis must be received by June 24, 2005. The draft environmental impact statement is expected in August 2006 and the final environmental impact statement is expected in April 2007.

ADDRESSES: Send written comments to James S. Bedwell, Forest Supervisor, Arapaho and Roosevelt National Forests and Pawnee National Grassland, Attention: Lisa Subcasky, 2150 Centre Avenue, Building E, Fort Collins, Colorado 80526–8119. Telephone number: (970) 295–6600. Fax number: (970) 295–6696.

FOR FURTHER INFORMATION CONTACT: Lisa Subcasky, Project Leader, at (970) 295–6656, Arapaho and Roosevelt National Forests and Pawnee National Grassland, 2150 Centre Avenue, Building E, Fort Collins, Colorado 80526–8119.

SUPPLEMENTARY INFORMATION: Long Draw Reservoir is located approximately 35 miles west of Fort Collins in Larimer County in sections 10, 11, 15 and 16, T. 6 N., R. 75 W., 6th P.M. Long Draw Reservoir has a storage capacity of 10,800 acre feet and is owned and operated by Water Supply and Storage Company. The facility stores water from the Colorado River, which is imported across the continental divide through the Grand Ditch. In addition, the reservoir stores native water from La Poudre Pass Creek (also known as Long Draw Creek), a tributary of the Cache la Poudre River. The water from the reservoir is released into La Poudre Pass Creek and then into the Cache la Poudre River and used for irrigation or traded to other water users. The City of Thornton owns shares in Water Supply and Storage Company and has long term plans to transport water to the City for municipal use. La Poudre Pass Creek below the impoundment is inside Rocky Mountain National Park boundary. The Cache la Poudre River is a tributary of the South Platte River, which joins the North Platte in Nebraska to form the Platte River. The Platte River is a tributary of the Missouri River.

Although water is stored in Long Draw Reservoir throughout the winter, most storage occurs in May and June. When the reservoir is full or no longer in priority to store water, additional flow, both native and imported is passed through the reservoir. Water is typically released from reservoir storage in July and August. The gates of the reservoir are shut when the Grand Ditch is closed in preparation for winter, usually in October. All native flow is stored, and no water is released throughout the winter months until the Grand Ditch is reopened the following spring, usually in April or May. Reservoir seepage and groundwater inflow provide some flow at times during the winter. This leaves the stream channel immediately below the dam with little or no water flowing during that time. Because some of the effects of this facility occur on lands administered by the United States Department of Interior, National Park Service, Rocky Mountain National Park, that agency has been asked to be a cooperating agency in this analysis.

Construction of Long Draw Reservoir was completed in 1929 then enlarged and the dam rebuilt in 1974. The facility was authorized by a special use permit in 1978. This permit expired December 31, 1991 and was granted an extension until January 31, 1994. In 1993 the Forest published a Notice of Intent to prepare an EIS for the reissuance of special use permit to occupy NFS land and a Record of Decision (ROD) was signed on July 29, 1994. The decision was to issue a special use easement for continued occupancy of NFS land contingent upon Water Supply and Storage Company participating in a Joint Operating Plan dated May 18, 1994. Six months after the ROD was signed the Forest executed a fifty-year easement to Water Supply and Storage Company. Trout Unlimited challenged this action by filing suit against the United States Department of Agriculture, et al. The Forest decision to authorize the continued use of Long Draw did not require bypass flows as a condition of use. Instead, the Forest accepted Water Supply and Storage Company's participation in a Joint Operation Plan, which increases winter flows in Joe Wright Creek and the Cache la Poudre River as mitigation for periods of no flow from the reservoir. In April 2004 the U.S. District Court for the District of Colorado reversed the decision of the Forest Service to issue an easement for Long Draw Reservoir without requiring bypass flows. The Court also confirmed the authority of the Forest Service to impose bypass flows during reauthorizations of permits or rights-of-way under the Federal Land Policy and Management Act for the operation and maintenance of water supply facilities on NFS lands. Based on the Court's decision the Forest is reanalyzing this project.

Purpose and Need for Action: Long Draw Reservoir and Dam is used to store water from La Poudre Pass Creek (also known as Long Draw Creek), and from the Colorado River which is imported across the continental divide through the Grand Ditch. The water from the reservoir is released into La Poudre Pass Creek and then into the Cache la Poudre River. The water is used for irrigation or traded to other water providers and in the long term, to provide municipal water to the city of Thornton. The need is for a re-authorization to occupy NFS land that minimizes damage to scenic

and aesthetic values and fish and wildlife habitat and otherwise protect the environment.

Proposed Action: The proposed action is to re-issue a special use authorization to Water Supply and Storage to allow the continued use of Long Draw Reservoir and Dam.

Lead and Cooperating Agencies: Lead Agency: USDA Forest Service, Cooperating Agency: USDI National Park Service, Rocky Mountain National Park.

Responsible Official: James S. Bedwell, Forest Supervisor, Arapaho and Roosevelt National Forests and Pawnee National Grassland, 2150 Centre Avenue, Building E, Fort Collins, CO 80526.

Nature of Decision To Be Made: The deciding officer will decide whether to implement the proposed action, take an alternative action that meets the purpose and need, or take no action.

Scoping Process: The project will be included in the Arapaho and Roosevelt National Forests and Pawnee National Grasslands quarterly schedule of proposed actions. Information on the proposed action will also be posted on the Forest Web site, *http://www.fs.fed.us/r2/arnf/projects/ea-projects/clrd/index.shtml* and will be advertised in the Denver Post. A scoping letter will be mailed to a Forest wide mailing list, known to be interested in Forest management. Comments submitted in response to this NOI will be most useful if received within 30 days from the date of this notice. Response to the draft EIS will be sought from the interested public beginning in September 2006.

Preliminary Issues:

Local Impacts to Stream Flows, Aquatic Dependent Species and Fish

Directly below the reservoir, changes in stream channel morphology and water quantity affect the aquatic ecosystem and fish habitat. Fish abundance is often dictated by habitat conditions that occur during base flow (winter) periods. Over-winter survival defines fish population for many streams. The amounts of stream flow that occurs during these critical periods can affect fish densities, biomass species composition and distribution. The extended periods of zero flow below Long Draw Reservoir and the resulting reduction in habitat represent total loss of habitat in some locations. These habitat conditions preclude the maintenance of self-sustaining fish populations immediately downstream of Long Draw Dam.

Downstream Impacts to Threatened, Endangered, Sensitive and Management Indicator Species

Several threatened and endangered species found downstream in Colorado and Nebraska, including fish, birds, plants and an insect, would likely be affected based on the previous EIS. The list of species to be assessed will be developed with concurrence by the U.S.D.I. Fish and Wildlife Service.

Other species dependent or closely associated with water from the Rocky Mountain Region's Sensitive Species list and the Arapaho and Roosevelt National Forests and Pawnee National Grassland Management Indicator Species list will also be evaluated for effects due to the proposed action. Combined with effects of the many other water development projects in the North and South Platte drainages, the project contributes to the cumulative dewatering of the Platte River system, which has jeopardy implications to downstream threatened and endangered species as identified in the previous EIS.

Comment Requested: This notice of intent initiates the scoping process which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability of the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 503.3 is addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21

Dated: May 11, 2005.

James S. Bedwell,

Forest Supervisor.

[FR Doc. 05–10377 Filed 5–24–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

"Northwest Howell Project", Chequamegon-Nicolet National Forest, WI

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplement to the environmental impact statement.

SUMMARY: In response to Federal District Judge Adelman's April 1, 2005 order regarding the "Northwest Howell" environmental impact statement and Record of Decision, I am preparing a Supplement to the April 2003 "Northwest Howell Project" Final Environmental Impact Statement. Consistent with the Court's findings, this supplement will clarify and add more detail to the cumulative effects regarding analysis area boundaries and other activities as they relate to specific Regional Forester Sensitive Species that may be affected by the actions considered in the original Environmental Impact Statement.

DATES: Comments concerning the scope of the analysis must be received by June

27, 2005 in order to be fully considered in preparing this supplemental statement. The draft supplemental environmental impact statement is expected July, 2005 and the final supplemental environmental impact statement is expected September, 2005.

ADDRESSES: Send written comments to Anne F Archie, Forest Supervisor (Responsible Official), Chequamegon-Nicolet National Forest, 1170 4th Avenue S, Park Falls, WI 54552.

FOR FURTHER INFORMATION CONTACT: Brian Quinn, Forest Environmental Coordinator, (see address above).

SUPPLEMENTARY INFORMATION: On April 14, 2003, District Ranger Butch Fitzpatrick signed a record of decision (ROD) and released the final EIS for the Northwest Howell Project. This EIS and ROD were challenged in federal district court by the Habitat Education Center, Inc. The plaintiffs raised several issues including the adeqaucy of the cumulative effects analysis in the FEIS. On April 1, 2005, United States Eastern District of Wisconsin Judge Adelman issued his order granting plaintiff's motion with respect to sufficiency of the cumulative impacts analysis and affirming the Forest Service's motion regarding all other issues raised by plaintiff's. After review of the court's findings, CEQ regulations, Forest Service policy, and a review of the Northwest Howell FEIS/ROD and administrative record, I have decided that the court order and the public can best be served by preparing a Supplement to the FEIS.

This notice begins the public involvement process. I will use the public response plus interdiscplinary team analysis to decide whether to revise, amend or reaffirm the original Northwest Howell Record of Decision.

The proposed action and purpose and need of the Northwest Howell Project remains unchanged from the April 2003 FEIS. The purpose is to move the structure and cover of the existing forest closer to desired conditions described under Forest Plan management direction, and to provide forest products while doing so. A concurrent purpose is to eliminate unneeded roads and manage needed roads in a more efficient and effective way.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft supplement to the environmental impact statement will be prepared for comment. The comment period on the draft statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft supplemental environmental impact statement stage but that are not raised until after completion of the final supplemental environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 20)

Dated: May 19, 2005.

Anne F. Archie,

Forest Supervisor, Chequamegon-Nicolet National Forest.

[FR Doc: 05–10403 Filed 5–24–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

"McCaslin Project", Chequamegon-Nicolet National Forest, WI

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplement to the environmental impact statement.

SUMMARY: In response to Federal District Judge Adelman's March 31, 2005 order regarding the "McCaslin" environmental impact statement and Record of Decision, I am preparing a Supplement to the September 2003 "McCaslin Project" Final Environmental Impact Statement. Consistent with the Court's findings, this supplement will clarify and add more detail to the cumulative effects regarding analysis area boundaries and other activities as they relate to specific Regional Forester Sensitive Species that may be affected by the actions considered in the original Environmental Impact Statement.

DATES: Comments concerning the scope of the analysis must be received by June 27, 2005 in order to be fully considered in preparing this supplemental statement. The draft supplemental environmental impact statement is expected July, 2005 and the final supplemental environmental impact statement is expected September, 2005.

ADDRESSES: Send written comments to Anne F. Archie, Forest Supervisor (Responsible Official), Chequamegon-Nicolet National Forest, 1170 4th Avenue S, Park Falls, WI 54552.

FOR FURTHER INFORMATION CONTACT: Brian Quinn, Forest Environmental Coordinator, (see address above).

SUPPLEMENTARY INFORMATION: On September 29, 2003, Deputy Forest Supervisor Larie Tippin signed a record of decision (ROD) and released the final EIS for the McCaslin Project. This EIS and ROD were challenged in federal district court by the Habitat Education Center, Inc. The plaintiffs raised several issues including the adequacy of the cumulative effects analysis in the FEIS. On March 31, 2005, United States Eastern District of Wisconsin Judge Adelman issued his order granting plaintiff's motion with respect to sufficiency of the cumulative impacts analysis and affirming the Forest Service's motion regarding all other issues raised by plaintiffs. After review of the court's findings, CEQ regulations, Forest Service policy, and a review of the McCaslin FEIS/ROD and administrative record, I have decided that the court order and the public can

best be served by preparing a Supplement to the FEIS.

This notice begins the public involvement process. I will use the public response plus interdiscplinary team analysis to decide whether to revise, amend or reaffirm the original McCaslin Record of Decision.

The proposed action and purpose and need of the McCaslin Project remains unchanged from the October 2003 FEIS. The purpose is to move the structure and cover of the existing forest closer to desired conditions described under Forest Plan management direction, and to provide forest products while doing so. A concurrent purpose is to eliminate unneeded roads and manage needed roads in a more efficient and effective way.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft supplement to the environmental impact statement will be prepared for comment. The comment period on the draft statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft supplemental environmental impact statement stage but that are not raised until after completion of the final supplemental environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 20)

Dated: May 19, 2005.

Anne F. Archie,

Forest Supervisor, Chequamegon-Nicolet National Forest.

[FR Doc. 05–10405 Filed 5–24–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Revision of Land Management Plan, Grand Mesa, Uncompahgre and Gunnison National Forests, Located In West-Central Colorado

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The Grand Mesa, Uncompahgre, and Gunnison National Forests (GMUG) will exercise its option to adjust its land management plan revision process from compliance with the 1982 planning regulations, to conformance with new planning regulations adopted in January 2005. This adjustment will have the following effects:

1. The new rule redefines forest plans to be more strategic and flexible to better facilitate adaptive management and public collaboration.

2. The new rule focuses more on the goals of ecological, social, and economic sustainability and less on prescriptive means of producing goods and services.

3. The Responsible Official who will approve the final plan will now be the Forest Supervisor instead of the Regional Forester.

4. The GMUG will establish an environmental management system (per ISO 14001:2004(E)) prior to completion of the revised forest plan.

5. Upon completion of final rulemaking, the planning and decision-making process may be categorically excluded from analysis and documentation in an environmental impact statement and record of decision (see draft rule at 70 FR 1062, January 5, 2005.

6. The emphasis on public involvement will shift from public comment on a range of alternative plans, to an iterative public-Forest Service collaboration process intended to yield a single broadly supported plan.

7. Administrative review has changed from a post-decision appeals process to a pre-decision objection process.

Public Involvement: There has been a great deal of public participation and collaborative work on this planning process over the past few years, including more than 60 public meetings. Results of this work and a detailed proposed action are available for review and comment. Current information and details of upcoming public participation opportunities are posted on our Web site: *http://www.fs.fed.us/r2/gmug/policy/plan_rev/*.Contact Anne Janik at (970) 874–6637, or e-mail at, *ajanik@fs.fed.us* to be placed on our mailing list.

ADDRESSES: Physical location: GMUG Forest Planning, 2250 Highway 50, Delta CO, 81416; or by e-mail: *r2_GMUG_planning@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Gary Shellhorn, Analysis Team Leader, GMUG National Forest, (970) 874–6666 or e-mail: *gshellhorn@fs.fed.us*; or view our Web site at *http://www.fs.fed.us/r2/gmug/policy/plan_rev/.*

DATES: Transition is effective immediately upon publication of this notice in the **Federal Register.**

Responsible Official: Charles S. Richmond, Forest Supervisor, Grand Mesa, Uncompahgre, and Gunnison National Forest, 2250 Highway 50, Delta CO, 81416.

SUPPLEMENTARY INFORMATION: The Grand Mesa, Uncompahgre, and Gunnison National Forests (GMUG) are managed as a single administrative unit. In September of 1999, the GMUG formally initiated its land management plan revision process with publication of a notice of intent to prepare and environmental impact statement for plan revision (64 FR 52266, September 28, 1999). After the initiation, several delays were experienced due to budget and administrative matters. When plan revision began in earnest in 2002, the GMUG began an extensive "pre-NEPA" public participation and collaboration process. In addition, the planning team has been working on comprehensive geographic area analyses of conditions and trends for the ecological, social and economic components of the plan area.

The first phase of public participation was focused primarily on development of "vision" statements, desired conditions, management issues, and suitable land uses to be incorporated into the preliminary proposed action. Over forty community meetings were conducted in this effort. During the second phase, the planning team met with the public to review the content of the preliminary proposal and to get feedback as to its desirability and feasibility. Also during the second phase, we displayed the draft findings of the comprehensive analyses of ecological, social, and economic conditions. We are still accepting comments on the preliminary proposed action and the analyses. We are using these comments to modify the plan proposal through an iterative process of public participation and adjustment. The planning team will be taking additional collaborative steps to finish the draft plan components and to identify potential options. Remaining work includes formulation of plan objectives (projections of measurable, time-specific actions toward achieving or maintaining desired conditions), guidelines (information and guidance for projects), monitoring program, and environmental management system.

This is an open planning process with numerous opportunities for the public to obtain information, provide comment, or participate in collaborative stakeholder activities. Options for the public include any of the following methods: (1) Reviewing and commenting on the preliminary proposed action, analysis results, and supporting maps posted on our website, (2) attending open house meetings, (3) requesting planning team presentations to specific groups, (4) newsletters, (5) participating in callaborative dialogue in-topic working groups, or (6) providing input during formal comment periods.

The focal points of the future collaborative work will be: (1) Review and adjustment of the preliminary proposed action (desired conditions and suitability of land areas for various purposes) and identification of options, (2) development of management objectives to assist in attaining or maintaining desired conditions, (3) formulation of guidelines to serve as operational controls to help ensure projects move toward or maintain desired conditions, and (4) development of the plan monitoring framework and environmental management system to guide adaptive management. We expect to complete this phase of collaboration by early Fall 2005. Our remaining forest plan revision schedule will be approximately as follows:

Release of Draft Forest Plan and start of 90-day public comment period—Fall 2005.
Release of Final Plans and start of 30-day objection period—Summer 2006.
Final decision and start of plan implementation—Fall 2006.

Please see our Web site to review draft revised plan components in progress and other details.

Dated: May 20, 2005.

Charles S. Richmond,

Forest Supervisor, Grand Mesa, Uncompahgre, and Gunnison National Forests.

[FR Doc. 05–10396 Filed 5–24–05; 8:45 am]

BILLING CODE 3410–ES–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Funding Opportunity: Section 525 Technical and Supervisory Assistance (TSA) Grants

Announcement Type: Initial notice of Funds Availability (NOFA) inviting applications from qualified organizations for Fiscal Year 2005 funding.

Catalog of Federal Domestic Assistance Number (CFDA): 10.441.

SUMMARY: The Rural Housing Service (RHS) announces it is soliciting competitive applications under its Technical and Supervisory Assistance (TSA) grant program. Grants will be awarded to eligible applicant organizations to conduct programs of technical and supervisory assistance for low-income rural residents to obtain and/or maintain occupancy of adequate housing.

DATES: The deadline for receipt of preapplication proposals by Rural Development State Offices is the close of business on June 24, 2005. Preapplications received after June 24, 2005, will not be considered for funding. Within 30 days after the closing date, each State Director will forward to the National Office the original preapplication(s) and supporting documents of the selected applicant. State Directors will be advised of the National Office's action on their selected preapplications.

FOR FURTHER INFORMATION CONTACT: Nica Mathes, Senior Loan Specialist, USDA Rural Development, Single Family Housing Direct Loan Division, Special Programs and New Initiatives Branch, Mail Stop 0783, Room 2206–S, 1400 Independence Avenue SW., Washington, DC 20250–0783, phone: (202) 205–3656 or (202) 720–1474, e-mail: *nica.mathes@usda.gov*, or FAX: (202) 690–3555.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The reporting requirements contained in this Notice have been approved by the Office of Management and Budget under Control Number 0575–0188.

Overview

This notice is published as required by 7 CFR 1944.525 (b) and 1944.528, which states the RHS Administrator must provide annual notice in the **Federal Register** on the distribution of appropriated TSA funds, the number of preapplications to be submitted to the National Office from the State Offices, and the maximum grant amount per project, and the dates governing the review and selection of TSA grant preapplications.

Complete agency regulations for the TSA program are contained in RD Instruction 1944–K, accessible online at *http://www.rurdev.usda.gov/regs*, or in 7 CFR part 1944, subpart K.

Up to $1,000,000 in competitive grants will be awarded to eligible applicants. No single award will exceed $100,000.

In accordance with 7 CFR 1944.525, the Administrator of RHS will distribute a portion of the funds to those States with the highest degree of substandard housing and persons in poverty in rural areas eligible to receive RHS housing assistance. These States are: New Mexico, Montana, South Dakota, Mississippi, and Kentucky. Up to $500,000 will be targeted to eligible TSA programs in these States. Remaining funds will be available for national competition. No more than one grant per State will be awarded.

The State Director may submit multiple preapplications, ranked in order of preference, to the National Office for consideration.

The performance period of grant activities will be two years from the date the grant agreement is executed.

Reimbursement of pre-award costs is not allowed.

To be eligible for a grant, the applicant must be a nonprofit corporation, agency, institution, organization, Indian tribe or other association. A private nonprofit corporation, which is owned and controlled by private persons or interests, must have local representation from the area being served, be organized and operated by private persons or interests for purposes other than making gains or profits for the corporation, and be legally precluded from distributing any gains or profits to its members.

Faith-based organizations that meet these requirements may apply. Cost sharing is not required but is encouraged. In the selection of grant recipients, the Agency will consider the extent to which the project will make use of other financial and contribution-in-kind resources for both technical and supervisory assistance and housing development and supporting facilities. Applications and complete program instructions are available at any Rural Development Area Office, listed on the Internet at *www.rurdev.usda.gov*. Federal grant application forms are available in electronic format at *www.whitehouse.gov/omb/grants/grants_forms.html*.

Program Administration

I. Funding Opportunity Description

Under Section 525(a) of the Housing Act of 1949, 42 U.S.C. 1490e(a), Rural Development provides funds to eligible applicants to conduct programs of technical and supervisory assistance (TSA) for low-income rural residents to obtain and/or maintain occupancy of adequate housing. Any processing or servicing activity involving authorized assistance to Rural Development employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of 7 CFR part 1900, subpart D. Applicants for this assistance are required to identify any known relationship or association with a Rural Development employee. This financial assistance may pay part or all of the cost of developing, conducting, administering, or coordinating effective and comprehensive programs of technical and supervisory assistance which will aid needy low-income individuals and families in benefiting from Federal, State, and local programs in rural areas. Rural Development will provide technical and supervisory grant assistance to applicants without discrimination because of race, color, religion, sex, national origin, age, marital status, or physical or mental disability.

Policy: The policy of Rural Development is to provide technical and supervisory assistance to eligible applicants to do the following:

(1) Provide homeownership and financial counseling to reduce both the potential for delinquency by loan applicants and the level of payment delinquency by present Rural Development housing loan borrowers; and

(2) Facilitate the delivery of housing programs to serve the most needy low-income families in rural areas of greatest need for housing.

Rural Development intends to fund projects which include counseling and delivery of housing programs.

State Directors are given a strong role in the selection of grantees so this program can complement Rural Development's policies of targeting Rural Development resources to areas of greatest need within their States.

Objectives: The objectives of the TSA Grant Program are to assist low-income rural families in obtaining adequate housing to meet their family's needs and/or to provide the necessary guidance to promote their continued occupancy of already adequate housing. These objectives will be accomplished through the establishment or support of housing delivery and counseling projects run by eligible applicants. This program is intended to make use of any available housing program which provides the low-income rural resident access to adequate rental properties or homeownership.

Definitions: References to Local, Area, State, National and Finance Offices and to State Director, and Administrator refer to Rural Development offices and officials and should be read as prefaced by Rural Development. Terms used here have the following meanings:

Adequate housing. A housing unit of adequate size and design to meet the specific needs of low-income families and the requirements governing the particular housing program providing the services or financial assistance.

Applicant or grantee. Any eligible organization which applies for or receives TSA funds under a grant agreement.

Grant agreement. The contract between Rural Development and the applicant which sets forth the terms and conditions under which TSA funds will be made available.

Low-income family. Any household, including those with one member, whose adjusted annual income, computed in accordance with 7 CFR 3550.54(c), does not exceed the Housing and Urban Development (HUD) established low-income limit (generally 80 percent of the median income adjusted for household size) for the county or Metropolitan Statistical Area where the property is or will be located.

Organization. Public or private nonprofit corporations, agencies, institutions, Indian tribes and other associations. A private nonprofit corporation, which is owned and controlled by private persons or interests, must have local representation from the area being served, be organized and operated by private persons or interests for purposes other than making gains or profits for the corporation, and be legally precluded from distributing any gains or profits to its members. Faith-based organizations may meet these requirements;

Rural area. The definition in 7 CFR 3550.10 applies.

Sponsored applicant. An eligible applicant which has a commitment of financial and/or technical assistance to apply for the TSA program and to implement such a program from a state, county, municipality, or other governmental entity or public body.

Supervisory assistance. Any type of assistance to low-income families which will assist those families in meeting the eligibility requirements for, or the financial and managerial responsibilities of, homeownership or tenancy in an adequate housing unit. Such assistance must include, but is not limited to, the following activities:

(1) Assisting individual Rural Development borrowers with financial problems to overcome delinquency and/or prevent foreclosure and assisting new low-income applicants avoid financial problems through:

(i) Financial and budget counseling including advice on debt levels, credit purchases, consumer and cost awareness, debt adjustment procedures, and availability of other financial counseling services;

(ii) Monitoring payment of taxes and insurance;

(iii) Home maintenance and management; and

(iv) Other counseling based on the needs of the low-income families.

(2) Contacting and assisting low-income families in need of adequate housing by:

(i) Implementing an organized outreach program using available media and personal contacts;

(ii) Explaining available housing programs and alternatives to increase the awareness of low-income families and to educate the community as to the benefits which can accrue from improved housing:

(iii) Assisting low-income families to locate adequate housing;

(iv) Providing construction supervision, training, and guidance to low-income families not involved in Mutual Self-Help programs who are otherwise being assisted by the TSA project;

(v) Organizing local public or private nonprofit groups willing to provide adequate housing for low-income families; and

(vi) Providing assistance to families and organizations in processing housing loan and/or grant applications generated

by the TSA program, including developing and packaging such applications for new construction, rehabilitation, or repair to serve low-income families.

Technical assistance. Any specific expertise necessary to carry out housing efforts by or for low-income families to improve the quantity and/or quality of housing available to meet their needs. Such assistance should be specifically related to the supervisory assistance provided by the project, and may include, as appropriate, the following activities:

(1) Develop, or assist eligible applicants to develop, multi-housing loan and/or grant applications for new construction, rehabilitation, or repair to serve low-income families.

(2) Market surveys, engineering studies, cost estimates, and feasibility studies related to applications for housing assistance to meet the specific needs of the low-income families assisted under the TSA program.

Grant purposes: Grant funds are to be used for a housing delivery system and counseling program to include a comprehensive program of technical and supervisory assistance as set forth in the grant agreement and any other special conditions as required by Rural Development. Uses of grant funds may include, but are not limited to:

(1) The development and implementation of a program of technical and supervisory assistance as defined in 7 CFR 1944.506(h) and (i).

(2) Payment of reasonable salaries of professional, technical, and clerical staff actively assisting in the delivery of the TSA project.

(3) Payment of necessary and reasonable office expenses such as office supplies and office rental, office utilities, telephone services, and office equipment rental.

(4) Payment of necessary and reasonable administrative costs such as workers' compensation, liability insurance, audit reports, travel to and attendance at Rural Development approved training sessions, and the employer's share of Social Security and health benefits. Payments to private retirement funds are prohibited unless prior written authorization is obtained from the Administrator.

(5) Payment of reasonable fees for necessary training of grantee personnel. This may include the cost of travel and per diem to attend regional training sessions when authorized by the State Director.

(6) Other reasonable travel and miscellaneous expenses necessary to accomplish the objectives of the specific TSA grant which were anticipated in the individual TSA grant proposal and which have been included as eligible expenses at the time of grant approval.

Ineligible Activities: Grant funds may not be used for:

(1) Acquisition, construction, repair, or rehabilitation of structures or acquisition of land, vehicles, or equipment.

(2) Replacement of or substitution for any financial support which would be available from any other source.

(3) Duplication of current services in conflict with the requirements of 7 CFR 1944.514(c).

(4) Hiring personnel to perform construction.

(5) Buying property of any kind from families receiving technical or supervisory assistance from the grantee under the terms of the TSA grant.

(6) Paying for or reimbursing the grantee for any expenses or debts incurred before Rural Development executes the grant agreement.

(7) Paying any debts, expenses, or costs which should be the responsibility of the individual families receiving technical and supervisory assistance.

(8) Any type of political activities.

(9) Other costs including contributions and donations, entertainment, fines and penalties, interest and other financial costs, legislative expenses and any excess of cost from other grant agreements.

Advice and assistance may be obtained from the National Office where ineligible costs are proposed as part of the TSA project or where a proposed cost appears ineligible.

The grantee may not charge fees or accept compensation or gratuities from TSA recipients for the grantee's assistance under this program.

Comprehensive TSA programs include: Outreach to the community and education of low-income families as to the benefits which can accrue from improved housing, including counseling on affording a home, obtaining a housing loan, and understanding predatory lending practices; loan packaging and assistance in the homebuying process, including reviewing client credit history, screening for housing loan eligibility for Rural Development Section 502 loans or similar loans, assisting clients to complete applications, advising clients on home selection and matters related to home financing, and providing post-purchase counseling; and, assisting individual Rural Development borrowers with financial problems to overcome delinquency and/or prevent foreclosure.

II. Award Information

Up to $1,000,000 in competitive grants will be awarded to eligible applicants. It is estimated that 10 grants will be awarded with these funds.

TSA projects will be funded under one Grant Agreement for two years commencing on the date of execution of the Agreement by the State Director. The Grant Agreement is contained as Exhibit A to RD Instruction 1944–K (available in any Rural Development office).

Performance of the grant program should begin within 60 days of award notification.

Applications for renewal or supplementation of existing TSA programs are eligible to compete with applications for new awards.

III. Eligibility Information

Grants provide funds to eligible applicant organizations to conduct programs of technical and supervisory assistance (TSA) for low-income rural residents to obtain and/or maintain occupancy of adequate housing.

Applicant eligibility. To be eligible to receive a grant, the applicant must:

(1) Be an organization as defined in 7 CFR 1944.506(e).

(2) Have the financial, legal, administrative, and operational capacity to assume and carry out the responsibilities imposed by the grant agreement. To meet this requirement of actual capacity, it must either:

(i) Have necessary background and experience with proven ability to perform responsibly in the field of low-income rural housing development and counseling, or other business management or administrative experience which indicates an ability to provide responsible technical and supervisory assistance; or

(ii) Be assisted by an organization which has such background experience and ability and which agrees in writing that it will provide, without charge, the assistance the applicant will need to carry out its responsibilities.

(3) Legally obligate itself to administer TSA funds, provide an adequate accounting of the expenditure of such funds, and comply with the grant agreement and Rural Development regulations;

(4) Demonstrate an understanding of the needs of low-income rural families;

(5) Have the ability and willingness to work within established guidelines; and

(6) If the applicant is engaged in or plans to become engaged in any other activities, it must be able to provide sufficient evidence and documentation that it has adequate resources, including

financial resources, to carry on any other programs or activities to which it is committed without jeopardizing the success and effectiveness of its TSA project.

Cost sharing or matching. There is no cost sharing or matching requirement. However, applicants who submit evidence of cost sharing will receive points under *Selection Criteria*, paragraph (2)(iv).

Other administrative requirements. The following policies and regulations apply to grants made under this program:

(1) The policies and regulations contained in 7 CFR part 1901, subpart E regarding equal opportunity requirements.

(2) The policies and regulations contained in 7 CFR part 1901, subpart F regarding historical and archaeological properties.

(3) The policies and regulations contained in 7 CFR part 1940, subpart G regarding Environmental Assessments.

IV. Application and Submission Information

The Federal government requires that all applicants for Federal grants and cooperative agreements with the exception of individuals other than sole proprietors, have a DUNS number. The Federal government will use the DUNS number to better identify related organizations that are receiving funding under grants and cooperative agreements, and to provide consistent name and address data for electronic grant application systems. More information on this policy and how to obtain a DUNS number is available at *http://www.whitehouse.gov/omb/grants/grants_forms.html.*

Preapplication submission. (1) All applicants will file an original and two copies of the preapplication, including supporting information detailed below, with the appropriate State Office serving the proposed TSA area. Pre-applications will consist of: Standard Form 424 (Form SF–424), "Application for Federal Assistance;" Form SF–424A, "Budget Information—Non-Construction Programs;" Form SF–424B, "Assurances—Non-Construction Programs;" and supporting documentation as detailed below. The applicant organization's DUNS number must be provided.

If the TSA area encompasses more than one State Office, the preapplication will be filed at the State Office which serves the area in which the grantee will provide the greatest amount of TSA efforts. Additional informational copies of the preapplication will be sent by the applicant to the other affected State Office(s). Applications for multi-state projects must designate the portion of funds and services to be provided to each state.

Where to file. Preapplication packages must be received prior to the deadline at a Rural Development State Office. State Office addresses and contacts are:

Alabama State Office, Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400, TDD (334) 279–3495, Vann L. McCloud

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 761–7705, ext. 740, TDD (907) 761–8905, Deborah Davis

Arizona State Office, Phoenix Corporate Center, 230 North 1st Avenue, Suite 206, Phoenix, AZ 85003, (602) 280–8701, TDD (602) 280–8706, Ernie Weatherbee, Acting

Arkansas State Office, 700 W. Capitol Ave., Rm. 3416, Little Rock, AR 72201–3225, (501) 301–3200, TDD (501) 301–3063, Lawrence McCullough

California State Office, 430 G Street, #4169, Davis, CA 95616–4169, (530) 792–5816, TDD (530) 792–5848, Robert P. Anderson

Colorado State Office, 655 Parfet Street, Room E–100, Lakewood, CO 80215, (720) 544–2903, TDD (800) 659–2656, Donald Pierce

Connecticut Served by Massachusetts State Office

Delaware & Maryland State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3580, TDD (302) 857–3585, W. Drew Clendaniel

Florida & Virgin Islands State Office, 4440 NW 25th Place, Gainesville, FL 32606–6563, (352) 338–3402, TDD (352) 338–3499, Daryl Cooper

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2162, TDD (706) 546–2034, Joseph Walden

Guam Served by Hawaii State Office

Hawaii State Office, (Services all Hawaii, American Samoa and Western Pacific), Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8309, TDD (808) 933–8321, Jack L. Mahan

Idaho State Office, Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378–5627, TDD (208) 378–5644, Roni Atkins

Illinois State Office, 2118 West Park Court, Suite A, Champaign, IL 61821–2986, (217) 403–6222, TDD (217) 403–6240, Barry L. Ramsey

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100 ext. 413, TDD (317) 290–3343, Paul Neumann

Iowa State Office, 210 Walnut Street Room 873, Des Moines, IA 50309–2196, (515) 284–4663, TDD (515) 284–4858, Bruce McGuire

Kansas State Office, 1303 SW First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2700, TDD (785) 271–2767, Tim Rogers

Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503–5477, (859) 224–7416, TDD (859) 224–7422, Denver Parks

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7920, TDD (318) 473–7655, Debbie Redfearn

Maine State Office, 967 Illinois Ave., Suite 4, PO Box 405, Bangor, ME 04402–0405, (207) 990–9118, TDD (207) 942–7331, Dale Holmes

Maryland Served by Delaware State Office

Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Suite 2, Amherst, MA 01002–2999, (413) 253–4333, TDD (413) 253–4590, Don Colburn

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823–6906, (517) 324–5192, TDD (517) 337–6795, Philip Wolak

Minnesota State Office, 375 Jackson Street Building, Suite 410, St. Paul, MN 55101–1853, (651) 602–7835, TDD (651) 602–7830, Lance Larson

Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325, TDD (601) 965–5850, John Jones

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–9301, TDD (573) 876–9480, Randy Griffith

Montana State Office, Unit 1, Suite B, 900 Technology Blvd., Bozeman, MT 59715, (406) 585–2551, TDD (406) 585–2562, Deborah Chorlton

Nebraska State Office, Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5551, TDD (402) 437–5093, Byron Fischer

Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1795, TDD (775) 885–0633, William Brewer

New Hampshire State Office Served by Vermont State Office

New Jersey State Office, 5th Floor North, Suite 500, 8000 Midlantic Drive, Mt. Laurel, NJ 08054, (856) 787–7731, TDD (856) 787–7784, George Hyatt, Jr.

New Mexico State Office, 6200 Jefferson St., NE, Room 255, Albuquerque, NM 87109, (505) 761–4973, TDD (505) 761–4938, Bill Culbertson

New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357 5th Floor, Syracuse, NY 13202, (315) 477–6419, TDD (315) 477–6447, Jennifer Jackson

North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2041, TDD (919) 873–2003, Melchior Ellis

North Dakota State Office, Federal Building, Room 208, 220 East Rosser Ave., PO Box 1737, Bismarck, ND 58502, (701) 530–2044, TDD (701) 530–2113, Don Warren

Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 255–2401, TDD (614) 255–2554, Gerald Arnott

Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000, TDD (405) 742–1007, Brian Wiles

Oregon State Office, 101 SW Main, Suite 1410, Portland, OR 97204–3222 (503) 414–3339, TDD (503) 414–3387, Sharon Shaffer

Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2279, TDD (717) 237–2261, Frank Wetherhold

Puerto Rico State Office, IBM Building, Suite 601, Munoz Rivera Ave. #654, San Juan, PR 00918, (787) 766–5095, TDD (787) 766–5332, Pedro Gomez

Rhode Island Served by Massachusetts State Office

South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163, TDD (803) 765–5697, Herbert R. Koon, Jr.

South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350, (605) 352–1135, TDD (605) 352–1147, Roger Hazuka

Tennessee State Office, Suite 300, 3322 West End Avenue, Nashville, TN 37203–1084, (615) 783–1375, TDD (615) 783–1397, Donald L. Harris

Texas State Office, Federal Building, Suite 102, 101 South Main Street, Temple, TX 76501, (254) 742–9765, TDD (254) 742–9712, Mike Meehan

Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4323, TDD (801) 524–3309, Dave Brown

Vermont & New Hampshire State Office, City Center, 3rd Floor, 89 Main Street, Montpelier. VT 05602, (802) 828–6015, TDD (802) 223–6365, Robert McDonald

Virgin Islands Served by Florida State Office

Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1603, TDD (804) 287–1753, James Reid

Washington State Office, 1835 Black Lake Blvd., Suite B, Olympia, WA 98501–5715, (360) 704–7704, TDD (360) 704–7742, Karen Bailor

Western Pacific Territories Served by Hawaii State Office

West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4867, TDD (304) 284–4836, Dianne Goff Crysler

Wisconsin State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600, TDD (715) 345–7614, Peter Kohnen

Wyoming State Office, 100 East B. Street, Federal Building, Room 1005, PO Box 11005, Casper, WY 82601, (307) 233–6715, TDD (307) 233–6733, Jack Hyde

(2) All preapplications shall be accompanied by the following information which will be used to determine the applicant's eligibility to undertake a TSA program and to determine whether the applicant might be funded:

(i) A narrative presentation of the applicant's proposed TSA program, including:

(A) The technical and supervisory assistance to be provided;

(B) The time schedule for implementing the program;

(C) The staffing pattern to execute the program and salary range for each position, existing and proposed;

(D) The estimated number of low-income and low-income minority families the applicant will assist in obtaining affordable adequate housing;

(E) The estimated number of Rural Development borrowers who are delinquent or being foreclosed that the applicant will assist in resolving their financial problems relating to their delinquency;

(F) The estimated number of households which will be assisted in obtaining adequate housing in the TSA area through new construction and/or rehabilitation;

(G) Annual estimated budget for each of the two years based on the financial needs to accomplish the objectives outlined in the proposal. The budget should include proposed direct and indirect costs for personnel, fringe benefits, travel, equipment, supplies, contracts, and other costs categories, detailing those costs for which the grantee proposes to use the TSA grant separately from non-TSA resources, if any;

(H) The accounting system (cash or accrual) to be used;

(I) The method of evaluation proposed to be used by the applicant to determine the effectiveness of its program;

(J) The sources and estimated amounts of other financial resources to be obtained and used by the applicant for both TSA activities and housing development and/or supporting facilities; and,

(K) Any other information necessary to explain the manner of delivering the TSA assistance proposed.

(ii) Complete information about the applicant's previous experience and capacity to carry out the objectives of the proposed TSA program;

(iii) Evidence of the applicant's legal existence, including, in the case of a private nonprofit organization, a copy of, or an accurate reference to, the specific provisions of State law under which the applicant is organized; a certified copy of the applicant's Articles of Incorporation and Bylaws or other evidence of corporate existence; certificate of incorporation for other than public bodies; evidence of good standing from the State when the corporation has been in existence one year or more; the names and addresses of the applicant's members, directors, and officers; and, if another organization is a member of the applicant-organization, its name, address, and principal business.

(iv) For a private nonprofit entity, a current financial statement dated and signed by an authorized officer of the entity showing the amounts and specific nature of assets and liabilities together with information on the repayment schedule and status of any debt(s) owed by the applicant. If the applicant is an organization being assisted by another private nonprofit organization, the same type of financial statement should also be provided by that organization.

(v) A brief narrative statement which includes information about the area to be served and the need for improved housing (including both percentage and actual number of both low-income and low-income minority families and substandard housing), the need for the type of technical and supervisory assistance being proposed, the method of evaluation to be used by the applicant in determining the effectiveness of its efforts (as related to paragraph (a)(2)(i) of this section), and any other

information necessary to specifically address the selection criteria in 7 CFR 1944.529.

(vi) A list of other activities the applicant is engaged in and expects to continue and a statement as to any other funding and whether it will have sufficient funds to assure continued operation of the other activities for at least the period of the TSA grant agreement.

(3) An applicant should submit written statements from the county, parish, or township governments of the area affected that the project is beneficial and does not duplicate current activities. If the local governmental units will not provide such statements, the applicant will prepare and include with its preapplication a summary of its analysis of alternatives considered under 7 CFR 1944.514(c). However, Indian nonprofit organization applicants should obtain the written concurrence of the Tribal governing body in lieu of the concurrence of the county governments.

(4) Sponsored applicants should submit a written commitment for financial and/or technical assistance from their sponsoring entity.

(5) Rural Development will deal only with authorized representatives designated by the applicant. The authorized representatives must have no pecuniary interest in any of the following as they would relate in any way to the TSA grant: The award of any engineering, architectural, management, administration, or construction contracts; purchase of the furnishings, fixtures or equipment; or purchase and/or development of land. (Note: Rural Development has designated the Area Office as the primary point of contact for all matters relating to the TSA program and as the office responsible for the administration of approved TSA projects.)

Intergovernmental Review. This program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

V. Application Review Information

Within 30 days of the closing date for receipt of preapplications, the State Director will forward to the National Office the original preapplication(s) and supporting documents of the selected applicant(s), including any comments received in accordance with 7 CFR Part 3015, "Intergovernmental Review of Agriculture Programs and Activities," (See RD Instruction 1940–J, available in any Rural Development Office) and the comments and recommendations of the Local Office(s), Area Office(s), and the State Office. The State Office may submit multiple preapplications, ranked in order of preference, to the National Office for consideration.

Concurrently the State Office will send a copy of the selected applicant's Form SF–424 and relevant documents to the Regional Office of the General Counsel (OGC) requesting a legal determination be made of the applicant's legal existence and authority to conduct the proposed program of technical and supervisory assistance.

The State Office will notify other applicants that their preapplications were not selected and advise them of their appeal rights under 7 CFR part 11.

Selection criteria. (1) Proposals must meet the following criteria:

(i) Provide a program of supervisory assistance as defined in 7 CFR 1944.506(h); and,

(ii) Serve areas with a concentration of substandard housing and low-income and low-income minority households.

(2) For proposals meeting the requirements listed in paragraph (1) above, Rural Development will use the weighted criteria in this paragraph in the selection of grant recipients. Each preapplication and its accompanying narrative will be evaluated and the applicant's proposal will be numerically rated on each criterion. The highest-ranking proposals will be selected for funding according to award information, described above. The criteria considered, the method of measurement, and the points to be awarded are:

(i) The extent to which the program serves areas with concentrations of Rural Development single family housing loan borrowers who are delinquent in their housing loan payments and/or threatened with foreclosure. Measured by whether the applicant proposes to offer delinquency counseling services for Rural Development borrowers. Program will offer delinquency counseling services: 5 points.

(ii) The capability and past performance demonstrated by the applicant in administering its programs, the effectiveness of current efforts by the applicant to assist low-income families in obtaining adequate housing, the extent to which the proposed staff and salary ranges will meet the objective of the program, the anticipated capacity of the applicant to implement the proposed time schedule for starting and completing the TSA program and each phase thereof, and the adequacy of records and practices (including personnel procedures and practices) that will be established and maintained by the applicant during the term of the agreement. Measured on whether the applicant organization or members of the applicant organization's staff conducting the proposed TSA program have, in the last two years, successfully conducted a TSA or similar program to assist low-income families in becoming successful homeowners. Have conducted a similar program, not TSA: 5 points; OR, have conducted a TSA program, 10 points.

(iii) The extent to which the program will provide or increase the delivery of housing resources to low-income and low-income minority families in the areas who are not currently occupying adequate housing.

(A) Measured by the county Poverty Rate, as reported in Census 2000 Summary File 3 (SF 3) Report GCT–P14, "Income and Poverty in 1999–2000." This information may be obtained on the Internet from the U.S. Census Bureau Web site, "American Fact Finder," at *factfinder.census.gov.*

(*1*) 25.1% or higher: 30 points.

(*2*) 14.7% to 25.0%: A total of 2.86 points, rounded to the nearest whole number, for each percentage point above 14.6%.

(*3*) 14.6% or less: 0 points.

Example: According to Census 2000, the service area Poverty Rate is 18.0 percent. This is 3.4 points above the National Non-Metropolitan Area Average of 14.6 percent. This proposal would be scored with 10 points (3.4 × 2.86 = 9.7).

(B) Measured by the degree of deficient housing, based on the combination of the county's percentage of housing units lacking complete plumbing facilities plus percentage of housing units lacking complete kitchen facilities (referred to as deficient housing factor), as reported in Census 2000 SF 3 Report GCT–H7, "Structural and Facility Characteristics of All Housing Units: 2000." This information may be obtained on the Internet from the U.S. Census Bureau Web site, "American Fact Finder," at *factfinder.census.gov.*

(*1*) Deficient housing factor 13.0 or greater: 30 points.

(*2*) Factor 5.1 to 13.0: A total of 3.75 points, rounded to the nearest whole number, for each point above 5.0.

(*3*) Factor 5.0 or lower: 0 points.

Example: Of the total housing units in the service area, 5.0 percent lack complete plumbing and 4.5 percent lack complete kitchen facilities, according to Census 2000. Adding these two percentages provides a "deficient housing index" of 9.5. This is 4.5 points above the National Non-Metropolitan Area Average of 5.0. This would result

in a score of 17 points (9.5 "5.0 = 4.5 × 3.75 = 16.875).

(C) For programs serving multi-county areas, scoring will be determined based upon the combined totals for the counties entire service area. County data (not smaller areas) will be used for evaluation.

(iv) The extent to which the program will make use of other financial and contribution-in-kind resources and be cost effective. The cost, both direct and indirect, per person benefiting from the program will be measured by the proposed total number of low-income participants who obtain suitable housing within the period of the grant as a result of participation in the comprehensive TSA program, compared to amount of the TSA grant. Scoring will be based on the TSA grant funds expended per participant who purchases suitable housing.

(A) $1,000 or less: 30 points.

(B) More than $1,000: $1,500 divided by amount expended per participant, multiplied by 20 points.

Example: The applicant organization's program of homebuyer training and loan packaging proposes to produce 60 homeowners during the two-year grant. Funding for the program includes a $75,000 TSA grant, $20,000 from a State grant and $10,000 of contribution-in-kind from the organization for office assistance. The TSA cost per homeowner produces is $75,000 / 60 = $1,250. Point calculation—$1,500 / $1,250 = 1.2 × 20 = 24 points.

(v) The extent to which the program will be cost effective in personnel to be hired to the cost of the program. Measured by the number of full-time employees or equivalents of the applicant organization working on the program. One or more employees, 5 points.

(vi) The extent to which the program is effective in providing expected benefits to low-income families. Measured by the proposed total number of low-income participants who obtain suitable housing within the period of the grant as a result of participation in the comprehensive TSA program. More than 25 new homeowners: 5 points, OR more than 50 new homeowners: 10 points.

(vii) The services the applicants will provide are not presently available in the proposed service area to assist low-income families in obtaining or maintaining occupancy of adequate housing and the extent of duplication of technical and supervisory assistance activities currently provided for low-income families. Measured by comments received. Proposed services not duplicated in the area: 10 points.

(viii) The extent of citizen and local government participation and involvement in the development of the preapplication and the project and coordination with other Federal, State or local technical and/or supervisory assistance programs. Measured by letter(s) or similar documentation from local government officials, businesses and individuals detailing participation and coordination in the project by groups other than the applicant. Evidence of participation in the project by groups other than the applicant: 10 points.

(ix) For programs proposed by nonprofit entities, whether the applicant has a commitment of financial and/or technical assistance to apply for the TSA program and to implement such a program from a State, county, municipality, or other government entity or public body. Measured by letter(s) or similar documentation from government entities or public body committing financial and/or technical assistance. Applicant is a government entity or public body OR is a nonprofit entity with evidence of commitment of financial and/or technical assistance from a government entity or public body: 10 points.

VI. Award Administration Information

Upon notification that the applicant has been tentatively selected for funding, the State Office will notify the applicant and provide instructions for preparation of a formal application. The applicant will submit all completed forms required for a formal application and provide whatever additional information is requested to the Area Office within 30 days.

The Area Office will assemble a formal application docket, which will include the following:

(1) Form SF–424 and the information submitted in accordance with 7 CFR 1944.526(a)(2) (pre-application package);

(2) Any comments received in accordance with 7 CFR part 3015, subpart V, "Intergovernmental Review of Department of Agriculture Programs and Activities." See RD Instruction 1940-J, available in any Rural Development Office.

(3) OGC legal determination made pursuant to 7 CFR 1944.526 (c)(3).

(4) Grant Agreement.

(5) Form RD 1940–1, "Request for Obligation of Funds."

(6) Form RD 400–1, "Equal Opportunity Agreement."

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

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

(9) Form AD–1049, "Certification Regarding Drug-Free Workplace Requirements (Grants), Alternative I—For Grantees Other Than Individuals."

(10) Form RD 1940–20, "Request for Environmental Information."

(11) Form RD 1940–22, "Environmental Checklist for Categorical Exclusions," Form RD 1940–21, "Environmental Assessment for Class I Actions" or Exhibit G of 7 CFR part 1940, subpart G entitled, "Environmental Assessment for Class II Actions."

(12) The historical and archaeological assessment.

(13) The detailed budget for the agreement period based upon the needs outlined in the proposal and the comments and recommendations by Rural Development.

(14) Verification of Debarment Listing check and Federal Debt Listing check.

(15) Form RD 2006–38, "Civil Rights Impact Analysis Certification."

Reporting requirements. Form SF–269, "Financial Status Report," and a project performance report will be required of all grantees on a quarterly basis. All grantees shall submit an original and two copies of these reports to the Area Office. The project performance reports will be submitted not later than January 15, April 15, July 15, and October 15 of each year.

As part of the grantee's preapplication submission required by 7 CFR 1944.526 (a)(2)(i), the grantee established the objectives of its TSA program including the estimated number of low-income families to be assisted by the TSA program and established its method of evaluation to determine the effectiveness of its program. The project performance report should relate the activities during the report period to the project's objectives and analyze the effectiveness of the program. The grantee will complete a final Form SF–269 and a final performance report upon termination or expiration of the grant agreement.

Grant monitoring. Each grant will be monitored by Rural Development to ensure that the grantee is complying with the terms of the grant and that the TSA project activity is completed as approved. Ordinarily, this will involve a review of quarterly and final reports by Rural Development and review by the appropriate Area Office.

Additional grants. An additional grant may be made to an applicant that has previously received a TSA grant and has achieved or nearly achieved the goals

established for the previous grant by submitting a new proposal for TSA funds. The additional grant application will be processed as if it were an initial application.

Management assistance. The Area Office will see that each TSA grantee receives management assistance to help achieve a successful program.

(1) TSA employees who will be contacting and assisting families will receive training in packaging single family housing and Rural Rental Housing loans when, or very shortly after, they are hired so that they can work effectively.

(2) TSA employees who will provide counseling, outreach, and other technical and supervisory assistance will receive training on Rural Development policies, procedures, and requirements appropriate to their positions and the type of assistance the grantee will provide at the outset of the grant.

(3) Training will be provided by Rural Development employees and/or outside sources approved by Rural Development when the technical and supervisory assistance involves rural housing programs other than Rural Development programs. Appropriate training of TSA employees should be anticipated during the planning stages of the grant and the reasonable cost of such training included in the budget.

(4) The Area Office, in cooperation with the appropriate Local Office(s), should coordinate the management assistance given to the TSA grantee in a manner which is timely and effective. This will require periodic meetings with the grantee to discuss problems being encountered and offer assistance in solving these problems; to discuss the budget, the effectiveness of the grant, and any other unusual circumstances affecting delivery of the proposed TSA services; to keep the grantee aware of procedural and policy changes, availability of funds, etc.; and to discuss any other matters affecting the availability of housing opportunities for low-income families.

(5) The Area and/or Local Office will advise the grantee of the options available to bring the delinquent borrowers' accounts current and advise the grantee that the appropriate approval authority for any resolution of the delinquent accounts and all other authority currently available to remedy delinquent accounts.

Grant evaluation, closeout, suspension, and termination. Grant evaluation will be an ongoing activity performed by both the grantee and Rural Development. The grantee will perform self-evaluations by preparing periodic project performance reports in accordance with 7 CFR 1944.541. Rural Development will also review all reports prepared and submitted by the grantee in accordance with the grant agreement and 7 CFR part 1944, subpart K.

Within forty-five (45) days after the grant ending date, the grantee will complete closeout procedures as specified in the grant agreement.

The grant can also be terminated before the grant ending date for the causes specified in the grant agreement. No further grant funds will be disbursed when grant suspension or termination procedures have been initiated in accordance with the grant agreement.

VII. Agency Contacts

Nica Mathes, Senior Loan Specialist, USDA Rural Development, Single Family Housing Direct Loan Division, Special Programs and New Initiatives Branch, Mail Stop 0783, Room 2206–S, 1400 Independence Avenue SW., Washington, DC 20250–0783, phone: (202) 205–3656 or (202) 720–1474, e-mail: *nica.mathes@usda.gov,* or FAX: (202) 690–3555.

VIII. Other Information

Information about TSA grants and other Rural Development Housing Programs can be obtained at the Rural Development Web site at *http://www.rurdev.usda.gov.* Questions can also be sent by e-mail to *agsec@usda.gov.*

Dated: May 13, 2005.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. 05–10465 Filed 5–24–05; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Assistance to High Energy Cost Rural Communities

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of funding availability (NOFA).

SUMMARY: The Rural Utilities Service (RUS) of the United States Department of Agriculture (USDA) announces the availability of $19.5 million in competitive grants to assist communities with extremely high energy costs. This grant program is authorized under section 19 of the Rural Electrification Act of 1936 (RE Act) (7 U.S.C. 918a) and program regulations at 7 CFR Part 1709. The grant funds may be used to acquire, construct, extend, upgrade, or otherwise improve energy generation, transmission, or distribution facilities serving communities in which the average residential expenditure for home energy exceeds 275 percent of the national average. Eligible applicants include persons, States, political subdivisions of States, and other entities organized under State law. Federally-recognized Indian tribes and tribal entities are eligible applicants. This notice describes the eligibility and application requirements, the criteria that will be used by RUS to award funding, and information on how to obtain application materials.

DATES: All applications must be postmarked or delivered to RUS or through grants.gov no later than July 25, 2005, to be assured of consideration. Applications will be accepted on publication of this notice.

ADDRESSES: Paper applications are to be submitted to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1560, Room 5165 South Building, Washington, DC 20250–1560. Applications should be marked "Attention: High Energy Cost Community Grant Program." Information on submitting applications electronically is available through *http://www.Grants.gov.* Applicants must successfully pre-register with Grants.gov to use the electronic applications option. Application information may be downloaded from Grants.gov without pre-registration.

FOR FURTHER INFORMATION CONTACT: Karen Larsen, Management Analyst, U.S. Department of Agriculture, Rural Utilities Service, Electric Program, 1400 Independence Avenue, SW., STOP 1560, Room 5165 South Building, Washington, DC 20250–1560. Telephone 202–720–9545, Fax 202–690–0717, e-mail *energy.grants@usda.gov.*

SUPPLEMENTARY INFORMATION:

Overview Information

Federal Agency Name: United States Department of Agriculture, Rural Utilities Service, Assistant Administrator, Electric Program.

Funding Opportunity Title: Assistance to High Energy Cost Rural Communities.

Announcement Type: Initial announcement.

Funding Opportunity Number: USDA–RD–RUS–HECG03–2

Catalog of Federal Domestic Assistance (CFDA) Number: 10.859. The CFDA title for this program is "Assistance to High Energy Cost Rural Communities."

Dates: Applications must be postmarked or filed with Grants.gov by July 25, 2005.

I. Funding Opportunity Description

RUS is making available $19.5 million in competitive grants under section 19 of the Rural Electrification Act of 1936 (the "RE Act") (7 U.S.C. 918a). Under section 19, RUS is authorized to make grants to "acquire, construct, extend, upgrade, and otherwise improve energy generation, transmission, or distribution facilities" serving extremely high energy cost communities. Eligible communities are those in which the average residential expenditure for home energy is at least 275 percent of the national average residential expenditure for home energy under the benchmarks published in this notice. Program regulations are codified at 7 CFR Part 1709.

The purpose of this grant program is to provide financial assistance for a broad range of energy facilities, equipment and related activities to offset the impacts of extremely high residential energy costs on eligible communities. Grant funds may be used to purchase, construct, extend, repair, upgrade and otherwise improve energy generation, transmission, or distribution facilities serving eligible communities. Eligible facilities include on-grid and off-grid renewable energy systems and implementation of cost-effective demand side management and energy conservation programs that benefit eligible communities.

Eligible applicants include for-profit and non-profit businesses, cooperatives, and associations, States, political subdivisions of States, and other entities organized under the laws of States, Indian tribes, tribal entities, and individuals. Eligible applicants also include entities located in U.S. Territories and other areas authorized by law to participate in RUS programs.

No cost sharing or matching funds are required as a condition of eligibility under this grant program. However, RUS will consider other financial resources available to the grantee and any voluntary commitment of matching funds or other contributions in assessing the grantee's capacity to carry out the grant program successfully. RUS will award additional evaluation points to any proposals that include such contributions.

As a further condition of each grant, section 19(b)(2) of the RE Act requires that planning and administrative expenses of the grantee not directly related to the project may not exceed 4 percent of the grant funds.

This NOFA provides an overview of the grant program, and the eligibility and application requirements, and selection criteria for grant proposals. RUS is also making available an Application Guide with more detailed information on application requirements and copies of all required forms and certifications. The Application Guide is available on the Internet from the RUS Web site at *http://www.usda.gov/rus/electric.* The application guide may also be requested from the Agency contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. For additional information, applicants should consult the program regulations at 7 CFR part 1709.

Definitions

As used in this *NOFA:*

Administrator means the Administrator of the Rural Utilities Service (RUS), United States Department of Agriculture (USDA).

Agency means the Rural Utilities Service.

Application Guide means the Application Guide prepared by RUS for the High Energy Cost Grant program containing detailed instructions for determining eligibility and preparing grant applications, and copies of required forms, questionnaires, and model certifications.

Census block means the smallest geographic entity for which the U.S. Census Bureau collects and tabulates decennial census information and which are defined by boundaries shown on census maps.

Census designated place (CDP) means a statistical entity recognized by the U.S. Census Bureau comprising a dense concentration of population that is not within an incorporated place but is locally identified by a name and with boundaries defined on census maps.

Extremely high energy costs means community average residential energy costs that are at least 275 percent of one or more home energy cost benchmarks identified by RUS based on the national average residential energy expenditures as reported by the Energy Information Administration (EIA) of the United States Department of Energy.

Home energy means any energy source or fuel used by a household for purposes other than transportation, including electricity, natural gas, fuel oil, kerosene, liquefied petroleum gas (propane), other petroleum products, wood and other biomass fuels, coal, wind, and solar energy. Fuels used for subsistence activities in remote rural areas are also included.

High energy cost benchmarks means the criteria established by RUS for eligibility as an extremely high energy cost community. Home energy cost benchmarks are calculated for total annual household energy expenditures; total annual expenditures for individual fuels; annual average per unit energy costs for primary home energy sources at 275 percent of the relevant national average household energy benchmarks.

Indian Tribe means a Federally recognized tribe as defined under section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) to include "* * * any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.], that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians."

Person means any natural person, firm, corporation, association, or other legal entity, and includes Indian Tribes and tribal entities.

Primary home energy source means the energy source that is used for space heating or cooling, water heating, cooking, and lighting. A household or community may have more than one primary home energy source.

State means any of the several States of the United States, and, where provided by law, any Territory of the United States or other area authorized to receive the services and programs of the Rural Utilities Service or the Rural Electrification Act of 1936, as amended.

State rural development initiative means a rural economic development program funded by or carried out in cooperation with a State agency.

Target area means the geographic area to be served by the grant.

Target community means the unit or units of local government in which the target area is located.

Tribal entity means a legal entity that is owned, controlled, sanctioned, or chartered by the recognized governing body of an Indian tribe.

II. Award Information

The total amount of funds available for grants under this notice is $19.5 million. The maximum amount of grant assistance that will be considered for funding in a grant application under this notice is $5,000,000. The minimum amount of assistance for a grant application under this program is $75,000. The number of grants awarded under this NOFA will depend on the

number of applications submitted, the amount of grant funds requested, and the quality and competitiveness of applications submitted.

The funding instrument available under this NOFA will be a grant agreement. Grants awarded under this notice must comply with all applicable USDA and Federal regulations concerning financial assistance, with the terms of this notice, and with the requirements of section 19 of the RE Act. Grants made under this NOFA will be administered under RUS program regulations at 7 CFR part 1709 and USDA financial assistance regulations at 7 CFR parts 3015, 3016, 3017, 3018, 3019, and 3052, as applicable. The award period will generally be for 36 months, however, longer periods may be approved depending on the project involved. Project proposals submitted in response to the NOFA published on January 23, 2004 (69 FR 3317) and that were accepted as complete and timely by RUS, but that were not selected for funding may request reconsideration of their proposals under this NOFA. Prior applicants may submit additional information for consideration as described later in this notice.

All timely submitted and complete applications will be reviewed for eligibility and rated according to the criteria described in this NOFA. Applications will be ranked in order of their numerical scores on the rating criteria and forwarded to the RUS Administrator. The Administrator will review the rankings and the recommendations of the rating panel. The RUS Administrator will then fund grant applications in rank order.

RUS reserves the right not to award any or all the funds made available under this notice, if in the sole opinion of the Administrator, the grant proposals submitted are not deemed feasible. RUS also reserves the right to partially fund grants if grant applications exceed the available funds. RUS will advise applicants if it cannot fully fund a grant request.

III. Eligibility Information

1. Eligible Applicants

Under Section 19 eligible applicants include "Persons, States, political subdivisions of States, and other entities organized under the laws of States" (7 U.S.C. 918a). Under section 13 of the RE Act, the term "Person" means "any natural person, firm, corporation, or association" (7 U.S.C. 913). Examples of eligible business applicants include: for-profit and non-profit business entities, including but not limited to corporations, associations, partnerships, limited liability partnerships (LLPs), cooperatives, trusts, and sole proprietorships. Eligible government applicants include State and local governments, counties, cities, towns, boroughs, or other agencies or units of State or local governments; and other agencies and instrumentalities of States and local governments. Indian tribes, other tribal entities and Alaska Native Corporations are also eligible applicants.

An individual is an eligible applicant under this program; however, the proposed grant project must provide community benefits and not be for the sole benefit of an individual applicant or an individual household or business.

All applicants must demonstrate the legal capacity to enter into a binding grant agreement with the Federal Government at the time of the award and to carry out the proposed grant funded project according to its terms.

Effective October 1, 2003, the Office of Management and Budget requires that all applicants for Federal grants with the exception of individuals other than sole proprietorships must have a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number. Consistent with this Federal policy directive, any organization that applies for an RUS high energy cost grant must use their DUNS number on the application and in field provided on the revised Standard Form 424 (SF 424), "Application for Federal Assistance." DUNS numbers are available without charge to Federal Grant applicants. Information on this new Federal requirement and how to obtain a DUNS number or how to verify if your organization already has a DUNS number is available at *http://www.whitehouse.gov/omb/grants/duns_num_guide.pdf.*

If you already have obtained a DUNS number in connection with the Federal acquisition process or requested or had one assigned to you for another purpose, you should use that number on all of your applications. It is not necessary to request another DUNS number from D&B.

If you know you do not have a DUNS number or if you are not sure if you have a DUNS number, you should call D&B using the toll-free number, 1–866–705–5711 between the hours of 8 a.m. to 6 p.m. (local time of the caller when calling from within the continental United States) and indicate that you are a Federal grant applicant or prospective applicant. D&B will tell you if you already have a number. If you do not have a DUNS number, D&B will ask you to provide the information listed below and will immediately assign you a number, free of charge. The process to request a number over the telephone takes about 5–10 minutes. D&B will immediately assign you a number, free of charge at the conclusion of the call. You will need to provide the following information required to obtain a DUNS number:

- Legal name of your organization.
- Headquarters name and address for your organization.
- Doing business as (DBA) or other name by which your organization is commonly known or recognized.
- Physical address, city, State and zip code.
- Mailing address (if separate from headquarters and/or physical address).
- Telephone number.
- Contact name and title.
- Number of employees at your physical location.

You may also request a DUNS number over the internet from *http://www.dnb.com.* It may take up to 30 days to process your internet request. Therefore, RUS strongly encourages Federal grant applicants use the telephone application process.

2. Cost Sharing and Matching

No cost sharing or matching funds are required as a condition of eligibility under this grant program. However, RUS will consider other financial resources available to the grantee and any voluntary pledge of matching funds or other contributions in assessing the grantee's commitment capacity to carry out the grant program successfully and will award additional evaluation points to proposals that include such contributions. If a successful applicant proposes to use matching funds in its project to obtain additional evaluation points, the grant agreement will include conditions requiring documentation of the availability of the matching funds and actual expenditure of matching funds.

3. Other Eligibility Requirements

A. Eligible Projects

Grantees must use grant funds for eligible grant purposes. Grant funds may be used to acquire, construct, extend, upgrade, or otherwise improve energy generation, transmission, or distribution facilities serving eligible communities. All energy generation, transmission, and distribution facilities and equipment, used to provide electricity, natural gas, home heating fuels, and other energy service to eligible communities are eligible. Projects providing or improving energy services to eligible communities through on-grid and off-grid renewable energy projects, energy efficiency, and

energy conservation projects are eligible. A grant project is eligible if it improves, or maintains energy services, or reduces the costs of providing energy services to eligible communities.

Grants may cover up to the full costs of any eligible projects subject to the statutory condition that no more than 4 percent of grant funds may be used for the planning and administrative expenses of the grantee. The program regulations at 7 CFR part 1709 provide more detail on allowable uses of grant funds, limitations on grant funds, and ineligible grant purposes.

The project must serve communities that meet the extremely high energy cost eligibility requirements described in this NOFA. The grantee must demonstrate that the proposed project will benefit the eligible communities. Additional information and examples of eligible project activities are contained in the Application Guide.

Grant funds cannot be used for: preparation of the grant application, fuel purchases, routine maintenance or other operating costs, and purchase of equipment, structures, or real estate not directly associated with provision of residential energy services. In general, grant funds may not be used to support projects that primarily benefit areas outside of eligible target communities. However, grant funds may be used to finance an eligible target community's proportionate share of a larger energy project.

Each grant applicant must demonstrate the economic and technical feasibility of its proposed project. Activities or equipment that would commonly be considered as research and development activities, or commercial demonstration projects for new energy technologies will not be considered as technologically feasible projects and would, thus, be ineligible grant purposes. However, grant funds may be used for projects that involve the innovative use or adaptation of energy-related technologies that have been commercially proven.

B. Eligible Communities

The grant project must benefit communities with extremely high energy costs. The RE Act defines an extremely high energy cost community as one in which "the average residential expenditure for home energy is at least 275 percent of the national average residential expenditure for home energy" 7 U.S.C. 918a. The determination is based on the latest available information from the Energy Information Administration (EIA) residential energy surveys.

The statutory requirement that community residential expenditures for home energy exceed 275 percent of national average establishes a very high threshold for eligibility under this program. RUS has calculated high energy cost benchmarks based on the most recent EIA national average home energy expenditure data. The benchmarks shown in Table 1 are changed from those used in prior rounds of High Energy Cost Grant applications. Communities must meet one or more high energy cost benchmarks to qualify as an eligible beneficiary of a grant under this program. All applicants, including those requesting reconsideration of prior applications must meet these revised eligibility benchmarks. Based on available published information on residential energy costs, RUS anticipates that only those communities with the highest energy costs across the country will qualify under this congressionally-mandated standard.

The EIA's Residential Energy Consumption and Expenditure Surveys (RECS) and reports provide the baseline national average household energy costs that were used by RUS for establishing extremely high energy cost community eligibility criteria for this grant program. The RECS data base and reports provide national and regional information on residential energy use, expenditures, and housing characteristics. EIA published its latest available RECS home energy expenditure survey results in 2004. These estimates of home energy usage and expenditures are based on national surveys conducted in *2001* survey data and are shown in Table 1 as follows:

TABLE 1.—NATIONAL AVERAGE ANNUAL HOUSEHOLD ENERGY EXPENDITURES AND RUS EXTREMELY HIGH ENERGY COST ELIGIBILITY BENCHMARKS EFFECTIVE MARCH 23, 2005

Fuel	National annual average household expenditure $ per year	Extremely high energy cost benchmark $ per year
Average Annual Household Expenditure		
Electricity	$938	$2,509
Natural Gas	702	1,859
Fuel Oil	737	1,882
LPG/Propane	605	1,514
Total Household Energy Use	1,493	4,013
Fuel (units)	**National average unit cost $ per unit**	**Extremely high energy cost benchmark $ per unit**
Annual Average Per Unit Residential Energy Costs		
Electricity (kilowatt hours)	$0.088	$0.239
Natural Gas (thousand cubic feet)	9.98	26.85
Fuel Oil (gallons)	1.24	3.35
LPG/Propane (gallons)	1.36	3.61

Fuel (units)	National average unit cost $ per unit	Extremely high energy cost benchmark $ per unit
Total Household Energy (million Btus)	16.19	43.91

Sources: United States Department of Energy, Energy Information Administration, *Residential Energy Consumption and Expenditure Surveys 2001*, available online at *http://www.eia.doe.gov/emeu/recs/contents.html*. The RUS benchmarks are set at 275 percent of the national average and include adjustments to reflect the uncertainties inherent in EIA's statistical methodology for estimating home energy costs. The benchmarks are set based on the EIA's lower range estimates using the specified EIA methods.

Extremely high energy costs in rural and remote communities typically result from a combination of factors. The most prevalent include high energy consumption, high per unit energy costs in local markets, limited availability of energy sources, extreme climate conditions, and housing characteristics. The relative impacts of these conditions exhibit regional and seasonal diversity. Market factors have created an additional complication in recent years as the prices of the major commercial residential energy sources—electricity, fuel oil, natural gas, and LPG/propane—have fluctuated dramatically in some areas.

The applicant must demonstrate that each community in the grant project's proposed target area exceeds one or more of these high energy cost benchmarks to be eligible for assistance under this program.

i. *RUS High Energy Cost Benchmarks.* The benchmarks measure extremely high energy costs for residential consumers. These benchmarks were calculated using EIA's estimates of national average residential energy expenditures per household and by primary home energy source. The benchmarks recognize the diverse factors that contribute to extremely high home energy costs in rural communities. The benchmarks allow extremely high energy cost communities several alternatives for demonstrating eligibility. Communities may qualify based on: Total annual household energy expenditures; total annual expenditures for commercially-supplied primary home energy sources, *i.e.*, electricity, natural gas, oil, or propane; or average annual per unit home energy costs. By providing alternative measures for demonstrating eligibility, the benchmarks reduce the burden on potential applicants created by the limited public availability of comprehensive data on local community energy consumption and expenditures.

A target community or target area will qualify as an extremely high cost energy community if it meets one or more of the energy cost eligibility benchmarks described below.

1. *Extremely High Average Annual Household Expenditure for Home Energy.* The target area or community exceeds one or more of the following:

- Average annual residential electricity expenditure of $2,509 per household;
- Average annual residential natural gas expenditure of $1,859 per household;
- Average annual residential expenditure on fuel oil of $1,882 per household;
- Average annual residential expenditure on propane or liquefied petroleum gas (LPG) as a primary home energy source of $1,514 per household; or
- Average annual residential energy expenditure (for all non-transportation uses) of $4,013 per household.

2. *Extremely High Average Per Unit Energy Costs.* The average residential per unit cost for major commercial energy sources in the target area or community exceeds one or more of the following:

- Annual average revenues per kilowatt hour for residential electricity customers of $0.239 per kilowatt hour (kWh);
- Annual average residential natural gas price of $26.85 per thousand cubic feet;
- Annual average residential fuel oil price of $3.35 per gallon;
- Annual average residential price of propane or LPG as a primary home energy source of $3.61 per gallon; or
- Total annual average residential energy cost on a Btu basis of $43.91 per million Btu.[1]

ii. *Supporting Energy Cost Data.* The applicant must include information that demonstrates its eligibility under the RUS high energy cost benchmarks for the target communities and the target areas. The applicant must supply documentation or references for its sources for actual or estimated home energy expenditures or equivalent measures to support eligibility. Generally, the applicant will be expected to use historical residential energy cost or expenditure information for the local energy provider serving the target community or target area to determine eligibility. Other potential sources of home energy related information include Federal and State agencies, local community energy providers such as electric and natural gas utilities and fuel dealers, and commercial publications. The Application Guide includes a list of EIA resources on residential energy consumption and costs that may be of assistance.

The grant applicant must establish eligibility for each community in the project's target area. To determine eligibility, the applicant must identify each community included in whole or in part within the target areas and provide supporting actual or estimated energy expenditure data for each community. The smallest area that may be designated as a target area is a 2000 Census block. This minimum size is necessary to enable a determination of population size.

Potential applicants can compare the RUS benchmark criteria to available information about local energy use and costs to determine their eligibility. Applicants should demonstrate their eligibility using historical energy use and cost information. Where such information is unavailable or does not adequately reflect the actual costs of supporting average home energy use in a local community, RUS will consider estimated commercial energy costs. The Application Guide includes examples of circumstances where estimated energy costs are used.

EIA does not collect or maintain data on home energy expenditures in sufficient detail to identify specific rural localities as extremely high energy cost communities. Therefore, grant applicants will have to provide information on local community energy costs from other sources to support their applications

[1] **Note:** Btu is the abbreviation for British Thermal Unit, a standard energy measure. A Btu is the quantity of heat needed to raise the temperature of one pound of water 1 degree Fahrenheit at or near 39.2 degrees Fahrenheit. In estimating average household per unit energy cost on a Btu basis, the costs of different home energy sources are converted to a standard Btu basis. The Application Guide contains additional information on calculating per unit costs on a Btu basis for major home energy sources.

In many instances, historical community energy cost information can be obtained from a variety of public sources or from local utilities and other energy providers. For example, EIA publishes monthly and annual reports of residential prices by State and by service area for electric utilities and larger natural gas distribution companies. Average residential fuel oil and propane prices are reported regionally and for major cities by government and private publications. Many State agencies also compile and publish information on residential energy costs to support State programs.

iii. *Use of Estimated Home Energy Costs.* Where historical community energy cost data are incomplete or lacking or where community-wide data do not accurately reflect the costs of providing home energy services in the target area, the applicant may substitute estimates based on engineering standards. The estimates should use available community, local, or regional data on energy expenditures, consumption, housing characteristics and population. Estimates are also appropriate where the target area does not presently have centralized commercial energy services at a level that is comparable to other residential customers in the State or region. For example, local commercial energy cost information may not be available where the target area is without local electric service because of the high costs of connection. Engineering cost estimates reflecting the incremental costs of extending service could reasonably be used to establish eligibility for areas without grid-connected electric service. Estimates also may be appropriate where historical energy costs do not reflect the costs of providing a necessary upgrade or replacement of energy infrastructure to maintain or extend service that would raise costs above one or more of benchmarks.

Information to support high energy cost eligibility is subject to independent review by RUS. Applications that contain information that is not reasonably based on credible sources of information and sound estimates will be rejected. Where appropriate, RUS may consult standard sources to confirm the reasonableness of information and estimates provided by applicants in determining eligibility, technical feasibility, and adequacy of proposed budget estimates.

C. Coordination With State Rural Development Initiatives

USDA encourages the coordination of grant projects under this program with State rural development initiatives. There is no requirement that the grant proposal receive the concurrence or approval of State officials as a condition of eligibility under this program. RUS will, however, award additional points to proposals that are coordinated with and support rural development initiatives within a State. The applicant should describe how the proposed project will support State rural development initiatives and provide documentation evidencing any project relationship to State initiatives.

If an applicant is an entity directly involved in rural development efforts, such as a State, local, or tribal rural development agency, the applicant may qualify for additional points by describing how its proposed project supports its efforts.

D. Limitations on Grant Awards

1. *Statutory limitation on planning and administrative expenses.* Section 19 of the RE Act provides that no more than 4 percent of the grant funds for any project may be used for the planning and administrative expenses of the grantee.

2. *Ineligible Grant Purposes.* Grant funds cannot be used for: Preparation of the grant application, fuel purchases, routine maintenance or other operating costs, and purchase of equipment, structures, or real estate not directly associated with provision of residential energy services. In general, grant funds may not be used to support projects that primarily benefit areas outside of eligible target communities. However, grant funds may be used to finance an eligible target community's proportionate share of a larger energy project.

Consistent with USDA policy and program regulations, grant funds awarded under this program generally cannot be used to replace other USDA assistance or to refinance or repay outstanding RUS loans. Grant funds may, however, be used in combination with other USDA assistance programs including RUS loans. Grants may be applied toward grantee contributions under other USDA programs depending on the terms of those programs. For example, an applicant may propose to use grant funds to offset the costs of electric system improvements in extremely high cost areas by increasing the utility's contribution for line extensions or system expansions to its distribution system financed in whole or part by an RUS electric loan. An applicant may propose to finance a portion of an energy project for an extremely high energy cost community through this grant program and secure the remaining project costs through a loan or loan guarantee or grant from RUS or other sources.

3. *Maximum and minimum awards.* The maximum amount of grant assistance that will be considered for funding per grant application under this notice is $5,000,000. The minimum amount of assistance for a competitive grant application under this program is $75,000.

IV. Application and Submission Information

All applications must be prepared and submitted in compliance with this NOFA and the Application Guide. The Application Guide contains additional information on the grant program and sources of information for use in preparing applications and copies of the required application forms or requested from RUS.

1. Address To Request an Application Package

Applications materials and the Application Guide are available for download through *http://www.Grants.gov* (under CFDA No. 10.859) and on the RUS Web site at *http://www.usda.gov/rus/electric.*

Application packages, including required forms, may be also be requested from: Karen Larsen, Management Analyst, U.S. Department of Agriculture, Rural Utilities Service, Electric Program, 1400 Independence Avenue, SW., STOP 1560, Room 5165 South Building, Washington, DC 20250–1560. Telephone 202–720–9545, Fax 202–690–0717, e-mail *energy.grants@usda.gov.*

2. Content and Form of Application Submission

There are different application requirements for first time applicants and for prior applicants requesting reconsideration. First time applicants are those that did not submit a timely application in response to the January 23, 2004 (69 FR 3,317), NOFA. Prior applicants are those that: (1) Submitted timely and complete applications under the January 23, 2004, NOFA; (2) were not selected for a grant award; and (3) would like to request consideration of their proposal under this notice. First time applicants should follow the directions in this notice and the Application Guide in preparing their applications and narrative proposals. The completed application package should be assembled in the order specified with all pages numbered sequentially or by section. Prior applicants should follow the special instructions for reconsideration and submit a revised Standard Form 424

(SF–424), a letter requesting reconsideration, and any supplemental material by the deadline.

A. Application Contents for First Time Applicants

First time applicants must submit the following information for the application to be complete and considered for funding:

Part A. A Completed SF 424, "Application for Federal Assistance." This form must be signed by a person authorized to submit the proposal on behalf of the applicant. Note: SF 424 has recently been revised to include new required data elements, including a DUNS number. You must submit the revised form. Copies of this form are available in the application package available on line through RUS or through Grants.gov, through the Office of Management and Budget at *http://www.whitehouse.gov/omb/grants/grants_forms.html*, or by request from the Agency contact listed above.

Part B. Grant Proposal. The grant proposal is a narrative description prepared by the applicant that establishes the applicant's eligibility, identifies the eligible extremely high energy cost communities to be served by the grant, and describes the proposed grant project, the potential benefits of the project, and a proposed budget. The grant proposal should contain the following sections in the order indicated.

1. Executive Summary. The Executive Summary is a one to two page narrative summary that: (a) Identifies the applicant, project title, and the key contact person with telephone and fax numbers, mailing address and e-mail address; (b) specifies the amount of grant funds requested; (c) provides a brief description of the proposed project including the eligible rural communities and residents to be served, activities and facilities to be financed, and how the grant project will offset or reduce the target community's extremely high energy costs; and (d) identifies the associated state rural development initiative, if any, that the project supports. The Executive Summary should also indicate whether the applicant is claiming additional points under any of the criteria designated as USDA priorities under this NOFA.

2. Table of Contents. The application package must include a table of contents immediately after the Executive Summary with page numbers for all required sections, forms, and appendices.

3. Applicant Eligibility. This section includes a narrative statement that identifies the applicant and supporting evidence establishing that the applicant has or will have the legal authority to enter into a financial assistance relationship with the Federal Government. Examples of supporting evidence of applicant's legal existence and eligibility include: a reference to or copy of the relevant statute, regulation, executive order, or legal opinion authorizing a State, local, or tribal government program, articles of incorporation or certificates of incorporation for corporate applicants, partnership or trust agreements, board resolutions. Applicants must also be free of any debarment or other restriction on their ability to contract with the Federal Government.

4. Community Eligibility. This section provides a narrative description of the community or communities to be served by the grant and supporting information to establish eligibility. The narrative must show that the proposed grant project's target area or areas are located in one or more communities where the average residential energy costs exceed one or more of the benchmark criteria for extremely high energy costs as described in this NOFA. The narrative should clearly identify the location and population of the areas to be aided by the grant project and their energy costs and the population of the local government division in which they are located. Local energy providers and sources of high energy cost data and estimates should be clearly identified. Neither the applicant nor the project must be physically located in the extremely high energy cost community, but the funded project must serve an eligible community.

The population estimates should be based on the results of the 2000 Census available from the U.S. Census Bureau. Additional information and exhibits supporting eligibility may include maps, summary tables, and references to statistical information from the U.S. Census, the Energy Information Administration, other Federal and State agencies, or private sources. The Application Guide includes additional information and sources that the applicant may find useful in establishing community eligibility.

5. Coordination with State Rural Development Initiatives. In this section the applicant must describe how the proposed grant is coordinated with and supports any rural development efforts. The applicant should provide supporting references or documentation of any relationship or contribution to State rural development initiatives.

6. Project Overview. This section includes the applicant's narrative overview of its proposed project. The narrative must address the following:

a. *Project Design*: This section must provide a narrative description of the project including a proposed scope of work identifying major tasks and proposed schedules for task completion, a detailed description of the equipment, facilities and associated activities to be financed with grant funds, the location of the eligible extremely high energy cost communities to be served, and an estimate of the overall duration of the project. The Project Design description should be sufficiently detailed to support a finding of technical feasibility. Proposed projects involving construction, repair, replacement, or improvement of electric generation, transmission, and distribution facilities must generally be consistent with the standards and requirements for projects financed with RUS loans and loan guarantees as set forth in RUS Electric Program Regulations and Bulletins and may reference these requirements.

b. *Project Management*: This section must provide a narrative describing the applicant's capabilities and project management plans. The description should address the applicant's organizational structure, method of funding, legal authority, key personnel, project management experience, staff resources, the goals and objectives of the program or business, and any related services provided to the project beneficiaries. A current financial statement and other supporting documentation may be referenced here and included under the Supplementary Material section. If the applicant proposes to use affiliated entities, contractors, or subcontractors to provide services funded under the grant, the applicant must describe the identities, relationship, qualifications, and experience of these affiliated entities. The experience and capabilities of these entities will be reviewed by the rating panel. If the applicant proposes to secure equipment, design, construction, or other services from non-affiliated entities, the applicant must briefly describe how it plans to procure and/or contract for such equipment or services. The applicant should provide information that will support a finding that the combination of management team's experience, resources and project structure will enable successful completion of the project.

c. *Regulatory and other approvals*: The applicant must identify any other regulatory or other approvals required by other Federal, State, local, or tribal agencies, or by private entities as a condition of financing that are necessary to carry out the proposed grant project

and its estimated schedule for obtaining the necessary approvals.

d. *Benefits of the proposed project.* The applicant should describe how the proposed project would benefit the target area and eligible communities. The description must specifically address how the project will improve energy generation, transmission, or distribution facilities serving the target area. The applicant should clearly identify how the project addresses the energy needs of the community and include appropriate measures of project success such as, for example, expected reductions in household or community energy costs, avoided cost increases, enhanced reliability, or economic or social benefits from improvements in energy services available to the target community. The applicant should include quantitative estimates of cost or energy savings and other benefits. The applicant should provide documentation or references to support its statements about cost-effectiveness savings and improved services. The applicant should also describe how it plans to measure and monitor the effectiveness of the program in delivering its projected benefits.

7. Proposed Project Budget. The applicant must submit a proposed budget for the grant program on SF 424A, "Budget Information—Non-Construction Programs" or SF–424C, "Standard Form for Budget Information—Construction Programs," as applicable. All applicants that submit applications through Grants.gov must use SF–424A. The grantee should supplement the budget summary form with more detailed budget information on component costs and the basis for cost estimates. The budget must document that planned administrative and other expenses of the project sponsor will not total more than 4 percent of grant funds. The applicant must also identify the source and amount of any other contributions of funds or services that will be used to support the proposed project. This program does not require supplemental or matching funds for eligibility; however, RUS will award additional rating points for programs that include a match of other funds or like-kind contributions to support the project.

8. Supplementary Material. The applicant may append any additional information relevant to the proposal or which may qualify the application for extra points under the evaluation criteria described in this NOFA.

Part C. Additional Required Forms and Certifications. In order to establish compliance with other Federal requirements for financial assistance, the applicant must execute and submit with the initial application the following forms and certifications:

- SF 424B, "Assurances—Non-Construction Programs" or SF 424D, "Assurances—Construction Programs" (as applicable). All applicants applying through Grants.gov must use form SF 424B.
- SF LLL, "Disclosure of Lobbying Activities."
- "Certification Regarding Debarment, Suspension and Other Responsibility Matter—Primary Covered Transactions" as required under 7 CFR part 3017, Appendix A. Certifications for individuals, corporations, nonprofit entities, Indian tribes, partnerships.
- Environmental Profile. The environmental profile template included in the Application Guide solicits information about project characteristics and site-specific conditions that may involve environmental, historic preservation, and other resources. The profile will be used by RUS to identify selected projects that may require additional environmental reviews, assessments, or environmental impact statements before a final grant award may be approved. A copy of the environmental profile and instructions for completion are included in the Application Guide and may be downloaded from the RUS Web site or Grants.gov.

B. Special Requirements for Applicants Requesting Reconsideration of an Application Submitted in 2004

Applicants that wish to request reconsideration of their application packages submitted in March 2004 in response to the NOFA published on January 23, 2004 in this round of competitive funding must submit an updated original SF 424, including new mandatory data elements (DUNS number, fax number, and e-mail address) along with a brief signed letter request for reconsideration identifying any additional information that they wish to be considered by the rating panel in reviewing their application along with supporting documentation. Applicants must confirm that their community continues to meet the eligibility benchmarks in Table 1 and may submit additional information to support their continued eligibility. The required application package will consist of the original signed SF 424, the request for reconsideration, and any additional supporting documents, plus the original application package submitted to RUS in March 2004. RUS has maintained prior application materials on file and will add the newly submitted material to the existing application package for review by the rating panel. You do not need to send a copy of the 2004 application package. Because this abbreviated application package differs from the general application package for first time applicants available through Grants.gov, applicants requesting reconsideration should submit their requests directly to RUS by the application deadline and not through Grants.gov. Prior applicants have the option of submitting an entirely new complete application package for their project. If you submitted an application in 2003, but did not submit a request for reconsideration in 2004, you must submit a complete new application package meeting current eligibility and content requirements.

3. Additional Information Requests

In addition to the information required to be submitted in the application package, RUS may request that successful grant applicants provide additional information, analyses, forms and certifications as a condition of pre-ward clearance, including any environmental reviews or other reviews or certifications required under USDA and Government-wide assistance regulations. RUS will advise the applicant in writing of any additional information required.

4. Submitting the Application

Applicants that are submitting paper application packages directly to RUS must submit one original application package that includes original signatures on all required forms and certifications and two copies. Applications should be submitted on 8½ by 11 inch white paper. Supplemental materials, such as maps, charts, plans, and photographs may exceed this size requirement.

A completed paper application package must contain all required parts in the order indicated in the above section on "Content and Form of Application Submission." The application package should be paginated either sequentially or by section.

Applicants that are submitting application packages electronically through the federal grants portal Grants.gov (*http://www.Grants.gov*) must follow the application requirements and procedures and use the forms provided there. Grants.gov contains full instructions on all required registration, passwords, credentialing and software required to submit applications electronically, including the following two requirements.

(i) Central Contractor Registry. Before you can submit an application through Grants.gov you must list your organization in the Central Contractor Registry (CCR). Setting up a CCR listing (a one-time procedure with annual updates) takes up to five business days. RUS strongly recommends that you obtain your organization's CCR listing well in advance of the deadline specified in this notice.

(ii) Credentialing and e-authentication of applicants. Grants.gov will also require some one-time credentialing and online authentication procedures for new registrants. These procedures may take several business days to complete. Because of the potential for delay, it is important to act early to complete the sign-up, credentialing and authorization procedures at Grants.gov before you are ready to submit your application through Grants.gov.

RUS encourages applicants who wish to apply through Grants.gov to submit their applications in advance of the deadlines. Early submittal will give you time to resolve any system problems or technical difficulties with an electronic application through customer support resources available at the Grants.gov Web site while preserving the option of submitting a timely paper application if any difficulties can not be resolved.

5. Disclosure of Information

All material submitted by the applicant may be made available to the public in accordance with the Freedom of Information Act (5 U.S.C. 552) and USDA's implementing regulations at 7 CFR part 1.

6. Submission Dates and Times

Applications must be postmarked or delivered to RUS or to Grants.gov by July 25, 2005. RUS will begin accepting applications on the date of publication of this NOFA. RUS will accept for review all applications postmarked or delivered to RUS by this deadline. Late applications will not be considered and will be returned to the applicant.

For the purposes of determining the timeliness of an application RUS will accept the following as valid postmarks: The date stamped by the United States Postal Service on the outside of the package containing the application delivered by U.S. Mail; the date the package was received by a commercial delivery service as evidenced by the delivery label; the date received via hand delivery to RUS; and the date an electronic application was posted for submission to Grants.gov.

7. Intergovernmental Review

This program is not subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs," as implemented under USDA's regulations at 7 CFR part 3015.

8. Funding Restrictions

Section 19 of the RE Act provides that no more than 4 percent of the grant funds may be used for the planning and administrative expenses of the grantee.

9. Other Submission Requirements

Applicants that are submitting hard or paper copies of their application package directly to RUS must submit one original application package that includes original signatures on all required forms and certifications and two copies. Applications should be submitted on 8 1/2 by 11 inch white paper. Supplemental materials, such as maps, charts, plans, and photographs may exceed this size requirement.

A completed application for first time applicants must contain all required parts in the order indicated in the above section on "Content and Form of Application Submission." The application package should be paginated either sequentially or by section. Applicants seeking reconsideration should follow the special instructions above.

The completed paper application package and two copies must be delivered to RUS headquarters in Washington, DC using United States Mail, overnight delivery service, or by hand to the following address: Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1560, Room 5165 South Building, Washington, DC 20250–1560. Applications should be marked "Attention: High Energy Cost Community Grant Program."

Applicants are advised that regular mail deliveries to Federal Agencies, especially of oversized packages and envelopes, continue to be delayed because of increased security screening requirements. Applicants may wish to consider using Express Mail or a commercial overnight delivery service instead of regular mail. Applicants wishing to hand deliver or use courier services for delivery should contact the Agency representative in advance to arrange for building access. RUS advises applicants that because of intensified security procedures at government facilities that any electronic media included in an application package may be damaged during security screening. If an applicant wishes to submit such materials, they should contact the agency representative for additional information.

RUS will not accept applications electronically over the Internet, by e-mail, or fax. RUS will accept electronic applications through the Federal Web portal at *http://www.Grants.gov*. Applicants wishing to submit electronic applications through Grants.gov must follow the application procedures and submission requirements detailed on that Web site at *http://www.Grants.gov* . RUS will accept electronic applications through Grants.gov only. Applicants that file through Grants.gov will receive electronic confirmation that their applications have been received from Grants.gov. RUS will send an independent confirmation that the application has been transmitted to RUS after the grant application deadline.

Applicants should be aware that Grants.gov requires that applicants complete several preliminary registrations and e-authentication requirements before being allowed to submit applications electronically. Applicants should consult the Grants.gov Web site and allow ample time to complete the steps required for registration before submitting their applications. Applicants may download application materials and complete forms online through Grants.gov without completing the registration requirements. Application materials prepared online may be printed and submitted in paper to RUS as detailed above.

10. Multiple Applications

Eligible applicants may submit only one application per project. Multiple tasks and localities may be included in a single proposed grant project. No more than $5 million in grant funds will be awarded per project. Applicants may, however, submit applications for more than one project.

V. Application Review Information

All applications for grants must be delivered to RUS at the address listed above or postmarked no later than July 25, 2005, to be eligible for grant funding. After the deadline has passed, RUS will review each application to determine whether it is complete and meets all of the eligibility requirements described in this NOFA.

After the application closing date, RUS will not consider any unsolicited information from the applicant. RUS may contact the applicant for additional information or to clarify statements in the application required to establish applicant or community eligibility and completeness. Only applications that are complete and meet the eligibility

criteria will be considered. RUS will not accept or solicit any additional information relating to the technical merits and/or economic feasibility of the grant proposal after the application closing date.

If RUS determines that an application package was not delivered to RUS, or postmarked on or before the deadline of July 25, 2005, the application will be rejected as untimely and returned to the applicant.

After review, RUS will reject any application package that it determines is incomplete or that does not demonstrate that the applicant, community or project is eligible under the requirements of this NOFA and program regulations. The Assistant Administrator, Electric Program will notify the applicant of the rejection in writing and provide a brief explanation of the reasons for rejection.

Applicants may appeal the rejection pursuant to program regulations on appeals at 7 CFR 1709.6. The appeal must be made, in writing to the Administrator, within 10 days after the applicant is notified of the determination to reject the application. The appeal must state the basis for the appeal. Appeals must be submitted to the Administrator, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1500, Washington, DC 20250–1500. The Administrator will review the appeal to determine whether to sustain, reverse, or modify the original determination by the Assistant Administrator. The Administrator's decision shall be final. A written copy of the Administrator's decision will be furnished promptly to the applicant.

RUS may establish one or more rating panels to review and rate the eligible grant applications. These panels may include persons not currently employed by USDA.

The panel will evaluate and rate all complete applications that meet the eligibility requirements using the selection criteria and weights described in this NOFA. As part of the proposal review and ranking process, panel members may make comments and recommendations for appropriate conditions on grant awards to promote successful performance of the grant or to assure compliance with other Federal requirements. The decision to include panel recommendations on grant conditions in any grant award will be at the sole discretion of the Administrator.

All applications will be scored and ranked according to the evaluation criteria and weightings described in this Notice. The evaluation criteria and weights in this NOFA differ from those used in prior NOFAS. For this reason, the ratings panel will review and revise scores of any prior applications that are being reconsidered according to the new criteria. The rating panel may revise the score upward based on any updated information submitted by the applicant.

RUS will use the ratings and recommendations of the panel to rank applicants against other applicants. All applicants will be ranked according to their scores in this round. The rankings and recommendations will then be forwarded to the Administrator for final review and selection.

Decisions on grant awards will be made by the RUS Administrator based on the application, and the rankings and recommendations of the rating panel. The Administrator will fund grant requests in rank order to the extent of available funds.

1. Criteria

RUS will use the selection criteria described in this NOFA to evaluate and rate applications and will award points up to the maximum number indicated under each criterion. Applicants should carefully read the information on the rating criteria in this NOFA and the Application Guide and address all criteria. The maximum number of points that can be awarded is 100 points. RUS will award up to 65 points for project design and technical merit criteria and up to 35 points based on priority criteria for project or community characteristics that support USDA Rural Development and RUS program priorities.

A. Project Design and Technical Merit Criteria

Reviewers will consider the soundness of applicant's approach, the technical feasibility of the project, the adequacy of financial and other resources, the competence and experience of the applicant and its team, the project goals and objectives, and community needs and benefits. A total of 65 points may be awarded under these criteria.

1. Comprehensiveness and feasibility of approach. (Up to 30 points) Raters will assess the technical and economic feasibility of the project and how well its goals and objectives address the challenges of the extremely high energy cost community. The panel will review the proposed design, construction, equipment, and materials for the community energy facilities in establishing technical feasibility. Reviewers may propose additional conditions on the grant award to assure that the project is technically sound. Reviewers will consider the adequacy of the applicant's budget and resources to carry out the project as proposed. Reviewers will also evaluate how the applicant proposes to manage available resources such as grant funds, income generated from the facilities, and any other financing sources to maintain and operate a financially viable project once the grant period has ended.

2. Demonstrated experience. (Up to 10 points) Reviewers will consider whether the applicant and its project team have demonstrated experience in successfully administering and carrying out projects that are comparable to that proposed in the grant application. RUS supports and encourages emerging organizations that desire to develop the internal capacity to improve energy services in rural communities. In evaluating the capabilities of entities without extensive experience in carrying out such projects, RUS will consider the experience of the project team and the effectiveness of the program design in compensating for lack of extensive experience.

3. Community Needs. (Up to 15 points) Reviewers will consider the applicant's identification and documentation of eligible communities, their populations, and the applicant's assessment of community energy needs to be addressed by the grant project. Information on the severity of physical and economic challenges affecting eligible communities will be considered. Reviewers will weigh: (1) The applicant's analysis of community energy challenges and (2) why the applicant's proposal presents a greater need for Federal assistance than other competing applications. In assessing the applicant's demonstration of community needs, the rating panel will consider information in the narrative proposal addressing:

(a) The burden placed on the community and individual households by extremely high energy costs as evidenced by such quantitative measures as, for example, total energy expenditures, per unit energy costs, energy cost intensity for occupied space, or energy costs as a share of average household income, and persistence of extremely high energy costs compared to national or statewide averages.

(b) The hardships created by limited access to reliable and affordable energy services; and

(c) The availability of other resources to support or supplement the proposed grant funding.

4. Project Evaluation Methods. (Up to 5 points) Reviewers will consider the applicant's plan to evaluate and report on the success and cost-effectiveness of financed activities and whether the results obtained will contribute to program improvements for the applicant

or for other entities interested in similar programs.

5. *Coordination with State Rural Development Initiatives. (Up to 5 points)* Raters will assess how effectively the proposed project is coordinated with State rural development initiatives, if any, and is consistent with and supports these efforts. RUS will consider the documentation for coordination efforts, community support, and State or local government recommendations. Applicants should identify the extent to which the project is dependent on or tied to other rural development initiatives, funding, and approvals. Applicants are advised that they should address this criterion explicitly even if only to report that the project is not coordinated with or supporting a State rural development initiative. Failure to address this criterion will result in zero points awarded.

B. Priority Criteria

In addition to the points awarded for project design and technical merit, all proposals will be reviewed and awarded additional points based on certain characteristics of the project or the target community. USDA Rural Development policies generally encourage agencies to give priority in their programs to rural areas of greatest need and to support other Federal policy initiatives. In furtherance of these policies, RUS will award additional points for the priorities identified in this notice. RUS has changed the priority criteria and point scores to be used in this NOFA to be consistent with the program regulations in 7 CFR part 1709. RUS will give priority consideration to smaller communities, areas suffering significant economic hardship, areas with inadequate community energy services, and areas where the condition of community energy facilities (or absence thereof) presents an imminent hazard to public health or safety. Priority points will also be awarded for proposals that include cost sharing. A maximum of 35 total points may be awarded under these priority criteria.

1. Economic Hardship. (Up to 15 points) The community experiences one or more economic hardship conditions that impair the ability of the community and/or its residents to provide basic energy services or to reduce or limit the costs of these services. Economic hardship will be assessed using either the objective measure of county median income under Option A below or subjectively under Option B based on the applicant's description of the community's economic hardships and supporting materials. Applicants may elect either measure, but not both.

Option A. Economically Distressed Communities (up to 15 points). The target community is an economically distressed county or Indian reservation where the median household income is significantly below the State average. Points will be awarded based on the county percentage of State median household income (or reservation percentage of State median household income in the case of Federally recognized Indian reservations) according to the following:

(1) Less than 70 percent of the State median household income, 15points;

(2) 70 to 80 percent of the State median household income, 12 points;

(3) 80 to 90 percent of the State median household income, 10 points;

(4) 90 to 95 percent of the State median household income, 5 points; or

(5) Over 95 percent of the State median household income, 0 points

Information on State and county median income is available online from the USDA Economic Research Service at *http://www.ers.usda.gov/data/unemployment/*. Information on Indian reservations is available through the U.S. Census at *http://www.census.gov*.

Option B. Other Economic Hardship. (up to 15 points) The community suffers from other conditions creating a severe economic hardship that is adequately described and documented by the applicant. Examples include but are not limited to natural disasters, financially distressed local industry, and loss of major local employer, persistent poverty, outmigration, or other conditions adversely affecting the local economy, or contributing to unserved or underserved energy infrastructure needs that affect the economic health of the community. The rating panel may assign points under this criterion, in lieu of awarding points based on the percentage of median household income.

2. Rurality. (Up to 14 points) Consistent with the USDA Rural Development policy to target resources to rural communities with significant needs and recognizing that smaller communities are often comparatively disadvantaged in seeking assistance, RUS reviewers will award additional points based on the rurality (as measured by population) of the target communities to be served with grant funds. Applications will be scored based on the population of the largest incorporated cities, towns, or villages, or census designated places included within the grant's proposed target area.

Points will be awarded on the population of the largest target community within the proposed target area as follows:

(A) 2,500 or less, 14 points;

(B) Between 2,501 and 5,000, inclusive, 12 points;

(C) Between 5,001 and 10,000, inclusive, 8 points;

(D) Between 10,001 and 15,000, inclusive, 5 points;

(E) Between 15,001 and 20,000, inclusive, 2 points; and

(F) Above 20,000, 0 points.

Applicants must use the latest available population figures from Census 2000 available at *http://www.census.gov/main/www/cen2000.html* for every incorporated city, town, or village, or Census designated place included in the target area.

3. Unserved Energy Needs. (2 points) Consistent with the purposes of the RE Act, projects that meet unserved or underserved energy needs will be eligible for 2 points. Examples of proposals that may qualify under this priority include projects that extend or improve electric or other energy services to communities and customers that do not have reliable centralized or commercial service or where many homes remain without such service because the costs are unaffordable.

4. Imminent hazard. (2 points) If the grant proposal involves a project to correct a condition posing an imminent hazard to public safety, welfare, the environment, or to a critical community or residential energy facility, raters may award 2 points. Examples include community energy facilities in immediate danger of failure because of deteriorated condition, capacity limitations, damage from natural disasters or accidents, or other conditions where impending failure of existing facilities or absence of energy facilities creates a substantial threat to public health or safety, or to the environment.

5. Cost Sharing. (2 points) This grant program does not require any cost contribution. In addition to their assessment of the economic feasibility and sustainability of the project under the project evaluation factors above, raters may award 2 points for cost sharing. These points will be awarded when the proposal documents supplemental contributions of funds, property, equipment, services, or other in kind contributions for the project evidencing the applicant's and/or community's commitment to the project exceed 10 percent of project costs. The applicant must specifically request additional points for cost sharing.

2. Review and Selection Process

A. Scoring and Ranking of Applications

Following the evaluation and rating of individual applications under the above criteria, the rating panel will rank the applications in numerical order according to their total scores. The scored and ranked applications and the raters' comments will then be forwarded to the Administrator for review and selection of grant awards.

B. Selection of Grant Awards and Notification of Applicants

The RUS Administrator will review the rankings and recommendations of the applications provided by the rating panel for consistency with the requirements of this NOFA. The Administrator may return any application to the rating panel with written instruction for reconsideration if, in his sole discretion, he finds that the scoring of an application is inconsistent with this NOFA and the directions provided to the rating panel.

Following any adjustments to the project rankings as a result of reconsideration, the Administrator will select projects for funding in rank order. If funds remain after funding the highest ranking application, RUS may fund all or part of the next highest ranking application. RUS will advise an applicant if it cannot fully fund a grant request and ask whether the applicant will accept a reduced award.

The Administrator may decide based on the recommendations of the rating panel or in his sole discretion that a grant award may be made fully or partially contingent upon the applicant satisfying certain conditions or providing additional information and analyses. For example, RUS may defer approving a final award to a selected project—such as projects requiring more extensive environmental review and mitigation, preparation of detailed site specific engineering studies and designs, or requiring local permitting, or availability of supplemental financing—until any additional conditions are satisfied. In the event that a selected applicant fails to comply with the additional conditions within the time set by RUS, the selection will be vacated and the next ranking project will be considered.

If a selected applicant turns down a grant award offer, or fails to conclude a grant agreement acceptable to RUS, or to provide required information requested by RUS within the time period established in the notification of selection for grant award, the RUS Administrator may select for funding the next highest ranking application submitted in response to this NOFA. If funds remain after all selections have been made, remaining funds will be carried over and made available in future awards under the High Energy Cost Grant Programs.

RUS will notify each applicant in writing whether or not it has been selected for an award. RUS's written notice to a successful applicant of the amount of the grant award based on the approved application will constitute RUS's preliminary approval, subject to compliance with all post-selection requirements including but not limited to completion of any environmental reviews and negotiation and execution of a grant agreement satisfactory to RUS. Preliminary approval does not bind the Government to making a final grant award. Only a final grant award and agreement executed by the Administrator will constitute a binding obligation and commitment of Federal funds. Funds will not be awarded or disbursed until all requirements have been satisfied. RUS will advise selected applicants of additional requirements or conditions.

C. Adjustments to Funding

RUS reserves the right to fund less than the full amount requested in a grant application to ensure the fair distribution of the funds and to ensure that the purposes of a specific program are met. RUS will not fund any portion of a grant request that is not eligible for funding under Federal statutory or regulatory requirements; that does not meet the requirements of this NOFA, or that may duplicate other RUS funded activities, including electric loans. Only the eligible portions of a successful grant application will be funded.

Grant assistance cannot exceed the lower of:

(a) The qualifying percentage of eligible project costs requested by the applicant; or

(b) The minimum amount sufficient to provide for the economic feasibility of the project as determined by RUS.

VI. Award Administration Information

1. Award Notices

RUS will notify all applicants in writing whether they have been selected for an award. Successful applicants will be advised in writing of their selection as award finalists. Successful applicants will be required to negotiate a grant agreement acceptable to RUS and complete additional grant forms and certifications required by USDA as part of the pre-award process.

Depending on the nature of the activities proposed by the application, the grantee may be asked to provide information and certifications necessary for compliance with RUS environmental policy regulations and procedures at 7 CFR part 1794. Following completion of the environmental review, selected applicants will receive a letter of conditions establishing any project-specific conditions to be included in the grant agreement and asked to execute a letter of intent to meet the grant conditions or to detail why such conditions can't be met and to propose alternatives. Grant funds will not be advanced unless and until the applicant has executed a grant agreement acceptable to RUS.

RUS will require each successful applicant to agree to the specific terms of each grant agreement, a project budget, and other RUS requirements. In cases where RUS cannot successfully conclude negotiations with a selected applicant or a selected applicant fails to provide RUS with requested information within the time specified, an award will not be made to that applicant. The selection will be revoked and RUS may offer an award to the next highest ranking applicant, and proceed with negotiations with the next highest ranking applicant.

2. Administrative and National Policy Requirements

A. Environmental Review and Restriction on Certain Activities

Grant awards are required to comply with 7 CFR part 1794, which sets forth RUS regulations implementing the National Environmental Policy Act (NEPA). Grantees must also agree to comply with any other Federal or State environmental laws and regulations applicable to the grant project.

If the proposed grant project involves physical development activities or property acquisition, the applicant is generally prohibited from acquiring, rehabilitating, converting, leasing, repairing or constructing property or facilities, or committing or expending RUS or non-RUS funds for proposed grant activities until RUS has completed any environmental review in accordance with 7 CFR part 1794 or determined that no environmental review is required. Successful applicants will be advised whether additional environmental review and requirements apply to their proposals.

B. Other Federal Requirements

Other Federal statutes and regulations apply to grant applications and to grant awards. These include, but are not limited to, requirements under 7 CFR part 15, subpart A—Nondiscrimination

in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964.

Certain OMB circulars also apply to USDA grant programs and must be followed by a grantee under this program. The policies, guidance, and requirements of the following, or their successors, may apply to the award, acceptance and use of assistance under this program and to the remedies for noncompliance, except when inconsistent with the provisions of the Agriculture, Rural Development and Related Agencies Appropriations Acts, other Federal statutes or the provisions of this NOFA:

- OMB Circular No. A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments);
- OMB Circular A–21 (Cost Principles for Education Institutions);
- OMB Circular No. A–122 (Cost Principles for Nonprofit Organizations);
- OMB Circular A–133 (Audits of States, Local Governments, and Non-Profit Organizations);
- 7 CFR part 3015 (Uniform Federal Assistance Regulations);
- 7 CFR part 3016 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally recognized Indian tribal governments);
- 7 CFR part 3017 (Governmentwide debarment and suspension (non-procurement) and governmentwide requirements for drug-free workplace (grants));
- 7 CFR part 3018 (New restrictions on Lobbying);
- 7 CFR part 3019 (Uniform administrative requirements for grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations); and
- 7 CFR part 3052 (Audits of States, local governments, and non-profit organizations).

Compliance with additional OMB Circulars or government-wide regulations may be specified in the grant agreement.

3. Reporting

The grantee will be required to provide periodic financial and performance reports under USDA grant regulations and RUS rules and to submit a final project performance report. The nature and frequency of required reports are established in USDA grant regulations and the project-specific grant agreements.

VII. Agency Contact

The Agency Contact for this grant announcement is Karen Larsen, Management Analyst, U.S. Department of Agriculture, Rural Utilities Service, Electric Program, 1400 Independence Avenue, SW., STOP 1560, Room 5165 South Building, Washington, DC 20250–1560. Telephone 202–720–9545, Fax 202–690–0717, e-mail *Karen.Larsen@usda.gov.*

Dated: May 18, 2005.

Curtis M. Anderson,

Acting Administrator, Rural Utilities Service.

[FR Doc. 05–10378 Filed 5–24–05; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 22–2005]

Foreign–Trade Zone 99 - Wilmington, Delaware, Expansion of Subzone and Manufacturing Authority Subzone 99D, AstraZeneca Pharmaceuticals LP (Pharmaceutical Products), Newark, Delaware

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the Delaware Economic Development Office, grantee of FTZ 99, requesting to expand the subzone and the scope of manufacturing authority under zone procedures within Subzone 99D, at the AstraZeneca Pharmaceuticals LP (AstraZeneca) facility in Newark, Delaware. It was formally filed on May 17, 2005.

Subzone 99D was approved by the Board in 1994 at AstraZeneca's plant (2 bldgs. on 156 acres/520,700 sq. ft.) located at 587 Old Baltimore Pike, Newark, Delaware, some 10 miles west of Wilmington. The facility (530 employees) is used to produce and/or distribute a wide range of pharmaceuticals, with specific authority granted for the manufacture of several products under zone procedures (Board Order 717, 12/02/94).

Subzone 99D is currently requesting to expand the subzone at the existing facility (Site 1) to include additions to existing buildings (totaling 114,100 sq. ft.) and to include another site (Site 2) for the manufacture of clinical trial products. AstraZeneca is also requesting to include in its scope of authority general categories of inputs and final products that it may produce under zone procedures in the future.

Proposed Site 2 (30 buildings, 3,226,805 sq. ft. (526,552 mfg. sq. ft.) on 163 acres, which includes a potential expansion of 7 buildings totaling 1,154, 298 sq. ft. (318,548 mfg. sq. ft.)) is located at 1800 Concord Pike, Wilmington, Delaware, some 20 miles from Site 1. It will be used to produce finished dose pharmaceutical formulations of clinical trial products (HTSUS 3004.90, duty–free). Materials sourced from abroad represent 90 to 95 percent of all materials used in production proposed for zone procedures. Inverted tariff savings will initially result from the following bulk active ingredients, all subject to a 6.5% duty rate: AZD 0328 (HTSUS 2934.99.9000), AZD 5455 (HTSUS 2933.39.9100) and AZD 4522 (HTSUS 2935.00.6000). Finished dose products will be transferred to Site 1 for packaging and shipping.

The application also requests authority to include a broad range of inputs and pharmaceutical final products that it may produce under FTZ procedures in the future. (New major activity in these inputs/products could require review by the FTZ Board.) General HTSUS categories of inputs include: 1108, 1212, 1301, 1302, 1515, 1516, 1520, 1521, 1702, 1905, 2106, 2207, 2302, 2309, 2501, 2508, 2510, 2519, 2520, 2526, 2710, 2712, 2807, 2809, 2811, 2814, 2815, 2816, 2817, 2821, 2823, 2825, 2826, 2827, 2829, 2831, 2832, 2833, 2835, 2836, 2837, 2839, 2840, 2841, 2842, 2843, 2844, 2846, 2851, 2901, 2902, 2903, 2904 (except for HTS 2904.20.5000), 2905, 2906, 2907, 2908, 2909, 2910, 2911, 2912, 2913, 2914, 2915, 2916, 2917, 2918, 2919, 2920, 2921, 2922, 2923, 2924, 2925, 2926, 2927, 2928, 2929, 2930, 2931, 2932, 2933, 2934, 2935, 2936, 2937, 2938, 2939, 2940, 2941, 2942, 3001, 3002, 3003, 3004, 3005, 3006, 3102, 3104, 3301, 3302, 3305, 3401, 3402, 3403, 3404, 3502, 3503, 3505, 3506, 3507, 3802, 3804, 3808, 3809, 3815, 3822, 3823, 3824, 3901, 3906, 3910, 3911, 3912, 3913, 3914, 3915, 3919, 3920, 3921, 3923, 4016, (4202.92.1000, 4202.92.9060, 4202.99.1000, 4202.99.5000 (plastic only)), 4817, 4819, 4901, 4902, 5403, 7010, 7607, 8004, 8104, 8309, 8481, 9018, and 9602. The duty rates on these products range from duty–free to 17%.

Final products that may be produced from the inputs listed above include these general HTSUS categories: 2302, 2309, 2902, 2903, 2904, 2905, 2906, 2907, 2909, 2910, 2912, 2913, 2914, 2915, 2916, 2917, 2918, 2920, 2921, 2922, 2923, 2924, 2925, 2926, 2928, 2930, 2931, 2932, 2933, 2934, 2935, 2936, 2937, 2938, 2939, 2941, 2942, 3001, 3002, 3003, 3004, 3006, 3802, 3804, 3808, 3809, 3824, 3910, 3911, 3912, 3913, and 3914. The duty rates on these products range from duty–free to 7.5%.

Zone procedures would exempt AstraZeneca from Customs duty

payments on foreign materials used in production for export. On domestic shipments, the company would be able to defer Customs duty payments on foreign materials, and to choose the duty rate that applies to finished products (duty–free) instead of the rates otherwise applicable to the foreign input materials (6.5%). The application indicates that the savings from zone procedures would help improve AstraZeneca's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign–Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building - Suite 4100W, 1099 14th St. NW, Washington, D.C. 20005; or
2. Submissions Via the U.S. Postal Service: Foreign–Trade-Zones Board, U.S. Department of Commerce, FCB - Suite 4100W, 1401 Constitution Ave. NW, Washington, D.C. 20230.

The closing period for their receipt is July 25, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 8, 2005).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign–Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, The Curtis Center - Suite 580, West 601 Walnut Street - Independence Square West, Philadelphia, PA 19106–3304.

Dated: May 19, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–10461 Filed 5–24–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket 23–2005]

Foreign–Trade Zone 7 Mayaguez, Puerto Rico, Application for Subzone, Abbott Laboratories (Pharmaceutical Products), Barceloneta, Puerto Rico

An application has been submitted to the Foreign–Trade Zones (FTZ) Board (the Board) by the Puerto Rico Industrial Development Corporation, grantee of FTZ 7, requesting special–purpose subzone status for the pharmaceutical manufacturing facilities of Abbott Pharmaceuticals PR LTD. (APPR), Abbott Health Products, Inc. (AHP), and Abbott Biotechnology LTD (ABL), subsidiaries of Abbott Laboratories (Abbott), located in Barceloneta, Puerto Rico. The application was submitted pursuant to the Foreign–Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 17, 2005.

The proposed subzone (123 buildings of 2,151,957 square feet (approx. 90% mfg. sq. ft.) on 276 acres, with a possible expansion of 34 buildings of 2,330,579 sq. ft.) is comprised of one site located at Road No. 2, Km 58.0, Barceloneta, Puerto Rico. The Abbott facility (2,200 employees) manufactures, tests, packages, and warehouses pharmaceutical and diagnostic products, activities which it is proposing to perform under zone procedures.

It will be used to produce finished dose pharmaceutical formulations and diagnostic products. Initially, the company is proposing to produce the antibiotics, clarythromycin and erythromycin; and Depakote®, a treatment for epilepsy, migraine and bipolar disorder, under zone procedures. Materials sourced from abroad represent 5–10 percent of the value of the finished products manufactured under the proposed primary scope. Inverted tariff savings will initially result from the following ingredients: Beta Carb (HTSUS 2917.19.7050), hexamethyldisilozane (HTSUS 2931.00.9010), and hypromellose phtalate (HTSUS 3912.90.0090). Some 60 to 80 percent of the proposed production under zone procedures will be exported.

The application also requests authority to include a broad range of inputs and pharmaceutical final products that it may produce under FTZ procedures in the future. (New major activity in these inputs/products could require review by the FTZ Board.) General HTSUS categories of inputs include: 1108, 1212, 1301, 1302, 1515, 1516, 1520, 1521, 1702, 1905, 2106, 2207, 2302, 2309, 2501, 2508, 2510, 2519, 2520, 2526, 2710, 2712, 2807, 2809, 2811, 2814, 2815, 2816, 2817, 2821, 2823, 2825, 2826, 2827, 2829, 2831, 2832, 2833, 2835, 2836, 2837, 2839, 2840, 2841, 2842, 2844, 2846, 2851, 2901, 2902, 2903, 2904 (except for 2904.20.5000), 2905, 2906, 2907, 2908, 2909, 2910, 2911, 2912, 2913, 2914, 2915, 2916, 2917, 2918, 2919, 2920, 2921, 2922, 2923, 2924, 2925, 2926, 2927, 2928, 2929, 2930, 2931, 2932, 2933, 2934, 2935, 2936, 2937, 2938, 2939, 2940, 2941, 2942, 3001, 3002, 3003, 3004, 3005, 3006, 3102, 3104, 3301, 3302, 3305, 3401, 3402, 3403, 3404, 3502, 3503, 3505, 3506, 3507, 3802, 3804, 3808, 3809, 3815, 3822, 3823, 3824, 3906, 3910, 3911, 3912, 3913, 3914, 3915, 3919, 3920, 3921, 3923, 4016, (4202.92.1000, 4202.92.9060, 4202.99.1000, 4202.99.5000 (plastic only)), 4817, 4819, 4901, 4902, 7010, 7607, 8004, 8104, 8309, 8481, 9018, 9602. Duty rates for these materials range from duty–free to 17%.

Final products that may be produced from the inputs listed above include these general HTSUS categories: 2302, 2309, 2825, 2902, 2903, 2904, 2905, 2906, 2907, 2909, 2910, 2912, 2913, 2914, 2915, 2916, 2917, 2918, 2920, 2921, 2922, 2924, 2925, 2926, 2928, 2930, 2931, 2932, 2933, 2934, 2935, 2936, 2937, 2938, 2939, 2940, 2941, 2942, 3001, 3002, 3003, 3004, 3006, 3503, 3507, 3802, 3804, 3808, 3809, 3824, 3910, 3911, 3912, 3913; 3914 and 9018. Duty rates for these products range from duty–free to 7.5%.

Zone procedures would exempt Abbott from Customs duty payments on foreign materials used in production for export (some 60–80% of shipments). On domestic shipments, the company would be able to defer Customs duty payments on foreign materials, and to choose the duty rate that applies to finished products (duty–free) instead of the rates otherwise applicable to the foreign input materials (3.7% - 5.2%). The application indicates that the savings from zone procedures would help improve Abbott's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign–Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building - Suite 4100W, 1099 14th St. NW, Washington, D.C. 20005; or
2. Submissions Via the U.S. Postal Service: Foreign–Trade-Zones Board, U.S. Department of Commerce, FCB - Suite 4100W, 1401 Constitution Ave. NW, Washington, D.C. 20230.

The closing period for their receipt is July 25, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 8, 2005).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign–Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, Centro Internacional de Mercadeo Torre II, Suite 702, Carr. 165 Guaynabo, Puerto Rico 00968–8058.

Dated: May 19, 2005.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 05–10462 Filed 5–24–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–802]

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Amended Advance Notification of Sunset Reviews

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

SUMMARY: This is an amendment to the notice of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews, 70 FR 25537 (May 13, 2005) (Advance Notification).

EFFECTIVE DATE: May 25, 2005.

FOR FURTHER INFORMATION CONTACT: Zev Primor, Office 4, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–4114.

Background

On May 13, 2005, the Department of Commerce (the Department) published in the **Federal Register** a list of sunset reviews scheduled for initiation in June 2005. *See Advanced Notification.* In the above–referenced notice, the antidumping order on Sparklers from the People's Republic of China (A–570–804) was inadvertently omitted. We are amending the above–referenced notice by including the antidumping order on Sparklers from the People's Republic of China.

This notice is not required by statute but is published as a service to the international trading community.

Dated: May 20, 2005.

Holly A. Kuga,

Senior Office Director AD/CVD Operations, Office 4 for Import Administration.

[FR Doc. E5–2652 Filed 5–24–05; 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; Notice of Rescission of Antidumping Duty New Shipper Review

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

EFFECTIVE DATE: May 25, 2005.

SUMMARY: In response to a request from an interested party, the Department of Commerce (the Department) initiated a new shipper review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC) with respect to Huaiyang Huamei Foodstuff Co., Ltd. (Huamei). However, Huamei has failed to respond to our new shipper questionnaire; consequently, we are rescinding the review of this company.

FOR FURTHER INFORMATION CONTACT: Coleen Schoch or Brian Ledgerwood at (202) 482–4551 and (202) 482–3836, respectively, 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:

Scope of the Order

The products covered by this antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non–fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 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. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non–fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to U.S. Customs and Border Protection (CBP) to that effect.

Background

The antidumping duty order on fresh garlic from the PRC was published on November 16, 1994. *See Antidumping Duty Order: Fresh Garlic From the People's Republic of China*, 59 FR 59209. On November 30, 2004, the Department received a request for a new shipper review from Huamei. We conducted an initial examination of its new shipper review request and initiated a new shipper review of the antidumping duty order on fresh garlic from the PRC for Huamei. *See Notice of Initiation of New Shipper Reviews*, 70 FR 779 (January 5, 2005). The period of review (POR) for the new shipper review is November 1, 2003, through October 31, 2004. As part of this new shipper review, the Department sent an antidumping duty questionnaire to Huamei on January 4, 2005. Pursuant to section 351.301(c)(2)(ii) of the Department's regulations, the questionnaire included (a) a deadline for the response; (b) a description of the form and manner in which Huamei must submit the information; and (c) a statement that failure to submit the requested information in the requested form and manner by the date specified could result in the application of facts available.

In a letter submitted to the Department on March 2, 2005, Huamei's counsel withdrew its representation of Huamei. Huamei's response to the Department's questionnaire was due on March 3, 2005. The Department received no response from Huamei and no other party has filed an entry of appearance on behalf of Huamei.

On March 15, 2005, the Department issued a letter to Huamei's last known address, including a copy of the antidumping duty questionnaire and request that Huamei respond by April 4, 2005. The Department warned that, should Huamei fail to provide the information requested by the due date, the Department could resort to the use of facts available with an adverse inference for purposes of this new shipper review, pursuant to sections 776(a) and 776(b) of the Tariff Act of 1930, as amended (the Act). Also on March 15, 2005, the Department issued a similar letter to the Director of the Bureau of Fair Trade for Imports and Exports at the PRC Ministry of Commerce.

To date, the Department has not received any response from Huamei. Furthermore, we have not received notice that Huamei would be unable to respond to our questionnaire within the specified time limits or that it would be unable to provide the information to the Department in the form required.

Rescission of New Shipper Review

Because Huamei failed to respond to our questionnaire after requesting a new shipper review, we are rescinding the new shipper review of the antidumping duty order on fresh garlic from the PRC with respect to this company.

Cash Deposits

Bonding is no longer permitted to fulfill the security requirements for shipments of subject merchandise produced or exported by Huamei and entered or withdrawn from warehouse for consumption in the United States on or after the date of publication of this notice. Further, effective upon publication of this notice for all shipments of subject merchandise produced or exported by Huamei, and entered or withdrawn from warehouse for consumption, the cash–deposit rate will be the PRC–wide rate of 376.67 percent.

Assessment of Antidumping Duties

The Department will instruct CBP to assess antidumping duties on all appropriate entries. Since we are rescinding this antidumping duty new shipper review, the PRC–wide rate of 376.67 percent that was in effect at the time of entry, applies to all exports of subject merchandise produced or exported by Huamei during the period of review. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of this notice.

This notice is published in accordance with section 751 of the Act and 19 CFR 351.213(d)(4).

Dated: May 18, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–2653 Filed 5–24–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review

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

SUMMARY: On January 31, 2005, the Department of Commerce ("the Department") published in the **Federal Register** (70 FR 4818) a notice announcing the initiation of the administrative review of the antidumping duty order on honey from the People's Republic of China ("PRC"). The period of review ("POR") is December 1, 2003, to November 30, 2004. This review is now being rescinded for Anhui Native Produce Import and Export Corp., and Inner Mongolia Autonomous Region Native Produce and Animal By–Products Import and Export Corporation, because the only requesting party withdrew its request in a timely manner.

EFFECTIVE DATE: May 25, 2005.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand or Anya Naschak, AD/CVD Operations, Office 9, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 4003, Washington, DC 20230; telephone (202) 482–3207 or (202) 482–6375, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2001, the Department published in the **Federal Register** an antidumping duty order covering honey from the PRC. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order; Honey from the People's Republic of China*, 66 FR 63670 (December 10, 2001). On December 1, 2004, the Department published a *Notice of Opportunity to Request an Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 69 FR 69889. On December 30, 2004, the American Honey Producers Association and the Sioux Honey Association (collectively, Petitioners), requested, in accordance with section 351.213(b) of the Department's regulations, an administrative review of the antidumping duty order on honey from the PRC for nineteen companies[1] covering the period December 1, 2003, through November 30, 2004. On December 30, 2004, and January 3, 2005, nine Chinese companies requested an administrative review of their respective companies. The Department notes that Petitioners' request covered these nine companies as well.

On January 31, 2005, the Department initiated an administrative review of nineteen Chinese companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 4818 (January 31, 2005). On February 22, 2005, Petitioners filed a letter withdrawing their request for review of seven companies. On March 29, 2005, the Department rescinded this review with respect to those seven companies, as only petitioners had requested a review of those companies. *See Notice of Partial Rescission of Antidumping Duty Administrative Review: Honey from the People's Republic of China*, 70 FR 15836 (March 29, 2005).

On April 28, 2005, Petitioners withdrew their request for review of Anhui Native Produce Import and Export Corp., and on April 29, 2005, Petitioners withdrew their request for review of Inner Mongolia Autonomous Region Native Produce and Animal By–Products Import and Export Corporation. Petitioners were the only party to request a review of these two companies.

Rescission of Review

The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an administrative review withdraws the request within 90 days of

[1] Among these 19 companies are "Inner Mongolia Autonomous Region Native Produce and Animal By-Products Import & Export Corp.," and "Inner Mongolia Autonomous Region Native Produce and Animal By-Products." These two names refer to the same company and the review is, therefore, being rescinded with respect to both iterations of the name.

the publication of the notice of initiation of the requested review, the Secretary will rescind the review. Petitioners withdrew their review request with respect to the two companies within the 90–day deadline, in accordance with 19 CFR 351.213(d)(1). Since Petitioners were the only party to request an administrative review of these two companies, we are partially rescinding this review of the antidumping duty order on honey from the PRC covering the period December 1, 2003, through November 30, 2004, with respect to Anhui Native Produce Import and Export Corp. and Inner Mongolia Autonomous Region Native Produce and Animal By–Products Import and Export Corporation.

Assessment

The Department will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties on all appropriate entries. For those companies for which this review is rescinded, 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 appropriate assessment instructions directly to CBP within 15 days of publication of this notice.

Notification of Interested Parties

This notice serves as a final 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 the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") 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 and 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: May 18, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–2600 Filed 5–24–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Notice of Final Results of New Shipper Review of the Antidumping Duty Order on Certain Pasta from Italy

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

SUMMARY: On March 1, 2005, the Department of Commerce ("the Department") published the preliminary results of the new shipper review of the antidumping duty order on certain pasta from Italy. The review covers Atar, S.r.L. ("Atar"). The period of review ("POR") is July 1, 2003, through June 30, 2004. The Department received no comments concerning our preliminary results; therefore, our final results remain unchanged from our preliminary results. The final results are listed in the section "*Final Results of Review*" below. For our final results, we have found that, during the POR, Atar did not sell subject merchandise at less than normal value ("NV").

EFFECTIVE DATE: May 25, 2005.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Maura Jeffords, AD/CVD Operations Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, D.C. 20230; telephone: (202) 482–5793 and (202) 482–3146, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2005, the Department published the preliminary results of the new shipper review of the antidumping duty order on certain pasta from Italy. *See Notice of Preliminary Results of New Shipper Review of the Antidumping Duty Order on Certain Pasta from Italy*, 70 FR 9921 (March 1, 2005) ("*Preliminary Results*"). We invited interested parties to comment on our Preliminary Results. We received no case briefs.

Scope of Review

Imports covered by this order are shipments of certain non–egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non–egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia, by the Consorzio per il Controllo dei Prodotti Biologici, or by the Associazione Italiana per l'Agricoltura Biologica.

The merchandise subject to this order is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* ("*HTSUS*"). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling determining that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See* Memorandum from Edward Easton, Senior Analyst, Office of AD/CVD Enforcement V, to Richard Moreland, Deputy Assistant Secretary, "Scope Ruling Concerning Pasta from Italy," dated August 25, 1997, which is on file in the Central Records Unit ("CRU").

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one–pound packages of pasta that are shrink–wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See* Letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import

Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., dated July 30, 1998, which is available in the CRU.

(3) On October 23, 1997, the petitioners filed an application requesting that the Department initiate an anti–circumvention investigation of Barilla America, Inc., and Barilla Alimentare, S.p.A. ("Barilla"), an Italian producer and exporter of pasta. The Department initiated the investigation on December 8, 1997 (62 FR 65673). On October 5, 1998, the Department issued its final determination that Barilla's importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention with respect to the antidumping duty order on pasta from Italy pursuant to section 781(a) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.225(b). *See Anti–circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 63 FR 54672 (October 13, 1998).

(4) On October 26, 1998, the Department self–initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* Memorandum from John Brinkmann, Program Manager, Office of AD/CVD Enforcement VI, to Richard Moreland, Deputy Assistant Secretary, "Final Scope Ruling," dated May 24, 1999, which is available in the CRU.

(5) On April 27, 2000, the Department self–initiated an anti–circumvention inquiry to determine whether Pastificio Fratelli Pagani S.p.A.'s importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention, with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). *See Certain Pasta from Italy: Notice of Initiation of Anti–circumvention Inquiry of the Antidumping and Countervailing Duty Orders*, 65 FR 26179 (May 5, 2000). On September 19, 2003, we published an affirmative finding of the anti–circumvention inquiry. *See Anti–circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 54888 (September 19, 2003).

Final Results of Review

We determine that the following weighted–average margin percentage exists for Atar for the period July 1, 2003, through June 30, 2004:

Manufacturer/exporter	Margin (percent)
Atar, S.r.L.	0.0

Assessment

The Department will determine, and U.S. Customs and Border Protection ("CBP") shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR 351.212(b). The Department calculated importer–specific duty assessment rates on the basis of 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. In accordance with 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties, all entries of subject merchandise during the POR for which the importer–specific assessment rate is zero or *de minimis*. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Cash Deposits Requirements

Bonding will no longer be permitted to fulfill security requirements for shipments from Atar of pasta from Italy entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this notice in the **Federal Register**. The following cash deposit rates shall be required for merchandise subject to the order entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results for this new shipper review, as provided for by section 751(a)(1) of the Act, as amended: (1) The cash deposit rates for Atar (*i.e.*, for subject merchandise both manufactured and exported by Atar) will be zero; (2) the cash deposit rate for exporters who received a rate in a prior segment of the proceeding will continue to be the rate assigned in that segment of the proceeding; (3) the cash deposit rate for entries of subject merchandise exported by Atar but not manufactured by Atar will continue to be the All Others rate (*i.e.*, 11.26 percent) or the rate applicable to the manufacturer, if so established; and (4) if neither the exporter nor the producer is a firm covered in this review or a prior segment of the proceeding, the cash deposit rate will be 11.26 percent, the All Others rate established in the less–than-fair–value investigation. These deposit requirements shall remain in effect until publication fo the final results of the next administrative review. There are no chages to the rates applicable to any other companies under this antidumping duty order.

This notice also 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 and countervailing 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 and countervailing duties occurred and the subsequent increase in antidumping and countervailing duties by the amount of antidumping duties reimbursed.

This notice also is the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. 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.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 18, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–2654 Filed 5–24–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–838]

Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada

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

SUMMARY: The Department has determined that entries of certain

softwood lumber products produced and exported by Produits Forestiers Saguenay Inc., shall be subject to the Abitibi Group cash deposit rate of 3.12 percent as of the date of publication of this notice in the **Federal Register**.

EFFECTIVE DATE: May 25, 2005.

FOR FURTHER INFORMATION CONTACT: Constance Handley or Saliha Loucif, AD/CVD Enforcement, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0631 or (202) 482–1779, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 2004, in accordance with section 751(b)(1) of the Tariff Act of 1930 (the Act) and 19 CFR 351.216(b) (2004), the Abitibi Group and Produits Forestiers Saguenay (PFS), both Canadian producers of softwood lumber products and interested parties in this proceeding, filed a request for a changed circumstances review. The Abitibi Group is composed of Abitibi–Consolidated Inc. (ACI), Abitibi Consolidated Company of Canada (ACCC), Produits Forestiers Petit Paris Inc. (PFPP), and Societe en Commandite Scierie Opitciwan (Opitciwan).

In response to this request, the Department of Commerce (the Department) initiated a changed circumstances review of the antidumping duty order on certain softwood lumber from Canada. *See Initiation of Antidumping Duty Changed Circumstances Review: Certain Softwood Products from Canada*, 69 FR 53681 (September 2, 2004) (*Initiation Notice*). On October 18, 2004, the Department issued to the Abitibi Group a questionnaire requesting further details on PFS' affiliation with the Abitibi Group. The Abitibi Group's response was received by the Department on November 18, 2004. The petitioner, the Coalition of Fair Lumber Imports Executive Commission, did not file comments with respect to the request.

On March 30, 2005, the Department published the preliminary results of this changed circumstances review and preliminarily determined that entries naming PFS as manufacturer and exporter should receive the Abitibi's cash deposit rate of 3.12 percent. See *Certain Softwood Lumber Products From Canada: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review*, 70 FR 16219 (March 30, 2005) (*Preliminary Results*). 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 20 days after publication of the *Preliminary Results* notice in the **Federal Register**, and submit rebuttal briefs, limited to the issues raised in those case briefs, seven days subsequent to the case briefs due date. We did not receive any hearing requests or comments on the *Preliminary Results*.

Scope of the Order

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger–jointed, of a thickness exceeding six millimeters;

(2) coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger–jointed;

(3) other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger–jointed; and

(4) coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger–jointed.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive. Preliminary scope exclusions and clarifications were published in three separate *Federal Register* notices.

Softwood lumber products excluded from the scope:

- trusses and truss kits, properly classified under HTSUS 4418.90
- I–joist beams
- assembled box spring frames
- pallets and pallet kits, properly classified under HTSUS 4415.20
- garage doors
- edge–glued wood, properly classified under HTSUS 4421.90.97.40 (formerly HTSUS 4421.90.98.40).
- properly classified complete door frames.
- properly classified complete window frames
- properly classified furniture

Softwood lumber products excluded from the scope only if they meet certain requirements:

- *Stringers* (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.97.40 (formerly HTSUS 4421.90.98.40).
- *Box–spring frame kits*: if they contain the following wooden pieces - two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius–cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1" in actual thickness or 83" in length.
- *Radius–cut box–spring–frame components*, not exceeding 1" in actual thickness or 83" in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.
- *Fence pickets* requiring no further processing and properly classified under HTSUS 4421.90.70, 1" or less in actual thickness, up to 8" wide, 6' or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog–eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring ¾ inch or more.
- *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: 1) the processing occurring in Canada is limited to kiln–drying, planing to create smooth–to-size

board, and sanding, and 2) if the importer establishes to U.S. Customs and Border Protection's (CBP) satisfaction that the lumber is of U.S. origin.

- *Softwood lumber products contained in single family home packages or kits,*[1] regardless of tariff classification, are excluded from the scope of the orders if the following criteria are met:

(A) The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

(B) The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, subfloor, sheathing, beams, posts, connectors and if included in purchase contract decking, trim, drywall and roof shingles specified in the plan, design or blueprint;

(C) Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;

(D) The whole package must be imported under a single consolidated entry when permitted by CBP, whether or not on a single or multiple trucks, rail cars or other vehicles, which shall be on the same day except when the home is over 2,000 square feet;

(E) The following documentation must be included with the entry documents:

- a copy of the appropriate home design, plan, or blueprint matching the entry;
- a purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;
- a listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;
- in the case of multiple shipments on the same contract, all items listed immediately above which are included in the present shipment shall be identified as well.

We have determined that the excluded products listed above are outside the scope of this order provided the specified conditions are met. Lumber products that CBP may classify as stringers, radius cut box–spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.40.90, 4421.90.70.40, and 4421.90.98.40. Due to changes in the 2002 HTSUS whereby subheading 4418.90.40.90 and 4421.90.98.40 were changed to 4418.90.45.90 and 4421.90.97.40, respectively, we are adding these subheadings as well.

In addition, this scope language has been further clarified to now specify that all softwood lumber products entered from Canada claiming non–subject status based on U.S. country of origin will be treated as non–subject U.S.-origin merchandise under the antidumping and countervailing duty orders, provided that these softwood lumber products meet the following condition: upon entry, the importer, exporter, Canadian processor and/or original U.S. producer establish to CBP's satisfaction that the softwood lumber entered and documented as U.S.-origin softwood lumber was first produced in the United States as a lumber product satisfying the physical parameters of the softwood lumber scope.[2] The presumption of non–subject status can, however, be rebutted by evidence demonstrating that the merchandise was substantially transformed in Canada.

Final Results of Changed Circumstances Review

Based on the information provided by the Abitibi Group 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 entries of certain softwood lumber products produced and exported by PFS shall receive the Abitibi's cash deposit rate of 3.12 percent. PFS's new deposit rate will become effective upon publication of this notice in the **Federal Register**.

Instructions to the U.S. Customs and Border Protection

The Department will instruct the U.S. Customs and Border Protection (CBP) to apply the Abitibi Group's cash deposit rate of 3.12 percent to all shipments of the subject merchandise produced and exported by PFS entered, or withdrawn from warehouse, for consumption, on or after the publication date of this notice. This deposit rate shall remain in effect until publication of the final results of the next administrative review in which Abitibi Group participates.

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 Act, and section 351.221(c)(3)(i) of the Department's regulations.

Dated: May 18, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–2655 Filed 5–24–05; 8:45 am]

BILLING CODE 3510–DS–S

[1] To ensure administrability, we clarified the language of this exclusion to require an importer certification and to permit single or multiple entries on multiple days as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

[2] See the scope clarification message (3034202), dated February 3, 2003, to CBP, regarding treatment of U.S.-origin lumber on file in the Central Records Unit, Room B-099 of the main Commerce Building.

DEPARTMENT OF COMMERCE

International Trade Administration

A–565–801

Stainless Steel Butt–Weld Pipe Fittings from the Philippines: Amended Final Determination of Sales at Less Than Fair Value Pursuant to Court Remand

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

SUMMARY: On March 23, 2005, the United States Court of International Trade (CIT) affirmed the Department of Commerce's (the Department's) redetermination on remand of the final determination of sales at less than fair value on stainless steel butt–weld pipe fittings from the Philippines. *See Tung Fong Industrial Co., Inc. v. United States*, Court No. 01–0070, Slip Op. 05–39 (CIT March 23, 2005) (*Tung Fong II*). The Department is now issuing this amended final determination reflecting the CIT's decision.

EFFECTIVE DATE: May 25, 2005.

FOR FURTHER INFORMATION CONTACT: Fred Baker at (202) 482–2924 or Robert James at (202) 482–0649, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On December 27, 2000, the Department published the final determination of sales at less than fair value of stainless steel butt–weld pipe fittings from the Philippines. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Butt–Weld Pipe Fittings From the Philippines*, 65 FR 81823 (December 27, 2000). Respondent Tung Fong Industrial Co., Ltd. (Tung Fong) filed a lawsuit challenging this determination. On April 7, 2004, the CIT issued an Order and Opinion remanding two issues to the Department. *See Tung Fong Industrial Co., Inc. v. United States*, 318 F. Supp. 2d 1321 (CIT April 7, 2004) (*Tung Fong I*). Specifically, the CIT ordered the Department to (1) reconsider the adequacy of the domestic manufacturers' petition, and the consequence of the falsity of their allegations of home market sales by Tung Fong; and (2) to reconsider its decision to resort to facts available in calculating Tung Fong's antidumping margin (and, if appropriate, to reevaluate the particular adverse facts available it selected). *See Tung Fong I*, 318 F. Supp 2d 1321 at 1338. In accordance with the CIT's order in *Tung Fong I*, the Department filed its remand results on September 7, 2004. On March 23, 2005, the CIT affirmed the Department's final results of remand redetermination in their entirety. *See Tung Fong II*. Accordingly, we are amending our final determination of sales at less than fair value.

Amendment to Final Determination

The CIT affirmed our final results of redetermination pursuant to Court remand on March 23, 2005. Given the particular circumstances of this case, we consider that the case is now final and conclusive. We are now amending the final determination of sales at less than fair value. We determine that a weighted–average margin of 7.59 percent exists for Tung Fong for the period of investigation, which was October 1, 1998, through September 30, 1999. No entries were enjoined during the pendency of this litigation, and no reviews of entries by any party have been requested or conducted since the less than fair value investigation. Accordingly, the Department will instruct U.S. Customs and Border Protection (CBP) to require a cash deposit of 7.59 percent for all entries of subject merchandise manufactured by Tung Fong beginning April 2, 2005. Furthermore, because the margin we assigned to "all others" in the final determination was based upon the margin we calculated for Tung Fong, we will also instruct CBP that the same cash deposit requirements are applicable to "all others" as are applicable to Tung Fong.

This notice is issued and published in accordance with section 735(d) of the Tariff Act of 1930, as amended.

Dated: May 18, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–2601 Filed 5–24–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Review Panel

AGENCY: Department of Commerce, National Oceanic and Atmospheric Administration, Oceanic and Atmospheric Research, National Sea Grant Program.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will discuss and provide advice on the National Sea Grant College Program in the areas of program evaluation, strategic planning, education and extension, science and technology programs, and other matters as described below:

DATES: The announced meeting is scheduled for: Sunday, June 5, 2005, 8 a.m. to 5 p.m.

ADDRESSES: North Samoset Room, Samoset Resort, 220 Warrenton Street, Rockport, Maine 04856.

FOR FURTHER INFORMATION CONTACT: Dr. Francis M. Schuler, Designated Federal Official, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11837, Silver Spring, Maryland 20910, (301) 713–2445.

SUPPLEMENTARY INFORMATION: The Panel, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Pub. L. 94–461, 33 U.S.C. 1128). The Panel advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice.

The agenda for this meeting can be found at *http://www.seagrant.noaa.gov/other/admininfo.html*. This meeting will be open to the public.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research.

[FR Doc. 05–10464 Filed 5–24–05; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050605C]

Marine Mammals; File No. 1042–1736

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Animal Training and Research, International, Moss Landing Marine Laboratories, 8272 Moss Landing Road, Moss Landing, CA 95039, (Jenifer Hurley, Ph.D., Principal Investigator) has been issued a permit to obtain up to four stranded, releasable California sea lions (*Zalophus californianus*) and up to two stranded, releasable Pacific harbor seals (*Phoca vitulina*) for the purpose of public display.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: On March 18, 2004, notice was published in the **Federal Register** (69 FR 12836) that a request for a public display permit to obtain up to four stranded, releasable California sea lions and up to two stranded, releasable Pacific harbor seals had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking

and Importing of Marine Mammals (50 CFR part 216).

The NOAA environmental review procedure provides that public display permits are generally categorically excluded from the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) requirements to prepare an environmental assessment (EA) or environmental impact statement (EIS). However, because of the public interest and comments on this application during the public comment period, NMFS determined that an EA was warranted. An EA was prepared on the issuance of the proposed permit, resulting in a finding of no significant impact.

Dated: May 19, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–10457 Filed 5–24–05; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Request under the African Growth and Opportunity Act (AGOA) and the United States-Caribbean Basin Trade Partnership Act (CBTPA)

May 20, 2005.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA)

ACTION: Request for public comments concerning a request for a determination that certain woven bamboo/cotton fabric cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA and the CBTPA.

SUMMARY: On May 18, 2005 the Chairman of CITA received a petition from Columbia Sportswear Company alleging that certain woven bamboo/cotton fabric, of specifications detailed below, classified in subheading 5516.42.0022 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requests that apparel articles of such fabrics be eligible for preferential treatment under the AGOA and the CBTPA. CITA hereby solicits public comments on this request, in particular with regard to whether such fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by June 9, 2005 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution Avenue, N.W. Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 112(b)(5)(B) of the AGOA; Section 211(a) of the CBTPA, amending Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Recovery Act (CBERA); Sections 1 and 6 of Executive Order No. 13191 of January 17, 2001; Presidential Proclamations 7350 and 7351 of October 2, 2000.

BACKGROUND:

The AGOA and the CBTPA provide for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The AGOA and the CBTPA also provide for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA and the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On May 18, 2005 the Chairman of CITA received a petition from Columbia Sportswear Company alleging that certain woven bamboo/cotton fabric, of specifications detailed below, classified in HTSUS subheading 5516.42.0022, for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the AGOA and the CBTPA for apparel articles that are both cut and sewn in one or more beneficiary countries from such fabrics.

Specifications:

Petitioner Style Number:	008410
Construction:	Woven Plain Weave
Fiber Content:	59% Bamboo / 41% Cotton
Yam Number:	33.6/1 metric warp, 23.5/1 metric filling, ring spun Overall average yam number: 17 - 18 metric
Thread Count:	27 - 28 warp ends per centimeter 20 - 21 filling picks per centimeter Total 47 - 49 threads per square centimeter
Weave:	Plain
Weight:	170 grams per square meter
Width:	130 - 133 centimeters
Finish:	Piece Dyed

CITA is soliciting public comments regarding this request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for these fabrics for purposes of the intended use. Comments must be received no later than June 9, 2005. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabric stating that it produces the fabric that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. CITA generally considers specific details, such as quantities and lead times for providing the subject product as business confidential. However, information such as the names of domestic manufacturers who were contacted, questions concerning the capability to manufacture the subject product, and the responses thereto should be available for public review to ensure proper public participation in the process. If this is not possible, an explanation of the necessity for treating such information as business

confidential must be provided. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–10565 Filed 5–23–05; 1:18 pm]

BILLING CODE 3510–DS–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

AGENCY: Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Notice; Defense Advisory Committee on military personnel testing.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held. The purpose of the meeting is to review planned changes and progress in developing computerized and paper-and-pencil enlistment tests.

DATES: June 2, 2005, from 8 a.m. to 5 p.m., and June 3, 2004, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Williamsburg Hospitality House Hotel & Conference Center, 415 Richmond Road, Williamsburg, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Under Secretary of Defense (Personnel and Readiness), Room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271.

SUPPLEMENTARY INFORMATION: Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian at the address or telephone number above no later than May 25, 2005.

Dated: May 19, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–10382 Filed 5–24–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. Navy Case No. 97,198 entitled "Method for Modifying Nitride Substrates for Covalent Immobilization of Aminated Molecules".

ADDRESSES: Requests for information about the invention cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Jane Kuhl, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone 202–767–3083. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, e-Mail: *kuhl@utopia.nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: May 18, 2005.

I.C. Le Moyne, Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–10392 Filed 5–24–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. U.S. Patent Application No. 09/668,407: Multiple-Buffer Queuing of Data Packets with High Throughput Rate, Navy Case No. 84,834.//U.S. Patent Application No. 09/715,772: Multi-Thread Peripheral Processing Using Dedicated Peripheral Bus, Navy Case No. 84,781.//U.S. Patent Application No. 09/715,778: Prioritizing Resource Utilization in Multi-Thread Computing System, Navy Case No. 84,779.//U.S. Patent Application No. 09/833,578: System and Method for Data Forwarding in a Programmable Multiple Network, Navy Case No. 84,886.//U.S. Patent Application No. 09/833,580: System and Method for Instruction-Level Parallelism in a Programmable Network Processor Environment, Navy Case No. 84,888.//U.S. Patent Application No. 09/833,581: System and Method for Processing Overlapping Tasks in a Programmable Network Processor Environment, Navy Case No. 84,885.//U.S. Patent Application No. 09/859,150: Adaptive Control of Multiplexed Input Buffer Channels, Navy Case No. 84,831.//U.S. Patent Application No. 09/933,786: Shift Processing Unit, Navy Case No. 84,832 and any continuations, divisionals or re-issues thereof.

ADDRESSES: Requests for copies of the inventions cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Jane F. Kuhl, Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone 202–767–3083. Due to temporary U.S. Postal Service delays, please fax 202–404–7920, e-mail: *kuhl@utopia.nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: May 18, 2005.

I.C. Le Moyne, Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–10393 Filed 5–24–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. U.S. Patent Application No. 10/355,162: Magnetic Nanoparticles Having Passivated Metallic Cores, Navy Case No. 83,289.//U.S. Patent Application No. 10/364,513: Nanoparticle Manganese Zinc Ferrites Synthesized Using Reverse Micelles, Navy Case No. 83,484.//U.S. Patent Application No. 10/414,571: Fluorescent-Magnetic Nanoparticles With Core-Shell Structure, Navy Case No. 84,548.

ADDRESSES: Requests for copies of the inventions cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Jane F. Kuhl, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone 202–767–7230. Due to temporary U.S. Postal Service delays, please fax 202–404–7920, e-Mail: *kuhl@utopia.nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: May 18, 2005.

I.C. Le Moyne Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–10394 Filed 5–24–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of closed meeting.

SUMMARY: The CNO Executive Panel is to report the final findings and recommendations of the New Concepts Study Group to the Chief of Naval Operations. The meeting will consist of discussions of perceived capability gaps in Information Operations (IO) that the Navy must address as it moves to reshape its fleet architecture and concept of operations.

DATES: The meeting will be held on Tuesday, June 7, 2005, from 1 p.m. to 2 p.m.

ADDRESSES: The meeting will be held at the Chief of Naval Operations office, Room 4E540, 2000 Navy Pentagon, Washington, DC 20350.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Chris Corgnati, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311, 703–681–4909.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order.

Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: May 18, 2005.

I.C. Le Moyne Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–10399 Filed 5–24–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DoD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. The meeting will include discussions of personnel issues at the Naval Academy, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on Monday, June 27, 2005, from 8 a.m. to 10:30 a.m. The closed Executive Session will be held on Monday, June 27, 2005, from 10:30 a.m. to 12:15 p.m.

ADDRESSES: The meeting will be held in the Chesapeake Room of Bancroft Hall at the U.S. Naval Academy, Annapolis, MD, 21402–5000.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Marc D. Boran, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, (410) 293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of personnel issues at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Secretary of the Navy has determined in writing that the meeting shall be partially closed to the public because it will be concerned with matters listed in section 552b(c)(2), (5), (6), (7) and (9) of title 5, United States Code.

Dated: May 18, 2005.

I.C. Le Moyne Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 05–10398 Filed 5–24–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection package to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The package requests a three-year extension of OMB Control Number 1910–0600, entitled, "Industrial Relations." This information collection package covers information necessary to collection of Human Resource information from major DOE contractors for contract management, administration, and cost control for example, reports of contractor expenditures for employee supplementary compensation such as medical insurance, life insurance, flexible benefit program, retirement and short term disability, overtime hours, holiday hours and other data.

DATES: Comments regarding this collection must be received on or before June 24, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon

as possible. The Desk Officer may be telephoned at 202–395–4650.

ADDRESSES: Written comments may be sent to: DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Rm 10102, 735 17th Street, NW., Washington, DC 20503.

Comments should also be addressed to: Sharon A. Evelin, Director, IM–11/Germantown Bldg., U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585–1290; or by fax at 301–903–9061 or by e-mail at *sharon.evelin@hq.doe.gov*, and to Stephanie Weakley, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585–1615, 202/287–1554, or by fax at 202/287–1656 or by e-mail at *stephanie.weakley@hq.doe.gov*.

FOR FURTHER INFORMATION CONTACT: The individuals listed in **ADDRESSES.**

SUPPLEMENTARY INFORMATION: This package contains: (1) OMB No. 1910–0600; (2) Package Title: Industrial Relations; (3) Purpose: This information is required for management oversight for DOE's Facilities Management Contractors and to ensure that the programmatic and administrative management requirements of the contract are managed efficiently and effectively; (4) Estimated Number of Respondents: 307; (5) Estimated Total Burden Hours: 7183; (6) Number of Collections: The package contains 9 information and/or recordkeeping requirements.

Statutory Authority: Department of Energy Organization Act, Pub. L. 95–91, of August 4, 1997.

Issued in Washington, DC, on May 18, 2005..

Sharon Evelin,

Director, Records Management Division, Office of the Chief Information Officer.

[FR Doc. 05–10434 Filed 5–24–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Nuclear Energy, Science and Technology; Nuclear Energy Research Advisory Committee; Notice of Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act, App.2, and section 102–3.65, title 41, Code of Federal Regulations and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Nuclear Energy Advisory Committee has been renewed for a six month period.

The Committee will provide advice to the Office of Nuclear Energy, Science and Technology on long-range planning and priorities in the nuclear energy program. The Secretary of Energy has determined that renewal of the Nuclear Energy Research Advisory Committee is essential to conduct the business of the Department of Energy and is in the public interest in connection with the performance of duties imposed by law upon the Department of Energy. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel Samuel at (202) 586–3279.

Issued in Washington, DC, on May 18, 2005.

Carol Matthews,

Acting Advisory Committee Officer.

[FR Doc. 05–10427 Filed 5–24–05; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Notice of Availability of Draft Section 3116 Determination for Salt Waste Disposal at the Savannah River Site; Extension of Comment Period

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of availability; extension of comment period.

SUMMARY: On April 1, 2005, the Department of Energy (DOE) published in the **Federal Register** a notice of availability of a draft Section 3116 determination for the disposal of separated, solidified, low-activity salt waste at the Savannah River Site (SRS) near Aiken, South Carolina. That notice set a deadline for public comments of May 16, 2005. On April 8, 2005, DOE published a correction to the April 1 notice, and extended the deadline for public comments to May 20, 2005. DOE has since received and is hereby granting a request for a further extension. The new deadline for submitting public comments on the draft Section 3116 determination is Tuesday, May 31, 2005. Comments received after that date will be considered to the extent practicable.

DATES: Comments must be received on or before May 31, 2005.

ADDRESSES: Written comments should be addressed to: Mr. Randall Kaltreider, U.S. Department of Energy, Office of Environmental Management, EM–20, 1000 Independence Avenue, SW., Washington, DC 20585. Alternatively, comments can be filed electronically by e-mail to *saltwastedetermination@hq.doe.gov*, or by Fax at (202) 586–4314.

FOR FURTHER INFORMATION CONTACT: Matthew Duchesne at (202) 586–6540.

Issued in Washington, DC, on May 18, 2005.

Charles E. Anderson,

Principal Deputy Assistant Secretary for Environmental Management.

[FR Doc. 05–10411 Filed 5–24–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, June 2, 2005, 6 p.m. to 9 p.m.

ADDRESSES: College Hill Library, Room L–107, Front Range Community College, 3705 W. 112th Avenue, Westminster, Colorado.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Executive Director, Rocky Flats Citizens Advisory Board, 10808 Highway 93, Unit B, MV–72, Room 107B, Golden, CO 80403; telephone (303) 966–7855; fax (303) 966–7856.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Presentation and Discussion on the Rocky Flats Integrated Monitoring Plan
2. Presentation and Discussion on Plans for Aerial Survey of Rocky Flats
3. Other Board business may be conducted as necessary

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should

contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments. This **Federal Register** notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: The minutes of this meeting will be available for public review and copying at the office of the Rocky Flats Citizens Advisory Board. To make arrangement, contact the Board by telephone at (303) 966–7855. Board meeting minutes are also posted on RFCAB's Web site within one month following each meeting at: *http://ww.rfcab.org/Minutes.HTML.*

Issued at Washington, DC on May 18, 2005.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 05–10410 Filed 5–24–05: 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, June 8, 2005, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, Tennessee.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Environmental Management Program Coordination with Oak Ridge National Laboratory and National Nuclear Security Administration concerning potential criticality issues at East Tennessee Technology Park.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m., Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC, on May 18, 2005.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 05–10426 Filed 5–24–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC05–600–000, FERC–600]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

May 17, 2005.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by July 29, 2005.

ADDRESSES: Copies of the proposed collection of information can be obtained from the Commission's Web site (*http://www.ferc.gov/docs-filings/elibrary.asp*) or to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director Officer, ED–33, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC05–600–000.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the eLibrary link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676. or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–600 "Rules of Practice and Procedures: Complaint Procedures" (OMB No. 1902–0180) is used by the Commission to implement the statutory provisions of the Federal Power Act (FPA), 16 U.S.C. 791a–825r; the Natural Gas Act (NGA), 15 U.S.C. 717–717w; the Natural Gas Policy Act (NGPA), 15 U.S.C. 3301–3432; the Public Utility Regulatory Policies Act of

1978 (PURPA), 16 U.S.C. 2601–2645; the Interstate Commerce Act, 49 U.S.C. App. § 1 *et seq.* and the Outer Continental Shelf Lands Act, 43 U.S.C. 1301–1356. With respect to the natural gas industry, section 14(a) of the NGA provides: The Commission may permit any person to file with it a statement in writing, under oath or otherwise, as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of an investigation.

For public utilities, section 205(e) of the FPA provides: Whenever any such new schedule is filed The Commission shall have the authority, either upon complaint or upon its own initiative without complaint at once, and, if it so orders, without answer or formal pleading by the public utility, but upon reasonable notice to enter upon hearing concerning the lawfulness of such rate, charge, classification, or service; and pending such hearing and the decision of the Commission.* * *

Concerning hydroelectric projects, section 19 of the FPA provides: * * * it is agreed as a condition of such license that jurisdiction is hereby conferred upon the Commission, upon complaint of any person aggrieved or upon its own initiative, to exercise such regulation and control until such time as the State shall have provided a commission or other authority for such regulation and control.* * *

For qualifying facilities, section 210(h)(2)(B) of PURPA provides: Any electric utility, qualifying cogenerator, or qualifying small power producer may petition the Commission to enforce the requirements of subsection (f) as provided in subparagraph (A) of this paragraph.

Likewise for oil pipelines, Part 1 of the Interstate Commerce Act (ICA), sections 1, 6 and 15 (recodified by P.L. 95–473 and found as an appendix to Title 49 U.S.C.) the Commission is authorized to investigate the rates charged by oil pipeline companies subject to its jurisdiction. If a proposed oil rate has been filed and allowed by the Commission to go into effect without suspension and hearing, the Commission can investigate the effective rate on its own motion or by complaint filed with the Commission. Section 13 of the ICA provided that: Any person, firm, corporation, company or association, or any mercantile, agricultural, or manufacturing society or other organization, or any common carrier complaining of anything done or omitted to be done by any common carrier subject to the provisions of this chapter in contravention of the provisions thereof, may apply to the Commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission.* * *

In Order No. 602, 64 FR 17087 (April 8, 1999), the Commission revised its regulations governing complaints filed with the Commission under the above statutes. Order No. 602 was designed to encourage and support consensual resolution of complaints, and to organize the complaint procedures so that all complaints are handled in a timely and fair manner. In order to achieve the latter, the Commission revised Rule 206 of its Rules of Practice and Procedure (18 CFR 385.206) to require that a complaint satisfy certain informational requirements, that answers be filed in a shorter, 20-day time frame, and that parties may employ various types of alternative dispute resolution procedures to resolve complaints.

On August 31, 1999, the Office of Management and Budget (OMB) approved the reporting requirements in Order No. 602 for a term of three years, the maximum period permissible under the Paperwork Reduction Act before an information collection must be resubmitted for approval. As noted above, this notice seeks public comments in order to recertify the FERC–600 reporting requirements in Order No. 602. The data in complaints filed by interested/affected parties regarding oil and natural gas pipeline operations, electric and hydropower facilities in their applications for rate changes, service, and/or licensing are used by the Commission in establishing a basis for various investigations and to make an initial determination regarding the merits of the complaint. Investigations may range from whether there is undue discrimination in rates or service to questions regarding market power of regulated entities to environmental concerns. In order to make a better determination, it is important to know the specifics of any oil, gas, electric, hydropower complaint "up front" in a timely manner and in sufficient detail to allow the Commission to act swiftly. In addition, such complaint data will help the Commission and interested parties to monitor the market for exercises of market power or undue discrimination. The information filed with the Commission is voluntary but submitted with prescribed information. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 385, Sections 385.206 and 385.213.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
178*	1	14	2,492

*Represents three year averages (2002–2004).

Estimated cost burden to respondents: 2,492 hours/2,080 hours per year × $108,558 per year = $130,060. The cost per respondent is equal to $730.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs

include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) 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; (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 those who are to respond.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2627 Filed 5–24–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–346–000]

El Paso Natural Gas Company; Notice of Tariff Filing

May 18, 2005.

Take notice that on May 16, 2005, El Paso Natural Gas Company (EPNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1A, Sixth Revised Sheet No. 2, to become effective June 17, 2005.

ENPG states that it has submitted a transportation service agreement (TSA) for the Commission's review of a discount provision. Furthermore, the tendered tariff sheet has been revised to list this additional TSA as a non-conforming agreement.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2620 Filed 5–24–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–343–000]

Florida Gas Transmission Company; Notice of Tariff Filing

May 18, 2005.

Take notice that on May 13, 2005, Florida Gas Transmission Company, (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 135B, to become effective June 13, 2005.

FGT states that the purpose of this filing is to remove tariff provisions implementing the Commission's CIG/Granite State discounting policy reflected in section 15j of the general terms and conditions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2617 Filed 5–24–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–132–003]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Motion To File Third Revised Annual Reconciliation Report

May 18, 2005.

Take notice that on May 13, 2005, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing a Motion to File a Third Revised Annual Reconciliation Report pursuant to section 35 of its general terms and conditions of its FERC Gas Tariff, Fourth Revised Volume No. 1–B.

KMIGT states that it has served copies of this filing upon each person designated on the official service list.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 25, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2613 Filed 5–24–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–341–000]

Midwestern Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 18, 2005.

Take notice that on May 13, 2005, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective June 12, 2005:

Second Revised Sheet No. 254
Sixth Revised Sheet No. 262
Second Revised Sheet No. 255
Fourth Revised Sheet No. 262.01
Second Revised Sheet No. 256
Fourth Revised Sheet No. 263
Second Revised Sheet No. 257
Fifth Revised Sheet No. 264
Second Revised Sheet No. 258
Second Revised Sheet No. 264A
Second Revised Sheet No. 259
Second Revised Sheet No. 265
First Revised Sheet No. 260
Fourth Revised Sheet No. 266B
First Revised Sheet No. 261

Midwestern states that it is filing the tariff sheets to revise section 21 of its general terms and conditions in order to reflect current business practices and reorganize the subsections in a more sequential manner thereby resulting in more comprehendible tariff provisions for its customers.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2615 Filed 5–24–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–229–001]

Northern Natural Gas Company; Notice of Compliance Filing

May 18, 2005.

Take notice that on May 16, 2005, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Substitute 71 Revised Sheet No. 53, proposed to be effective on May 1, 2005.

Northern states that the above sheet is being filed in compliance with the Commission's April 29, 2005 Order in this docket, related to the rate treatment for the Waterville storage facility in Northern's market area.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a

document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2614 Filed 5–24–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–344–000]

Saltville Gas Storage Company L.L.C.; Notice of Negotiated Rate Agreement Filing

May 18, 2005.

Take notice that on May 13, 2005, Saltville Gas Storage Company L.L.C. (Saltville) tendered for filing an original and five copies of an Interruptible Storage Service Agreement with Sequent Energy Management, L.P. pursuant to Saltville's Rate Schedule ISS (the Service Agreement).

Saltville states that the purpose of this filing is to implement a negotiated rate agreement for service rendered by its Saltville, Virginia gas storage facility.

Saltville requests an effective date of May 15, 2005 for the Service Agreement as detailed in its filing. Saltville specifically requests waiver of the notice requirements of 18 CFR 154.207 to permit this effective date.

Saltville states that copies of the filing were mailed to all affected customers of Saltville and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time May 25, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2618 Filed 5–24–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–348–000]

Sea Robin Pipeline Company, LLC; Notice of Proposed Changes in FERC Tariff

May 18, 2005.

Take notice that on May 13, 2005, Sea Robin Pipeline Company, LLC (Sea Robin) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the revised tariff sheets listed on Appendix A attached to the filing to become effective November 28, 1990, February 6, 1991, September 1, 1991, December 31, 1992, April 8, 1993, April 22, 1993 and November 28, 1993.

Sea Robin states that the purpose of this filing is to comply with the Commission's Orders Approving Abandonment and cancel Volume No. 2 Rate Schedules X–3, X–4, X–5, X–19, X–22, X–23 and X–33.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2607 Filed 5–24–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–73–000]

Sheboygan Power, LLC and Wisconsin Power and Light Company; Notice of Filing

May 17, 2005.

Take notice that on May 11, 2005, Alliant Energy Corporate Services, Inc., (AECS) on behalf of Alliant Energy Generation, Inc., and Sheboygan Power, LLC (SPLLC), (collectively, Applicants), submitted a letter in captioned docket advising the Commission that the Public Service Commission of Wisconsin issued a verbal order on May 5, 2005, approving the leased generation agreement between SPLLC and WPL

that governs the transfer for which Applicants seek approval from FERC.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on May 23, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2624 Filed 5–24–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1390–040]

Southern California Edison Company; Notice Extending Deadline for Filing Reply Comments and Soliciting Additional Motions To Intervene and Protests

May 18, 2005.

Take notice that the due date for filing reply comments set out in the Settlement Agreement notice issued on February 11, 2005, has been extended. Reply comments are now due on June 13, 2005. This notice also provides for the submission of motions to intervene for anyone not already an intervenor in the relicensing proceeding.

a. *Type of Application:* Settlement Agreement.

b. *Project No.:* 1390–040.

c. *Date filed:* February 4, 2005.

d. *Applicant:* Southern California Edison Company.

e. *Name of Project:* Lundy Project.

f. *Location:* On Mill Creek in Mono County, California. The project is located partly on lands in the Inyo National Forest and on land administered by the Bureau of Land Management.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* Mr. Nino J. Mascolo, Southern California Edison Company, P.O. Box 800, 2244 Walnut Grove Avenue, Rosemead, CA 91770, (626) 302–4459.

i. *FERC Contact:* John Smith, telephone (202) 502–8972, e-mail *john.smith@ferc.gov*.

j. Deadline for filing reply comments and motions to intervene: June 13, 2005.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Reply comments and motions to intervene may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. A copy of the Settlement Agreement is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

l. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2612 Filed 5–24–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–347–000]

Trailblazer Pipeline Company; Notice of Revenue Report

May 18, 2005.

Take notice that on May 13, 2005, Trailblazer Pipeline Company (Trailblazer) tendered for filing its Penalty Revenue Report. Trailblazer states the purpose of this filing is to inform the Commission that Trailblazer collected no penalty revenues in the quarter ended March 31, 2005.

Trailblazer states that copies of the filing are being mailed to its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: May 25, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2621 Filed 5–24–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–345–000]

TransColorado Gas Transmission Company; Notice of Tariff Filing

May 18, 2005.

Take notice that on May 13, 2005, TransColorado Gas Transmission Company (TransColorado) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective June 15, 2005:

First Revised Sheet No. 233
Original Sheet No. 233.01
First Revised Sheet No. 251

TransColorado states that the purpose of this filing is to supplement TransColorado's tariff provisions as contained in section 8.4 of the general terms and conditions to provide for reservation charge adjustments in the event TransColorado fails to confirm certain nominated primary firm volumes under contract.

TransColorado states that a copy of this filing has been served upon all of its customers and effected state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2619 Filed 5–24–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–342–000]

Transwestern Pipeline Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

May 18, 2005.

Take notice that on May 13, 2005, Transwestern Pipeline Company, LLC (Transwestern) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective June 13, 2005:

First Revised Sheet No. 41
First Revised Sheet No. 56

Transwestern states that the purpose of this filing is to remove tariff provisions implementing the Commission's CIG/Granite State discounting policy reflected in section 3.5 of Rate Schedules FTS–1 and LFT.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210

of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2616 Filed 5–24–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–1174–000; ER04–1174–001; ER04–1174–002; EL05–41–000]

Xcel Energy Services, Inc. and Southwest Power Pool, Inc. (Consolidated); Notice Pursuant to Section 206(B) of the Federal Power Act

May 17, 2005.

On December 17, 2004, pursuant to section 206 of the Federal Power Act (FPA),[1] the Commission instituted a proceeding in Docket No. EL05–41–000. *Xcel Energy Services, Inc.*, 109 FERC ¶ 61,284 (2004), *reh'g denied*, 111 FERC ¶ 61,084 (2005). The refund effective date for the proceeding instituted in Docket No. EL05–41–000 is May 20, 2005, five months after publication of notice of the institution of the proceeding in the **Federal Register**.[2]

[1] 16 U.S.C. 824e (2000).

[2] 69 FR 78009 (2004).

Under section 206 of the FPA, if no final decision is rendered by the refund effective date or by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, whichever is earlier, the Commission must state why it has failed to render a final decision. In that event the Commission must also provide its best estimate as to when it reasonably expects to make such a decision.

The Commission will be unable to render a final decision by the refund effective date because the proceeding is pending before a settlement judge.

In a May 4, 2005 report to the Commission, the settlement judge estimated that if the proceeding does not settle, a presiding judge would issue an initial decision by June 23, 2006. The Commission will require approximately four months after briefs on and opposing exceptions to an initial decision are filed to review the record, the initial decision and the briefs, and to issue an opinion. This estimate is influenced by the issues in the proceeding, as well as the complexity of the issues.

Therefore, assuming that the proceeding does not settle, the best estimate of when the Commission will reach a final decision in Docket No. EL05–41–000 is December 29, 2006.

The Secretary of the Commission issues this notice pursuant to section 375.302(w) of the Commission's rules, 18 CFR 375.302(w) (2004).

Magalie R. Salas,

Secretary.

[FR Doc. E5–2625 Filed 5–24–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Filings

Thursday, May 19, 2005.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER02–237–004; ER03–1151–004; ER95–1739–023; ER99–2984–005; ER02–2026–003; ER99–3320–003; ER03–922–004.

Applicants: J. Aron & Company.

Description: J. Aron & Company *et al.* submits First Revised Sheet 3 *et al.* to FERC Rate Schedule 1, which incorporates the change in status reporting requirement adopted in Order 652 under ER02–237 *et al.*

Filed Date: 5/16/2005.

Accession Number: 20050518–0154.

Comment Date: 5 p.m. Eastern Time on Monday, June 6, 2005.

Docket Numbers: ER02–600–004.

Applicants: Delta Energy Center, LLC.

Description: Delta Energy Center, LLC revises its market based rate schedule to incorporate the change in status reporting requirement pursuant to Order 652 under ER02–600.

Filed Date: 5/16/2005.

Accession Number: 20050518–0159.

Comment Date: 5 p.m. Eastern Time on Monday, June 6, 2005.

Docket Numbers: ER04–106–010; ER04–691–042 and EL04–104–040.

Applicants: Midwest Independent Transmission System Operator Inc.

Description: Midwest Independent Transmission System Operator Inc submits its compliance filing re proposed revisions to Attachment P under ER04–106 *et al.*

Filed Date: 5/16/2005.

Accession Number: 20050518–0152.

Comment Date: 5 p.m. Eastern Time on Monday, June 6, 2005.

Docket Numbers: ER04–366–003.

Applicants: Jersey Central Power & Light Company.

Description: FirstEnergy Service Co submits a supplement to the Market-Based Rate Power Sales Tariff of Jersey Central Power & Light Co etc. under ER04–366.

Filed Date: 5/16/2005.

Accession Number: 20050518–0155.

Comment Date: 5 p.m. Eastern Time on Monday, June 6, 2005.

Docket Numbers: ER04–372–003.

Applicants: Metropolitan Edison Company and Pennsylvania Electric Company.

Description: FirstEnergy Service Co submits a supplement to the Market-Based Rate Power Sales Tariff of Metropolitan Edison Co et al. to incorporate the requirement for reporting changes in status adopted by FERC under ER04–372.

Filed Date: 5/16/2005.

Accession Number: 20050518–0163.

Comment Date: 5 p.m. Eastern Time on Monday, June 6, 2005.

Docket Numbers: ER04–691–038; EL04–104–036.

Applicants: Midwest Independent Transmission System Operator Inc.

Description: Midwest Independent Transmission System Operator, Inc submits revisions to their Open Access Transmission and Energy Markets Tariff, FERC Electric Tariff, Third Revised Volume 1 under ER04–691 et al.

Filed Date: 5/16/2005.

Accession Number: 20050518–0001.

Comment Date: 5 p.m. Eastern Time on Monday, June 6, 2005.

Docket Numbers: ER05–541–002; ER05–542–002; ER05–543–002; ER05–544–002; ER05–545–002; ER05–546–002; ER05–547–002; ER05–548–002; ER05–549–002; ER05–550–002; ER05–551–002; ER05–552–002; ER05–553–002.

Applicants: New England Power Company.

Description: New England Power Co submits the corrected page designation of Substitute First Revised Service Agreement IA–NEP–14 concerning Deerfield 3 Development, originally filed on 5/4/05 under ER05–541 *et al.*

Filed Date: 5/16/2005.

Accession Number: 20050519–0113.

Comment Date: 5 p.m. Eastern Time on Monday, June 6, 2005.

Docket Numbers: ER05–764–001.

Applicants: Montana Alberta Tie Ltd.

Description: Report on Open Season of Montana Alberta Tie, Ltd under ER05–764.

Filed Date: 5/16/2005.

Accession Number: 20050518–0156.

Comment Date: 5 p.m. Eastern Time on Monday, June 6, 2005.

Docket Numbers: ER05–975–000.

Applicants: FirstEnergy Generation Corp.

Description: FirstEnergy Generation Corp submits its compliance filing to modify FERC Electric Tariff, original Volume 1 under ER05–975.

Filed Date: 5/16/2005.

Accession Number: 20050518–0158.

Comment Date: 5 p.m. Eastern Time on Monday, June 6, 2005.

Docket Numbers: ER05–976–000.

Applicants: FirstEnergy Solutions Corp.

Description: FirstEnergy Solutions Corp submits Original Sheet 1 et al. to FERC Electric Tariff, First Revised Volume 1, pursuant to Section 205 of the Federal Power Act under ER05–976.

Filed Date: 5/16/2005.

Accession Number: 20050518–0157.

Comment Date: 5 p.m. Eastern Time on Monday, June 6, 2005.

Docket Numbers: ER98–1150–004; EL05–87–000.

Applicants: Tucson Electric Power Company.

Description: Tucson Electric Power Co submits a filing in partial compliance with FERC's 4/14/05 Order and requests a 15-day extension of time to submit the balance of material required under ER98–1150 *et al.*

Filed Date: 5/16/2005.

Accession Number: 20050518–0160.

Comment Date: 5 p.m. Eastern Time on Monday, June 6, 2005.

Docket Numbers: ER99–3125–001.

Applicants: Minergy Neenah, LLC.

Description: Minergy Neenah, LLC submits an updated Triennial Market-Power Analysis, pursuant to FERC's July 28, 1999 Order granting exempt wholesale generator status as a condition of market-based rate authority etc. under ER99–3125.

Filed Date: 5/16/2005.

Accession Number: 20050518–0236.

Comment Date: 5 p.m. Eastern Time on Monday, June 6, 2005.

Docket Numbers: ER01–2636–003; ER00–2177–002.

Applicants: Allete, Inc.

Description: Allete, Inc. dba Minnesota Power and Rainy River Energy Corp submits First Revised Sheet 4 *et al.*, First Revised Volume 1 containing FERC's required provisions for the market based tariffs, in compliance with the 4/14/05 Order under ER01–2636 *et al.*

Filed Date: 5/13/2005.

Accession Number: 20050518–0004.

Comment Date: 5 p.m. Eastern Time on Friday, June 3, 2005.

Docket Numbers: ER05–970–000.

Applicants: MGE Power West Campus, LLC.

Description: MGE Power West Campus, LLC submits a notice of cancellation of a power purchase agreement, designated as West Campus FERC Electric Rate Schedule 1 under ER05–970.

Filed Date: 5/13/2005.

Accession Number: 20050517–0142.

Comment Date: 5 p.m. Eastern Time on Friday, June 3, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding (ER05– –000 docket numbers), 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 line 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 Street, NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For Assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2606 Filed 5–24–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–92–000]

Liberty Gas Storage, L.L.C.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Liberty Gas Storage Project and Request for Comments on Environmental Issues

May 18, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the proposed Liberty Gas Storage Project which involves the construction and operation of facilities by Liberty Gas Storage L.L.C. (Liberty) in Calcasieu and Beauregard Parishes, Louisiana.[1] These facilities would consist of two natural gas storage caverns; four injection/withdrawal wells, two compressor stations, approximately 24.6 miles of various diameter pipelines and four meter/regulator stations.

This notice announces the opening of the scoping period that will be used to

[1] Liberty's application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

gather environmental input from the public and interested agencies on the project. Please note that the scoping period will close on June 20, 2005.

This notice is being sent to potentially affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American Tribes, other interested parties; local libraries and newspapers. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a Liberty representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Liberty provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings and is available for viewing on the FERC Internet Web site at *http://www.ferc.gov*.

Summary of the Proposed Project

According to Liberty, the purpose of the Project is to provide additional natural gas storage services to local gas distributors, power generators, pipeline shippers, gas marketers and existing and proposed liquefied natural gas (LNG) terminals.

Liberty proposes to:

- Convert two existing salt dome caverns currently used for brine solution mining in Calcasieu Parish, Louisiana to natural gas storage caverns;
- Convert two existing brine extraction wells into natural gas injection/withdrawal wells;
- Construct two additional natural gas injection/withdrawal wells;
- Construct a 1.3-mile-long 20-inch-diameter pipeline connecting the converted storage caverns to a new on-site compressor station;
- Construct from the on-site compressor station a new 23.3-mile-long 30-inch-diameter pipeline that would interconnect with existing pipeline facilities in Beauregard Parish, Louisiana;
- Construct a remote compressor station in Beauregard Parish; and
- Construct four new meter/regulator stations along the 30-inch-diameter pipeline.

The on site compressor station would have approximately 17,650 HP of natural gas fueled compression. The remote compressor station would have approximately 9,470 HP of natural gas fueled compression. The project would have a total natural gas storage capacity of approximately 23.4 billion cubic feet (Bcf).

The location of the project facilities is shown in Appendix 1.[2]

Nonjurisdictional Facilities

Entergy Corporation would construct, own and operate a non-jurisdictional 1.2-mile-long 7.2/12.5 kilovolt distribution line entirely within the proposed 30-inch-diameter pipeline construction right-of-way. This distribution line would connect the remote compressor station to available electrical service.

Land Requirements for Construction

Construction of the proposed facilities would affect approximately 341.46 acres of land. Following construction, approximately 173.34 acres of land would be maintained as new aboveground facility sites and right-of-way. The remaining 168.12 acres of land would be restored and allowed to revert to its former use.

The EA Process

We[3] are preparing this EA to comply with the National Environmental Policy Act (NEPA) which requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. By this notice, we are also asking federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filing comments below.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

In the EA, we will discuss impacts that could occur as a result of the construction and operation of the project. We will also evaluate possible alternatives to the proposed project or portions of the project.

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Liberty. This preliminary list of issues may be changed based on your comments and our analysis.

- Endangered and threatened species: The federally endangered Red-cockaded Woodpecker and the federally threatened Bald Eagle may occur in the proposed project area.
- Wetlands: Approximately 40.9 acres of wetlands (including forested, scrub-shrub, emergent and "mosaic") would be affected during project construction and approximately 24.8 acres of wetlands would be permanently affected by project operation.
- Water resources: 19 waterbodies would be crossed by the proposed 30-inch-diameter pipeline.
- Land use: Two residences are located within 50 feet of the proposed 30-inch-diameter pipeline.
- Soils: Approximately 20.9 acres of prime farm land would be removed from potential agricultural use.

[2] The appendices referenced to in this notice will not be printed in the **Federal Register**. Copies of all appendices with the exception of appendix 1 (maps), are available on the Commission's website via the "eLibrary" link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or by calling (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket No. CP05–92–000.
- Mail your comments so that they will be received in Washington, DC on or before June 20, 2005.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created online.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (Appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor." Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see Appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental agencies, especially those in Appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2608 Filed 5–24–05; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1656–000]

California Independent System Operator Corporation; Notice of FERC Staff Attendance

May 18, 2005.

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of its staff will attend a series of stakeholder meetings on the California Independent System Operator Corporation's (CAISO) Market Redesign and Technology Upgrade proposal on the following dates:

May 18–19, 2005;

June 22–23, 2005;

July 13–14, 2005;

August 17–18, 2005;

September 21–22, 2005;

October 26–27, 2005.

The meetings will be held at the CAISO's facility, located at 151 Blue Ravine Road, Folsom, CA 95630.

Sponsored by the CAISO, the meetings are open to the public. The Commission staff's attendance is part of the Commission's ongoing outreach efforts. The meeting may discuss matters at issue in Docket No. ER02–1656–000.

For further information, contact Katherine Gensler at *katherine.gensler@ferc.gov;* (916) 294–0275.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2609 Filed 5–24–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP05–132–000, PF04–15–000]

Dominion Cove Point LNG, LP; Notice of Site Visit

May 17, 2005.

On June 1, 2005, the Office of Energy Projects (OEP) staff will conduct a pre-certification site visit of Dominion Cove Point LNG, LP's (Dominion) proposed TL–532 pipeline loop in Calvert County, Maryland. The loop is one component of Dominion's Cove Point LNG Expansion Project proposed in Maryland, Pennsylvania and West Virginia.

We will view the BGE Alternative, State Route 4 Alternative and other variations that are being considered for the planned pipeline expansion. Examination will be by automobile and on foot. Representatives of Dominion will be accompanying the OEP staff.

All interested parties may attend. Those planning to attend must provide their own transportation. Those interested in attending should meet at 1 p.m. (EDT) in the parking lot/area of the Wal-Mart Shopping Center, 150 Solomons Island Road North, Prince Frederick, Maryland.

For additional information, please contact the Commission's Office of External Affairs at 1–866–208–FERC.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2629 Filed 5–24–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM01–8–000, ER02–2001–000]

Revised Public Utility Filing Requirements; Electric Quarterly Reports; Notice of Electric Quarterly Reports Users Group Meeting

May 17, 2005.

On April 25, 2002, the Commission issued Order No. 2001, a final rule which requires public utilities to file Electric Quarterly Reports (EQR) Order 2001–C, issued December 18, 2002, instructed all public utilities to file these reports using Electric Quarterly Report Submission Software. This notice announces a working meeting for the EQR Users Group to be held Wednesday, June 22, 2005, at FERC headquarters, 888 First Street, NW., Washington, DC. The meeting will run from 10 a.m. to 4 p.m. (EST). At the workshop, Commission staff and EQR users will discuss recent changes in the EQR software, Commission efforts to improve the quality of filings, and the progress in developing EQR-appropriate reports at the ISOs. A detailed agenda will be issued in a later notice and will be provided on *http://www.ferc.gov* attached to the event on the calendar prior to the meeting.

Documents to be discussed at the meeting will be posted on the EQR Users Group and Workshops page on FERC.gov at *http://www.ferc.gov/docs-filing/eqr/groups-workshops.asp.*

All interested parties are invited to attend. There is no registration fee. For those unable to attend in person, limited access to the workshop will be available by teleconference.

Those interested in participating are asked to register on the FERC Web site at *http://www.ferc.gov/whats-new/registration/eqr-06–22-form.asp.* Interested parties wishing to file comments may do so under the above-captioned Docket Numbers. Those filings will be available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or via phone at (866) 208–3676 (toll-free). For TTY, contact (202) 502–8659.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an e-mail to *accessibility@ferc.gov* or call toll-free 866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For additional information, please contact Michelle Reaux of FERC's Office of Market Oversight & Investigations at (202) 502–6497 or by e-mail at *eqr@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–2628 Filed 5–24–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at the Florida Public Service Commission's Workshop Concerning the Proposed GridFlorida RTO

May 18, 2005.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the workshop on May 23, 2005, to be held at 9:30 a.m. (EST) at the Florida Public Service Commission, Hearing Room 148, 2540 Shumard Oak Blvd., Tallahassee, FL 32399–0850. The workshop is being held for ICF Consulting Resources, LLC to present and discuss the results of its cost benefit study of the proposed GridFlorida Regional Transmission Organization (RTO).

The discussion may address matters at issue in Docket No. RT01–67–003.

The meeting is open to the public. For more information, contact Robert T. Machuga, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (202) 502–6004 or *robert.machuga@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–2611 Filed 5–24–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–134–001, ER05–134–002, and EL05–91–000]

ISO New England Inc.; Notice of Technical Conference

May 18, 2005.

Take notice that the Commission will convene a technical conference on Thursday, June 9, 2005, at 9 a.m. (EST), at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 in conference room 3M–2A.

The purpose of the conference is to explore the issues raised, gain an understanding of the facts, and obtain additional information about the positions of the parties regarding Schedule 3 of the ISO New England Inc.'s Tariff for Transmission Dispatch and Power Administration Services, through which it collects its administrative costs for providing Reliability Administration Service

(RAS). The Commission directed its staff to convene this technical conference in an April 19, 2005 Order.[1] Issues the participants will be asked to address include but are not limited to:

(1) What is the rationale underlying the assignment of RAS costs based on load obligation? How well does the current cost allocation match the costs of the RAS with the benefits received from the service? How many and what type of market participants (*e.g.*, financial marketers, generators, etc.) are negatively affected by the current rate design?

(2) What is the rationale for assigning RAS costs as proposed under the alternative cost allocation? How well does the alternative cost allocation match the costs of the RAS with the benefits received from the service? Explain why exports should be treated differently from all other load obligations?

(3) Quantify the impact that the asserted "seam" caused by the current RAS rate design has had (and would have) on cross-border transactions? Assess the overall impact of both rate designs on the liquidity and efficiency of New England markets.

(4) Are the rate designs used by NYISO and PJM for similar reliability services the same as the alternative rate design proposed here? If not, how do they differ and what effect would the differences have on the costs assessed for a participant with the same load profile obligation in each of the RTO/ISOs? Would seams still exist if the alternative rate design were adopted by ISO–NE?

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–208–01659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

All interested persons are permitted to attend. There will be no transcript of the conference. For further information please contact Elizabeth Arnold at (202) 502–8818 or e-mail *elizabeth.arnold@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2610 Filed 5–24–05; 8:45 am]

BILLING CODE 6717–01–P

[1] *ISO New England Inc.*, 111 FERC ¶ 61,096 (2005).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No RM93–11–000]

Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992; Notice of Annual Change in the Producer Price Index for Finished Goods

May 17, 2005.

The Commission's regulations include a methodology for oil pipelines to change their rates through use of an index system that establishes ceiling levels for such rates. The Commission bases the index system, found at 18 CFR 342.3, on the annual change in the Producer Price Index for Finished Goods (PPI–FG). This rule now provides that pipelines should use PPI–FG as the oil pricing index factor, 18 CFR 342.3(d)(2).[1] The Commission determined in an order on remand issued February 24, 2003, that the PPI–FGE *without* the minus 1 percent is the appropriate oil pricing index factor for pipelines to use.[2]

The regulations provide that the Commission will publish annually, an index figure reflecting the final change in the PPI–FG, after the Bureau of Labor Statistics publishes the final PPG–FG in May of each calendar year. The annual average PPI–FG index figure for 2003 was 143.3. The annual average PPI–FG index figure for 2004 was 148.5.[3] Thus, the percent change (expressed as a decimal) in the annual average PPI–FG from 2003 to 2004 is positive .036288.[4] Oil pipelines must multiply their July 1, 2004, through June 30, 2005, index ceiling levels by positive 1.036288[5] to compute their index ceiling levels for July 1, 2005, through June 30, 2006, in accordance with 18 CFR § 342.3(d). For guidance in calculating the ceiling levels for each 12 month period beginning January 1, 1995[6] see *Explorer Pipeline Company*, 71 FERC 61,416 at n.6 (1995).

In addition to publishing the full text of this Notice in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print this Notice via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington DC 20426. The full text of this Notice is available on FERC's Home Page at the eLibrary link. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field and follow other directions on the search page.

User assistance is available for eLibrary and other aspects of FERC's Web site during normal business hours. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2623 Filed 5–24–05; 8:45 am]

BILLING CODE 6717–01–P

[1] 108 FERC ¶ 61,210 (2004).

[2] 102 FERC ¶ 61,195 at P 1 (2003).

[3] Bureau of Labor Statistics (BLS) publishes the final figure in mid-May of each year. This figure is publicly available from the Division of Industrial Prices and Price Indexes of the BLS, at (202) 691–7705, and in print in August in Table 1 of the annual data supplement to the BLS publication Producer Price Indexes via the Internet at [*http://www.bls.gov/ppi*]. To obtain the BLS data, click on "Get Detailed PPI Statistics," and then under the heading "Most Requested Statistics" click on "Commodity Data." At the next screen, under the heading "Producer Price Index—Commodity," select the first box, "Finished goods—WPUSOP3000", then scroll all the way to the bottom of this screen and click on Retrieve data.

[4] [148.5—143.3]/143.3 = 0.036288.

[5] 1 + 0.036288 = 1.036288

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD05–3–000]

Promoting Regional Transmission Planning and Expansion To Facilitate Fuel Diversity Including Expanded Uses of Coal-Fired Resources; Post-Technical Conference Notice Inviting Comments

May 18, 2005.

On May 13, 2005, the Commission convened a technical conference in Charleston, West Virginia, in order to identify regional solutions to promote regional transmission planning, expansion and enhancement to facilitate fuel diversity including increased integration of coal-fired resources to the transmission grid. As announced at the conclusion of the conference, entities are invited to file comments in the above-captioned docket on the topics discussed at the conference. Comments are due on May 27, 2005.

[6] For a listing of all prior multipliers issued by the Commission, see the Commission's website, *www.ferc.gov*. The table of multipliers can be found under the headings "Oil" and "Index".

The Commission encourages electronic submission of comments in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the comment to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All filings in this docket are accessible online at *http://www.ferc.gov*, using the "eLibrary" link and will be available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2622 Filed 5–24–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0121; FRL–7713–1]

Pythium Oligandrum DV 74; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0121, must be received on or before June 24, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Tessa Milofsky, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0455; e-mail address: *milofsky.tessa@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2005–0121. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the

photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2005–0121. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2005–0121. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0121.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2005–0121. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 16, 2005.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Biopreparaty Co. Ltd.

PP 4F6877

EPA has received a pesticide petition (4F6877) from Biopreparaty Co., Ltd. (EPA Company No. 81606), Tylisovska 1, Prague 6, Czech Republic, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the microbial pesticide pythium oligandrum DV 74 in or on all food commodities.

Pursuant to section 408(d)(2)(A)(i) of FFDCA, as amended, Biopreparaty Co., Ltd., has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Biopreparaty Co., Ltd., and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

Pythium oligandrum DV 74 is the active ingredient in the proposed end-use product "Polyversum." The end-use product polyversum is for the stimulation of plant growth, the enhancement of plant strength, and the prevention of fungal attack. Polyversum mobilizes plant defense mechanisms, increases plant resistance to pathogenic fungal attack, increases rate of growth, and increases overall crop strength and yield. Polyversum can be applied as a seed dressing, pre-plant soak, overhead spray or soil drench, or irrigation application to agricultural crops, ornamental plants, and turf grasses.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* Pythium oligandrum, originally described by Charles Drechsler in 1943. Isolate to be registered was discovered in 1972, in the Czech Republic. The pythium oligandrum DV 74 isolate is on deposit at the American Type Culture Collection (ATCC) as "Pythium oligandrum, ATCC 38472." The microorganism pythium oligandrum is naturally found in soil, and is often associated with other mycoparasites and fungal species. It is widely distributed around the world, including the United States for example, pythium oligandrum was isolated from 74 of 93 soil samples collected from 40 different counties in California that represented a wide range of environmental conditions.

The pythium family has 100 varieties, of which pythium oligandrum is one of four mycoparasites. The microorganism lives parasitically on plant pathogenic fungi, and works to induce/stimulate the internal defense systems of plants. Testing has shown pythium oligandrum is parasitic to 20 species of plant pathogenic fungi, including: Alternaria, Botrytis, Fusarium, Gaeumannonyces, Ophiostoma, Phoma, Pseudocercosporella, Pythium, Sclerotinia, and Sclerotium.

The active ingredient pythium oligandrum DV 74 colonizes the surroundings of treated and sown seeds, and the rhizosphere of treated plants. Because of its strong mycoparasitical and competitive abilities, the active ingredient suppresses the growth and antagonistic effects of many soil borne pathogenic fungi, which cause damping-off and seed, and root rots such as phytophthora, rhizoctonia, fusarium, etc. The active ingredient also induces a defense reaction in the newly emerged plant, through stimulation of the phytohormones, which are involved in the resistance mechanisms of the plant against diseases. Pythium oligandrum DV 74 does not produce any antibiotics and therefore is considered a true plant growth promoter for the induction of plant resistance. The mycoparasitic action and stimulation of plant resistance by pythium oligandrum are both associated with positive effects on plant health and viability.

2. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* An analytical method for detecting and measuring levels of pesticide residues is not applicable. It is expected that, when used as proposed, pythium oligandrum DV 74 would not result in residues that are of toxicological concern. Further, the application of pythium oligandrum DV 74 to seeds, foliage, or soil will not result in an increase in concentration in the environment. The level of pythium oligandrum DV 74 in the environment following application is expected to decrease to levels similar to naturally occurring concentrations, because the organism does not thrive in the absence of sufficient nutrients.

C. Mammalian Toxicological Profile

Studies to evaluate the safety to mammals were conducted on the technical grade active ingredient (tgai) and are summarized as follows:

1. *Acute oral toxicity.* No adverse effects were seen on either rats or mice that received an oral gavage dose of 5,000 milligrams/kilogram/body weight (mg/kg/bwt) of the technical grade active ingredient. No effects on appearance, behavior, or body weight were observed in any rats or mice any time after dosing. No rats or mice died during the 14–day observation period, and no gross pathological changes were found in organs in the thoracic or abdominal cavities at necropsy. An LD_{50} >5,000 mg/kg was established.

2. *Acute dermal toxicity.* No adverse effects were seen in rats that received a dermal dose of 5,000 mg/kg/bwt of the technical grade active ingredient. No effects on appearance, behavior, or body weight were observed in any rats any time after exposure. No rats died during the 14–day observation period, and no gross pathological changes were found in organs in the thoracic or abdominal cavities at necropsy. An LD_{50} >5,000 mg/kg was established.

3. *Acute inhalation toxicity.* No adverse effects were seen in rats that were exposed by inhalation for 4 hours to a concentration of 5 mg/liters of the technical grade active ingredient. No effects on appearance, behavior, or body weight were observed in any rats any time after exposure. No rats died during the 14–day observation period, and no gross pathological changes were found in organs in the thoracic or abdominal cavities at necropsy. Histological analysis of the lungs and trachea taken from two males and two females revealed no pathogenic response to inhalation of the test article. An LD_{50} >5 mg/l was established.

4. *Primary eye irritation.* In the primary eye irritation study on the technical grade active ingredient, 3 rabbits received 100 mg of test article in 0.1 milliliter (ml) of water in the right eye. Redness of the conjunctiva and swelling of the eyelids occurred during

the first 24–48 hours after exposure, both were rated as high as 2 on a scale of 1 to 3 in some animals. The edema resolved in all animals within 48–hours after test article administration and the redness resolved in all animals within 72 hours. No changes in the cornea or iris of any animals occurred. Pythium oligandrum DV 74 was rated "moderately irritating" to eyes.

5. *Primary dermal irritation.* No adverse effects were seen in rabbits that received a subcutaneous injection of an extract of the technical grade active ingredient. In this study 3 rabbits received 0.2 ml of an extract of the test article by subcutaneous injection at 2 injection sites. No reaction was observed between 45 minutes and 72 hours after the subcutaneous injection. Pythium oligandrum DV 74 was rated "non irritant" to skin.

6. *Hypersensitivity incidents.* The registrant has noted that no incidents of hypersensitivity or any other adverse effects have occurred through the research, develop, or testing of the active ingredient and its related end-use product. Should any incidents occur, they will be reported per the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) section 6(a)(2).

A literature search on pythium oligandrum demonstrates that this microorganism is not infective to mammals. The literature search indicated that pythium oligandrum has been studied for over 20 years, and the only biological effects attributed to the organism are parasitic effects on fungal species and stimulation of resistance to parasitic infection in plants. The mycoparasitic mode of action of pythium oligandrum is initiated by a specific affinity for the cells of the pathogenic fungus, followed by tight binding to the host hyphae and local penetration. Pythium oligandrum stimulates disease resistance in plants by production of a small proteinaceous molecule that serves as a biochemical signal in the plant. Neither the mechanism of mycoparasitic action nor the stimulation of plant resistance is associated with adverse affects in mammals.

Further, pythium oligandrum DV 74 is the active ingredient in a variety of over the counter products sold in parts of Europe (including the Czech Republic, Slovakia, and Poland). These products include: A footbath to control itching and odor (brand name: Biodeur Deodorant); a fingernail treatment preparation to control nail fungus (brand name: BioBlock); a mouthwash rinse to control yeast infections (brand name: BioPlus); and a bath additive (brand name: Biodelta) and a skin cream (brand name: Biogama) to control psoriasis and dermatitis. These products have been marketed since 1999 without reports of adverse effects.

A waiver has been requested for acute oral, dermal, pulmonary, and IV/IP toxicity/pathogenicity; dermal sensitization; and the conditionally required Tier 1 data for cell culture and immune response. In general, the waiver requests are based on the rationale that the active ingredient:

- Produced no adverse effects in mammalian toxicity studies.
- Is ubiquitous as a naturally occurring soil colonizer whose level in the environment will not significantly increase with the use of products that contain this strain.
- Has modes of action that are not consistent with toxicity or pathogenicity to mammals.
- In an extensive literature search yielded no reports of adverse effects in humans or other mammals.
- Is marketed in Europe as the active ingredient in over the counter products, including mouth rinses, bath additives, and skin creams, with no reports of adverse effects.

The results of toxicity testing indicate there is no risk to human health or the environment from pythium oligandrum DV 74. There are no reports of ecological or human health hazards caused by pythium oligandrum in general or the strain pythium oligandrum DV 74 in specific. It does not produce recognized toxins, enzymes, or virulence factors normally associated with mammalian invasiveness or toxicity. The absence of acute toxicity or pathogenicity in laboratory animals demonstrates the benign nature of this strain. The limited survival of pythium oligandrum DV 74 and the lack of acute toxicity indicate that both the hazard and the exposure associated with the use of pythium oligandrum DV 74 are low. Non-dietary exposures would not be expected to pose any quantifiable risk due to a lack of residues of toxicological concern.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Dietary exposure from use of pythium oligandrum DV 74, as proposed, is minimal. The major intended use of pythium oligandrum DV 74 is application to growing plants and crops for the purposes of disease control and stimulating plant defense mechanisms. Pythium oligandrum is widely distributed around the world, including the U.S. application of pythium oligandrum DV 74 to seeds, foliage, or soil will not result in a substantial increase in concentration in the environment. The level of pythium oligandrum DV 74 in the environment following application will decrease to levels similar to naturally occurring concentrations, because the organism does not thrive in the absence of sufficient nutrients. Limited survivability once its nutrient source is exhausted will limit any dietary exposure.

ii. *Drinking water.* Similarly, exposure to humans from residues of pythium oligandrum DV 74 in consumed drinking water would be unlikely. Pythium oligandrum DV 74 is not known to grow or thrive in aquatic environments. Potential exposure to surface water would be negligible and exposure to drinking water (well or ground water) would be impossible to measure. The major intended use of pythium oligandrum DV 74 is to treat growing plants and crops for the purpose of disease control. Pythium oligandrum DV 74 has limited survivability once its nutrient source is exhausted. The risk of the microorganism passing through the soil to ground water is minimal to unlikely. Additionally, the fungus would not tolerate the conditions water is subjected to in a drinking-water facility (including: Chlorination, pH adjustments, high temperatures, and/or anaerobic conditions).

2. *Non-dietary exposure.* The potential for non-dietary exposure to the general population, including infants and children, is unlikely as the proposed use sites are application to growing plants or crops. Further, pythium oligandrum DV 74 has limited survivability once its nutrient source is exhausted.

3. *Conclusion.* The results of toxicity testing indicate there is no risk to human health or the environment from pythium oligandrum DV 74. There are no reports of ecological or human health hazards caused by pythium oligandrum in general or the strain pythium oligandrum DV 74 in specific. It does not produce recognized toxins, enzymes, or virulence factors normally associated with mammalian invasiveness or toxicity. The absence of acute toxicity or pathogenicity in laboratory animals demonstrates the benign nature of this strain. The limited survival of pythium oligandrum DV 74 and the lack of acute toxicity indicate that both the hazard and the exposure associated with the use of pythium oligandrum DV 74 are low. Non-dietary exposures would not be expected to pose any quantifiable risk due to a lack of residues of toxicological concern.

E. Cumulative Exposure

It is not expected that, when used as proposed, pythium oligandrum DV 74 would result in residues that are of toxicological concern. Pythium oligandrum DV 74 is applied to growing plants and crops for the purposes of disease control and stimulating plant resistance. Pythium oligandrum is widely distributed around the world, including the U.S. application of pythium oligandrum DV 74 to seeds, foliage, or soil will not result in a substantial increase in concentration in the environment. The level of pythium oligandrum DV 74 in the environment following application will decrease to levels similar to naturally occurring concentrations because the organism does not thrive in the absence of sufficient nutrients. The results of toxicity testing indicate there is no risk to human health or the environment from pythium oligandrum DV 74. There are no reports of ecological or human health hazards caused by pythium oligandrum in general or the strain pythium oligandrum DV 74 in specific. It does not produce recognized toxins, enzymes, or virulence factors normally associated with mammalian invasiveness or toxicity. The absence of acute toxicity or pathogenicity in laboratory animals demonstrates the benign nature of this strain. The limited survival of pythium oligandrum DV 74 and the lack of acute toxicity indicate that both the hazard and the exposure associated with the use of pythium oligandrum DV 74 are low.

F. Safety Determination

1. *U.S. population.* Acute toxicity studies have shown that pythium oligandrum DV 74 is not toxic, pathogenic, or infective to mammals. The major intended use of pythium oligandrum DV 74 is applied to growing plants and crops for the purposes of disease control and stimulating plant resistance. The level of pythium oligandrum DV 74 in the environment following application will decrease to levels similar to naturally occurring concentrations because the organism does not thrive in the absence of sufficient nutrients. The results of toxicity testing indicate there is no risk to human health or the environment from pythium oligandrum DV 74. There are no reports of ecological or human health hazards caused by pythium oligandrum in general or the strain pythium oligandrum DV 74 in specific. It does not produce recognized toxins, enzymes, or virulence factors normally associated with mammalian invasiveness or toxicity. The absence of acute toxicity or pathogenicity in laboratory animals demonstrates the benign nature of this strain. The limited survival of pythium oligandrum DV 74 and the lack of acute toxicity indicate that both the hazard and the exposure associated with the use of pythium oligandrum DV 74 are low. There is a reasonable certainty of no harm to the general U.S. population from exposure to this active ingredient.

2. *Infants and children.* It is not expected that, when used as proposed, pythium oligandrum DV 74 would result in residues that are of toxicological concern. There is a reasonable certainty of no harm for infants and children from exposure to pythium oligandrum DV 74 from the proposed uses.

G. Effects on the Immune and Endocrine Systems

To date there is no evidence to suggest that pythium oligandrum DV 74 functions in a manner similar to any known hormone, or that it acts as an endocrine disrupter.

H. Existing Tolerances

There is no EPA tolerance for pythium oligandrum DV 74.

I. International Tolerances

A Codex Alimentarium Commission Maximum Residue Level (MRL) is not required for pythium oligandrum DV 74.

[FR Doc. 05–10340 Filed 5–24–05; 8:45 am]
BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

May 13, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by July 25, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: OMB Control No.: 3060–0881.

Title: Section 95.861, Interference.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 460.

Estimated Time Per Response: .50 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 230 hours.

Annual Cost Burden: $13,800.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission will be submitting this information collection after the 60 day public comment period in order to obtain the full three year clearance from OMB. We are requesting an extension (no change) to the information collection requirements. Section 95.861 requires 218–219MHz licensees to notify all households located both within a TV Channel 13 Grade B contour and a 218–219 MHz system service area of potential interference to Channel 13 TV reception. This requirement is intended to prevent interference from 219–219

MHz operations to TV Channel 13 reception.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–10112 Filed 5–24–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

May 13, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 25, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918 or via the Internet at *Cathy.Williams@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0849.

Title: Commercial Availability of Navigation Devices, CS Docket 97–80.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 215.

Estimated Time per Response: 10 minutes to 40 hours.

Frequency of Response: One-time reporting requirement; Every 60 days and every 90 days reporting requirements.

Total Annual Burden: 4,944 hours.

Total Annual Cost: 33,450.

Privacy Impact Assessment: No impact(s).

Needs and Uses: Section 629 of the Communications Act of 1934, as amended, directs the Commission to assure the commercial availability of navigation devices from sources other than incumbent multichannel video programming distributors. The Commission released an *Order*, In the Matter of the Implementation of Section 304 of the Telecommunications Act of 1996—Commercial Availability of Navigation Devises, CS Docket No. 97–80 on March 17, 2005. The reporting requirements in the *Order* are imposed to ensure that progress continues to be made toward the statutory goals of Section 629. Beginning August 1, 2005 or upon Office of Management and Budget (OMB) approval, and every 60 days thereafter, the National Cable and Telecommunications Association and the Consumer Electronics Association must file joint status reports and hold joint status meetings with the Commission regarding progress in bidirectional negotiations and a software-based conditional access agreement. Beginning August 1, 2005 or upon OMB approval, and every 90 days thereafter, the six largest cable operators must file status reports on CableCARD deployment and support. The reporting requirement that the cable industry file a report on the feasibility of deploying downloadable security is effective on December 1, 2005 or upon OMB approval.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–10113 Filed 5–24–05; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

May 17, 2005.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13. 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 control number.

FOR FURTHER INFORMATION CONTACT: Paul J. Laurenzano, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–1359 or via the Internet at *plaurenz@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0819.

OMB Approval date: 05/12/2005.

Expiration Date: 05/31/2008.

Title: Lifeline Assistance (Lifeline) Connection Assistance (Link-Up) Reporting Worksheet and Instructions (47 CFR 54.400–54.417).

Form No.: FCC–497.

DATES: Effective 05/12/2005 for sections 54.405(c), 54.405(d), 54.409(d), 54.409(d)(3), 54.410, 54.416, 54.417 which contain information collection requirements that required approval by the Office of Management and Budget. The other rules in section 54.400–54.417 went into effect July 22, 2004 as noted in the **Federal Register** notice announcing the adoption of the final rule (69 FR 34590).

Estimated Annual Burden: 1,318,055 responses; 101,493 total annual burden hours; approximately 0.08 hours average per respondent.

Needs and Uses: In the Report and Order and Further Notice of Proposed Rulemaking (FCC 04–87), the Commission modified rules to improve the effectiveness of the low-income support mechanism. Among other steps taken, the Order requires collection of certain information to certify and subsequently verify that beneficiaries of low-income support are qualified to receive the support. Specifically, the Commission requires the Eligible Telecommunications Carrier (ETC), in states governed by federal default rules, to retain records of the ETC's self-certification and certifications made by the subscriber, including the subscriber's self-certification that the purported income represents the total household income and the subscriber's

self-certification as to the number of persons in the household. **Note:** *Pursuant to OMB guidance, we emphasize that while carriers are allowed to ask for information to verify eligibility, they are not allowed to keep records of the actual information contained in the documents that are presented to them. Rather, carriers may only keep a record that the appropriate documentation was presented and reviewed at the point of eligibility determination.* In those states that operate their own Lifeline/Link-Up program, states must devise a procedure to ensure eligibility criteria are met and those ETCs must be able to document that they are complying with state regulations and recordkeeping requirements. This information collection is necessary to protect against fraud and abuse in the provision of services supported by the universal service mechanism.

In addition, the Commission plans to issue a voluntary survey to gather data and information from states regarding the administration of Lifeline/Link-Up programs upon OMB approval. This information collection is necessary to enable the Commission to make more informed decisions in any future Lifeline/Link-Up orders.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–10232 Filed 5–24–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

May 12, 2005.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 24, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Cathy.Williams@fcc.gov* or Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information concerning this information collection(s) contact Cathy Williams at (202) 418–2918 or via the Internet at *Cathy.Williams@fcc.gov.* If you would like to obtain or view a copy of this revised information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0289.

Title: Section 76.601, Performance Tests; Section 76.1704, Proof of Performance Test Data; Section 76.1705, Performance Tests (Channels Delivered); 76.1717, Compliance with Technical Standards.

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; State, local or tribal government.

Number of Respondents: 8,250.

Estimated Time per Response: 0.5–70 hours.

Frequency of Response: Semi-annual reporting requirement; Triennial reporting requirement; Third party disclosure requirement.

Total Annual Burden: 276,125 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 1704 requires that proof of performance test required by 47 CFR 76.601 shall be maintained on file at the operator's local business office for at least five years. The test data shall be made available for inspection by the Commission or the local franchiser, upon request. If a signal leakage log is being used to meet proof of performance test recordkeeping requirement in accordance with Section 76.601, such a log must be retained for the period specified in 47 CFR 76.601(d). 47 CFR 76.1705 requires that the operator of each cable television system shall maintain at its local office a current listing of the cable television channels which that system delivers to its subscribers. 47 CFR 76.601(b) requires cable systems with over 1,000 subscribers to conduct semi-annual proof of performance test, triennial proof of performance tests for color testing, and otherwise conform to pertinent technical standards throughout the system. Section 76.601(c) states that the FCC or the local franchise authority (LFA) require additional tests for specified subscriber terminals to secure compliance with technical standards. Prior to requiring any additional testing, the LFA shall notify the cable operator, which is then allowed 30 days to come into compliance with any perceived signal quality problems that need to be corrected.

47 CFR section 76.1717 requires an operator to be prepared to show, on request by an authorized representative of the Commission or the local franchising authority, that the system does in fact, comply with the technical standards rules in part 76, subpart K.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–10240 Filed 5–24–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Approved by the Office of Management and Budget

May 3, 2005.

SUMMARY: The Federal Communications Commissions (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995, Pub. L. 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of law, no person shall be subject to any penalty for failing to

comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number.

FOR FURTHER INFORMATION CONTACT: For additional information or questions concerning the OMB control number and expiration date should be directed to Kim Matthews, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–2120 or via the Internet to *Kim.Matthews@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1082.

OMB Approval Date: 04/14/05.

OMB Expiration Date: 04/30/08.

OMB Control Number: 3060–1082.

Title: Section 73.1201 Station Identification.

Form Number: N/A.

Respondents: Business or other for-profit entities, Not-for-profit institutions.

Number of Respondents: 1,700.

Estimated Hours per Response: 2 hours.

Needs and Uses: On August 4, 2004, the Commission adopted a Report and Order in MB Docket No. 03–15, In the Matter of Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television. With this Report and Order, the Commission requires digital television stations to follow the same rules for station identification as analog television stations. 47 CFR 73.1201 (a) requires licensees to make broadcast station identification announcements at the beginning and ending of each time of operation, and hourly, as close to the hour as feasible, at a natural break in program offerings. Television and Class A television broadcast stations may make these announcements visually or aurally. 47 CFR 73.1201 (b) requires the licensees' station identification to consist of the station's call letters immediately followed by the community or communities specified in its license as the station's location. The name of the licensee, the station's frequency, the station's channel number, and/or the station's network affiliation may be inserted between the call letters and station location. DTV stations choosing to include the station's channel number in the station identification must use the station's major channel number and may distinguish multicast program streams.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–10241 Filed 5–24–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

May 20, 2005.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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 control number.

FOR FURTHER INFORMATION CONTACT: Paul J. Laurenzano, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–1359 or via the Internet at *plaurenz@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0149.

OMB Approval Date: 4/28/2005.

Expiration Date: 4/30/2008.

Title: Application and Supplemental Information Requirements—Part 63, Sec. 214, sections 63.01–02; 63.50–53; 63.60–63; 63.65–66; 63.71; 63.90; 63.500–01; 63.504–05; and 63.601.

Form No.: N/A.

Estimated Annual Burden: 35 responses; 175 total annual burden hours; approximately 5 hours average per respondent.

Needs and Uses: Section 214 of the Communications Act of 1934, as amended, requires that the FCC review establishment, acquisition, operation, line extension, and service discontinuance by interstate common carriers. Since 1999, however, the Commission has only regulated the acquisition and discontinuance of domestic telecommunciations services. This OMB collection pertains primarily to section 63.71 of the Commission's rules, which governs the authorization process for domestic discontinuance, impairment or reduction in service.

OMB Control No.: 3060–0823.

OMB Approval Date: 5/2/2005.

Expiration Date: 05/31/2008.

Title: Pay Telephone Reclassification Memorandum Opinion and Order, CC Docket No. 96–128.

Form No.: N/A.

Estimated Annual Burden: 400 responses; 44,700 total annual burden hours; 2–35 hours average response time per respondent.

Needs and Uses: In the MO&O issued in CC Docket No. 96–128, the Wireline Competition Bureau clarified requirements established in the Payphone Orders for the provision of payphone-specific coding digits by LECs and PSPs, to IXCs, beginning October 7, 1997. Specifically, the Order clarified that only FLEX ANI comply with the requirements; required that LECs file tariffs to reflect FLEX ANI as a nonchargeable option to IXCs; requires that LECs file tariffs to recover costs associated with implementing FLEX ANI; and grants permission and certain waivers.

OMB Control No.: 3060–0298.

OMB Approval Date: 5/2/2005.

Expiration Date: 5/31/2008.

Title: Tariffs (Other Than Tariff Review Plan)—Part 61.

Form No.: N/A.

Estimated Annual Burden: 1,160 responses; 66,120 total annual burden hours; 57 hours per respondent.

Needs and Uses: Part 61 is designed to ensure that all tariffs filed by common carriers are formally sound, well organized, and provide the Comission and the public with sufficient information to determine the justness and reasonableness as required by the Act, of the rates, terms and conditions in those tariffs.

OMB Control No.: 3060–0391.

OMB Approval Date: 5/12/2005.

Expiration Date: 5/31/2008.

Title: Program to Monitor the Impacts of the Universal Service Support Mechanisms, CC Docket Nos. 98–202, 96–45.

Form No.: N/A.

Estimated Annual Burden: 1,456 responses; 971 total annual burden hours; .66 hours average per respondent.

Needs and Uses: The Commission has a program to monitor the impacts of the universal service support mechanisms. The program requires periodic reporting by telephone companies and the universal service administrator. The information is used by the Commission, Federal-State Joint Boards, Congress, and the general public to assess the impacts of the decisions of the Commission and the Joint Boards.

OMB Control No.: 3060–0715.

OMB Approval Date: 5/11/2005.

Expiration Date: 5/31/2008.

Title: Telecommunications Carriers' Use of Customer Proprietary Network Information (CPNI) and Other Customer Information, CC Docket No. 96–115.

Form No.: N/A.

Estimated Annual Burden: 4,832 responses; 669,808 total annual burden hours; .5–78 hours average per respondent.

Needs and Uses: The Memorandum Opinion and Order on Reconsideration (FCC 04–206) was released in response to reconsideration requests for the

Commission's Subscriber List Information Order, which implemented section 222(e) of the Act. Section 222(e) requires carriers to provide their subscriber list information (*i.e.*, the names, addresses, phone numbers, and, where applicable, yellow pages advertising classifications) of their telephone exchange services subscribers to requesting directory publishers on a timely and unbundled basis and under reasonable and nondiscriminatory rates, terms, and conditions.

OMB Control No.: 3060–0997.

OMB Approval Date: 5/12/2005.

Expiration Date: 5/31/2008.

Title: 47 CFR Section 52.15(k), Numbering Utilization and Compliance Audit Program.

Form No.: N/A.

Estimated Annual Burden: 25 responses; 825 total annual burden hours; 33 hours average per respondent.

Needs and Uses: The audit program, consisting of audit procedures and guidelines, was developed to conduct random audits. The random audits are conducted on the carriers that use numbering resources in order to verify the accuracy of numbering data reported on FCC Form 502, and to monitor compliance with FCC rules, orders and applicable industry guidelines. Failure of the audited carrier to respond to the audits can result in penalties. Based on the final audit report, evidence of potential violations may result in enforcement action.

OMB Control No.: 3060–0496.

OMB Approval Date: 3/2/2005.

Expiration Date: 3/31/2008.

Title: The ARMIS Operating Data Report.

Form No.: FCC 43–08.

Estimated Annual Burden: 55 responses; 7,645 total annual burden hours; 139 hours average per respondent.

Needs and Uses: The Operating Data Report collects annual statistical data in a consistemt format that is essential for the Commission to monitor network growth, usage, and reliability.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–10337 Filed 5–24–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

May 17, 2005.

SUMMARY: The Federal Communications Commission ("Commission") has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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 control number.

FOR FURTHER INFORMATION CONTACT: Dana Jackson, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–2247 or via the Internet at *Dana.Jackson@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0653.

OMB Approval Date: 05/02/2005.

Expiration Date: 05/31/2008.

Title: Section 64.703 (b) and (c), Consumer Information—Posting of Aggregators.

Form No.: N/A.

Estimated Annual Burden: 56,200 responses, 178,467 hours, 3.18 hours per response.

Needs and Uses: As required by 47 U.S.C. 226(c)(1)(A), 47 CFR 64.703(b) provides that aggregators (any person that, in the ordinary course of its operations, makes telephone available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services), shall post on or near the telephone instrument, in plain view of consumers: (1) The name, address, and toll-free telephone number of the provider of operator services (operator services means any interstate telecommunications service initiated from an aggregator location that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an interstate telephone call through a method other than: (a) Automatic completion with billing to the telephone from which the call originated, or (b) completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer)); (2) except for commercial mobile radio service aggregators, a written disclosure that the rates for all operator-assisted calls are available on request, and that consumers have a right to obtain access to the interstate common carrier of their choice and may contact their preferred interstate common carriers for information on accessing that carrier's service using that telephone; (3) in the case of a pay telephone, the local coin rate for the pay telephone location; and (4) the name and address of the Consumer & Governmental Affairs Bureau, of the Federal Communications Commission, to which the consumer may direct complaints regarding operator services.

47 CFR 64.703 (c) provides that postings required by this section shall be updated as soon as practicable following any change of the carrier presubscribed to provide interstate service at an aggregator location, but no later than 30 days following such change. Consumers will use this information to determine whether or not to use the services of the identified operator service provider.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–10338 Filed 5–24–05; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

Sixth Meeting of the Advisory Committee for the 2007 World Radiocommunication

Conference (WRC–07 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the sixth meeting of the WRC–07 Advisory Committee will be held on June 22, 2005, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2007 World Radiocommunication Conference. The Advisory Committee will consider any preliminary views and draft proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: June 22, 2005; 11 a.m.–12 noon.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Roytblat, FCC International Bureau, Strategic Analysis and

Negotiations Division, at (202) 418–7501.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–07 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2007 World Radiocommunication Conference (WRC–07).

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the sixth meeting of the WRC–07 Advisory Committee. The WRC–07 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the sixth meeting is as follows:

Agenda

Sixth Meeting of the WRC–07 Advisory Committee, Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554

June 22, 2005; 11 a.m.–12 noon

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Fifth Meeting
4. Status of Preliminary Views and Draft Proposals
5. Reports on Recent WRC–07 Preparatory Meetings
6. NTIA Draft Preliminary Views and Proposals
7. Informal Working Group Reports and Documents relating to:
   a. Consensus Views and Issues Papers
   b. Draft Proposals
8. Future Meetings
9. Other Business

Federal Communications Commission.

Don Abelson,

Chief, International Bureau.

[FR Doc. 05–10117 Filed 5–24–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may obtain copies of agreements by contacting the Commission's Office of Agreements at 202–523–5793 or via email at *tradeanalysis@fmc.gov*. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011284–057.

Title: Ocean Carrier Equipment Management Association Agreement ("OCEMA").

Parties: APL Co. Pte. Ltd.; American President Lines, Ltd.; A.P. Moller-Maersk A/S, trading under the name of Maersk Sealand; CMA CGM, S.A.; Compania Sudamericana de Vapores, S.A.; CP Ships (USA) LLC; Evergreen Marine Corp. (Taiwan) Ltd.; Hanjin Shipping Co., Ltd.; Hamburg-Süd; Hapag-Lloyd Container Linie GmbH; Hyundai Merchant Marine Co. Ltd.; Mitsui O.S.K. Lines Ltd.; Contship Containerlines, a division of CP Ships (UK) Limited; Australia-New Zealand Direct Line, a division of CP Ships (UK) Limited; Orient Overseas Container Line Limited; P&O Nedlloyd Limited; P&O Nedlloyd B.V.; Nippon Yusen Kaisha Line; Yangming Marine Transport Corp.; COSCO Containerlines Company Limited; and Kawasaki Kisen Kaisha, Ltd.

Filing Party: Jeffrey F. Lawrence, Esq.; and Donald J. Kassilke, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The agreement changes the name of Lykes Lines Limited LLC to CP Ships (USA) LLC and deletes TMM Lines Limited LLC as a party to the agreement.

Agreement No.: 011435–010.

Title: APL/CP Ships Space Charter Agreement.

Parties: American President Lines, Ltd.; APL Co. Pte Ltd.; CP Ships (USA) LLC.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW., Suite 900; Washington, DC 20036.

Synopsis: The amendment changes the name of Lykes Lines Limited, LLC to CP Ships (USA) LLC and deletes TMM Lines Limited, LLC as a party to the agreement.

Agreement No.: 011539–012.

Title: Montemar/Lykes/TMM Space Charter and Sailing Agreement.

Parties: Lykes Lines Limited, LLC; Montemar Maritima S.A.; and TMM Lines Limited, LLC.

Filing Party: Wayne R. Rohde, Esquire; Sher & Blackwell, LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The subject modification changes Lykes' name to CP Ships (USA) LLC effective June 1, 2005, deletes TMM as a party effective July 1, 2005, adds a new Article 7.10 to facilitate the transition, changes the agreement name, and restates the agreement.

Agreement No.: 011656–002.

Title: West Coast Industrial Express Joint Service Agreement.

Parties: Associated Transport Line, LLC; Industrial Maritime Carriers, LLC; ATL Investments Ltd.; West Coast Industrial Express, L.L.C.

Filing Party: Wade S. Hooker, Esq.; 211 Central Park W; New York, NY 10024.

Synopsis: The amendment substitutes Industrial Maritime Carriers, LLC for Industrial Maritime Carriers (U.S.A.) Inc. as a party to the agreement.

Agreement No.: 011707–004.

Title: Gulf/South America Discussion Agreement.

Parties: Associated Transport Line, LLC; ATL Investments Ltd.; Industrial Maritime Carriers (U.S.A.) Inc.; and Seaboard Marine Ltd.

Filing Party: Wade S. Hooker, Esq.; 211 Central Park W; New York, NY 10024.

Synopsis: The amendment substitutes Industrial Maritime Carriers, LLC for Industrial Maritime Carriers (U.S.A.) Inc. as a party to the agreement.

Agreement No.: 011715–003.

Title: IMC/ATL Space Charter and Sailing Agreement.

Parties: Associated Transport Line, LLC; Industrial Maritime Carriers (U.S.A.) Inc.; Industrial Maritime Carriers, LLC.

Filing Party: Wade S. Hooker, Esq.; 211 Central Park W; New York, NY 10024.

Synopsis: The amendment substitutes Industrial Maritime Carriers, LLC for Industrial Maritime Carriers (U.S.A.) Inc. as a party to the agreement and restates the agreement for housekeeping purposes.

Agreement No.: 011743–004.

Title: Global Transportation Network Agreement.

Parties: APL Co. Pte. Ltd.; American President Lines, Ltd.; Companhia Libra de Navegacao; Compania Sud-Americana de Vapores, S.A.; CP Ships (U.K.) Ltd.; Crowley Liner Services, Inc.; Hanjin Shipping Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Lykes Lines Limited, LLC; Mitsui O.S.K. Lines, Ltd.; Montemar Maritima, S.A.; Norasia Container Lines Limited; Senator Lines GMBH; TMM Lines Limited, LLC; Wan Hai Lines Ltd.; Yangming Marine Transport Corp.; Zim Integrated Shipping Services, Ltd.;

Filing Party: Eric C. Jeffrey, Esq.; Goodwin Procter LLP; 901 New York Avenue, NW.; Washington, DC 20001.

Synopsis: The amendment changes Zim Israel Navigation Company's name to Zim Integrated Shipping Services, Ltd.

Agreement No.: 011914.

Title: CP/CCNI Med-Gulf Space Charter Agreement.

Parties: CP Ships (USA), LLC and Compania Chilena de Navegacion Interoceanica.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW; Washington, DC 20036.

Synopsis: The agreement authorizes Lykes to charter space to CCNI in the trade between the U.S. Gulf Coast/Mexico and Italy, Malta and Spain and between the U.S. Gulf Coast, Miami, and Mexico.

By Order of the Federal Maritime Commission.

Dated: May 20, 2005.

Bryant L VanBrakle,

Secretary.

[FR Doc. 05–10442 Filed 5–24–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
017753NF	Associated Consolidators Express, 1273 Industrial Parkway, Unit 290, Hayward, CA 94544	April 7, 2005.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 05–10458 Filed 5–24–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 007778N.

Name: International Aero-Sea Forwarders Ltd.

Address: 35–22 Tongeui-Dong, Chongro-Ku, Seoul, Korea.

Date Revoked: May 14, 2005.

Reason: Failed to maintain a valid bond.

License Number: 017312F.

Name: Manila Forwarders, LLC.

Address: 3228 Madera Avenue, Los Angeles, CA 90039.

Date Revoked: February 4, 2005.

Reason: Failed to maintain a valid bond.

License Number: 017761N.

Name: U.S. Rich Long, Inc. dba Agend Logistics Company

Address: 10932 Schmidt Road, #H, El Monte, CA 91733

Date Revoked: February 25, 2005.

Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. 05–10443 Filed 5–24–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicant:

Oceans Consolidators, 9990 NW, 14th Street, Suite 103, Miami, FL 33172, Officers: Carlos J. Bengochea, President (Qualifying Individual), Olga R. Bengochea, Treasurer.

Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Con-Way Global Solutions, Inc., dba Con-Way Air Express, 277 Southfield Parkway, Suite 170, Forest Park, GA 30297, Officer: Harold Gary Weekley, Asst. Secretary (Qualifying Individual).

Four Points International, 16 Nantucket Court, Howell, NJ 07731, George Mario Luna, Sole Proprietor.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–10459 Filed 5–24–05; 8:45 am]

BILLING CODE 6730–01–P

GENERAL SERVICES ADMINISTRATION

[FMR Bulletin 2005-B1]

Delegations of Lease Acquisition Authority-Notification, Usage, and Reporting Requirements for General Purpose, Categorical, and Special Purpose Space Delegations

AGENCY: General Services Administration.

ACTION: Notice of Bulletin.

SUMMARY: SUMMARY: It has been reported recently to Congressional committees and the General Services Administration (GSA), Public Buildings Service that some Federal agencies using the delegated leasing authority issued to Federal agencies on September 25, 1996, as part of the "Can't Beat GSA Leasing" program are not following properly the instructions specified as a condition for use of the leasing delegation. The attached bulletin reemphasizes and updates the notification and reporting requirements specified in the delegation of authority and its supporting information, GSA Bulletin FPMR D-239 and GSA Bulletin FPMR D-239, Supplement 1, which are hereby canceled and superseded by this bulletin. Additional reporting requirements for categorical and special purpose space delegations are also

included. This bulletin is in keeping with the spirit of Executive Order 13327, "Federal Real Property Asset Management," in order to maximize the increased Governmentwide emphasis on real property inventory management. The FMR and any corresponding documents may be accessed at GSA's website at *http://www.gsa.gov/fmr.* Click on FMR Bulletins.

EFFECTIVE DATES: May 25, 2005.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Stanley C. Langfeld, General Services Administration, Office of Real Property Management (MP), Washington, DC 20405; *stanley.langfeld@gsa.gov.* (202) 501-1737. Please cite FMR Bulletin 2005-B1.

SUPPLEMENTARY INFORMATION: GSA Bulletin FPMR D-239, published in the Federal Register October 16, 1996, announced a new GSA leasing program called "Can't Beat GSA Leasing" and the delegation of lease acquisition authority issued by the Administrator of General Services to the heads of all Federal agencies in his letter of September 25, 1996. GSA Bulletin FPMR D-239, Supplement 1, published in the Federal Register on December 18, 1996, issued supporting information for the delegation.

There have been several instances reported of agencies failing to meet the conditions required for use of the lease delegation:

1. Several agencies have failed to notify GSA prior to conducting a specific leasing action,

2. Semi-annual performance reports on use of the lease delegation are not being submitted to GSA on a regular basis, and

3. Some agencies have exceeded the authority of the delegation, which is restricted to below prospectus level actions.

The following bulletin reemphasizes the above conditions, updates outdated information and citations, and modifies certain reporting requirements.

[FMR Bulletin 2005-B1]

To: Heads of Federal Agencies

Subject: Revised Implementation Requirements of the Delegation of Lease Acquisition Authority.

1. *Purpose.* This bulletin reemphasizes and modifies certain procedures associated with the use of the delegation of general purpose leasing authority provided by GSA in 1996 as part of the leasing program called "Can't Beat GSA Leasing," and two other longstanding delegations for categorical and agency-specific special purpose space as currently provided in 41 CFR 102-73.

2. *Expiration.* This bulletin contains information of a continuing nature and will remain in effect until canceled.

3. *Background.*

a. Agencies (without their own independent leasing authority) are required to use one of the three types of blanket lease delegations offered by GSA: 1) general purpose, 2) categorical, or 3) special purpose. The "Can't Beat GSA Leasing" program, offering the general purpose delegation, was an outgrowth of GSA's commitment to streamline its leasing operations. Under this program, GSA provided each Federal agency a simple choice: either engage GSA to provide the most cost-effective and fastest service available, or use the leasing authority to perform the space acquisition on its own. This bulletin emphasizes the need for agencies to communicate with GSA prior to using the general purpose delegation for each space action. This bulletin also establishes that agencies are now required to submit semi-annual reports on their use of any of the three types of blanket lease delegations.

b. Executive Order No. 13327, "Federal Real Property Asset Management" (69 F.R. 5897), dated February 4, 2004, promotes the efficient and economical use of Federal real property resources. Among other things, the Executive Order requires Federal agencies to establish performance measures addressing the cost, value, and efficiency of all acquisitions, within the scope of an overall agency asset management plan. Agencies using any of the three GSA lease delegations are expected to apply these measures to their acquisitions.

4. *Action.*

a. Pursuant to the authority vested in the Administrator of General Services by subsections 121(d) and 585(a) of Title 40 of the United States Code, in his letter of September 25, 1996, the Administrator delegated authority to the heads of all Federal agencies to perform all functions related to the leasing of general purpose space for a term of up to 20 years regardless of geographic location. Lease procurements using this delegation must be compatible with the GSA community housing plans for new Federal construction or any suitable space that will become available in Federally-controlled facilities. GSA will advise the agency about any limiting factors (*e.g.* length of term) so that the lease will be consistent with any community housing plans. This delegation of authority does not alter the space delegation authorities in 41 CFR 102-73 of the Federal Management Regulation, which pertain to "categorical" and "special purpose" space. It is also important to emphasize that none of the GSA delegations provide authorization for agencies to conduct procurements on behalf of or to collect rent from other agencies.

b. *General Purpose Delegation Notification Requirements.* Prior to instituting any new, succeeding, or superseding lease action under this delegation, the head of a Federal agency or its designee shall notify in writing the appropriate GSA, Assistant Regional Administrator for Public Buildings Service (ARA/PBS) of the agency's need for general purpose space and the agency's intent to exercise the authority granted in this delegation. The name of the contracting officer conducting the procurement as well as a limited acquisition plan for the procurement shall be included in the notice to GSA. The limited acquisition plan must meet the requirements specified by General Services Administration Acquisition Manual (GSAM), Part 507.1- Acquisition Plans. A sample limited acquisition plan is available online at *http://www.gsa.gov/leasingform.* The agency may exercise the authority contained in this delegation only when the ARA/PBS notifies the requesting agency in writing that suitable Federally-controlled space is not available to meet its space need. If the agency subsequently decides not to exercise the requested authority, it must provide written notice of such to the ARA/PBS.

c. *General Conditions for the use of General Purpose, Categorical, and Special Purpose Delegations.*

(1) Relocation of Government employees from GSA-controlled Federally-owned or -leased space may take place when prior written confirmation has been received from the appropriate ARA/PBS that suitable Government-controlled space cannot be provided for them.

(2) The average net annual rent (gross annual rent excluding services and utilities) of any lease action executed under these delegations must be below the prospectus threshold. The prospectus threshold may be adjusted annually in accordance with 40 U.S.C. 3307(g). The current threshold for each fiscal year can be accessed by entering GSA's website at *http://www.gsa.gov* and then inserting "prospectus thresholds" in the search mechanism in the upper right hand corner of the page.

(3) Redelegation of the authority to lease may only be made to those officers, officials, and employees fully meeting the experience and training requirements of the contracting officer warrant program as specified in section 501.603-1 of the GSAM.

(4) Federal agencies must acquire and utilize the space in accordance with all applicable laws and regulations that apply to Federal space acquisition activities, including, but not limited to, the Competition in Contracting Act, the Federal Management Regulation, Executive Order No. 12072, Executive Order No. 13006, Executive Order No. 13327, the Davis-Bacon Act, OMB Circular A-11 (Scoring), and the GSAM.

(5) Agencies are responsible for maintaining the capacity to support all delegated leasing activities, including a warranted contracting officer, legal review and oversight, construction and inspection management, cost estimation, lease management and administration, and program oversight. Prior to each leasing action, the agency must conduct an assessment of its needs to establish technical requirements and the amounts of space necessary to meet mission requirements. Additionally, agencies are expected to acquire space at charges consistent with prevailing market rates for comparable facilities in the community. Accountability for all leasing activities shall be coordinated through the agency's Senior Real Property Officer.

(6) GSA retains the right to assess, at any time, both the integrity of each individual lease action as well as the capability of an agency to perform all aspects of the delegated leasing activities and, if necessary, to revoke an agency's delegation.

(7) The general purpose delegation requires agencies to provide GSA with leasing performance information periodically. In addition, GSA is now requiring agencies to provide lease performance information on categorical and special purpose lease delegation actions. Accordingly, agencies using any of the GSA lease delegations are hereafter required to provide GSA with reports semi-annually on April 30 and October 31 that detail the leasing activities conducted under the delegations. Reports should be sent to GSA, Office of Governmentwide Policy, Office of Real Property Management (MP), 1800 F Street, N.W., Room 6203, Washington, DC 20405. Reports may also be sent via e-mail to *real.property@gsa.gov*. The reports should contain the following information for each currently active and future lease executed under the lease delegation:

(a) Agency/bureau name;

(b) Property Address—Street address, city and state of the leased building;

(c) Rentable Square Feet (if applicable) —The area for which rent is charged (based on the local commercial method of measurement;

(d) Annual Rental Rate per Square Foot—Divide the total annual rent by the rentable square feet to obtain the annual rental rate;

(e) Type of Space—General purpose-office, storage, or special. If categorical or special purpose, specify type;

(f) Effective Net Annual Rent—The effective net annual rent is obtained by dividing the total rent (excluding services and utilities) to be paid over the lease term (after adjusting for any rent-free periods) by the number of years in the lease. Estimated CPI escalations and tax escalations are not to be included in this calculation. Provide total annual rent for categorical or special purpose space where effective net annual rent cannot be calculated;

(g) Lease Term;

(h) Lease Expiration Date; and

(i) If the lease is for general purpose space, provide date of the ARA/PBS notice stating that no suitable Federally-controlled space was available to satisfy the space need.

(8) Agencies using the general purpose delegation are also required to provide the following information to the GSA Regional Office from which the delegation authorization was requested:

(a) Upon award, provide notification of the award date and location of the property, including documentation that the negotiated rental rate is within the prevailing market rental rate for the class of building leased in the delegated action. The documentation may include information from organizations such as SIOR, Black's Guide, Torto-Wheaton, Co-Star, etc. If the negotiated rental rate exceeds the market range, provide information as to why the market rate was exceeded; and

(b) Provide 18 months advance notice of lease expiration if there is a continuing need for the space and the agency wishes to use the delegation again to satisfy the requirement.

(9) Agencies using any of the GSA delegations are responsible for observing the above rules and conditions. Improper use of the delegations may result in revocation of the delegation.

d. Further information regarding this program may be obtained by contacting the General Services Administration, Office of Real Property Management on (202) 501-0856.

Dated: 12 May 2005.

G. Martin Wagner,

Associate Administrator for Governmentwide Policy.

[FR Doc. 05–10451 Filed 5–24–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Availability of Funding Opportunity Announcement

Funding Opportunity Title/Program Name: Performance Outcomes Measures Project.

Announcement Type: Initial.

Funding Opportunity Number: Program Announcement No. AoA–PO–0504.

Statutory Authority: The Older Americans Act, Pub. L. 106–501.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.048, Title IV and Title II, Discretionary Projects.

Dates: The deadline date for the submission of applications is July 25, 2005.

I. Funding Opportunity Description

The purpose of this competition is to solicit applications for Standard Performance Outcomes Measures Projects (POMP). POMP projects that will continue to work with performance measurement surveys to fill in existing gaps in the current arsenal of POMP developed performance measurement tools and develop "final versions" of the instruments for use throughout the Aging Network as follows:

- Develop a methodology and tool for Statewide Performance Measurement.
- Develop "Final Versions" of performance measurement surveys.
- Develop a performance measurement dissemination plan.
- Participate in Web site enhancement activity.

A detailed description of the funding opportunity may be found at *http://www.aoa.gov* or *http://www.gpra.net*.

II. Award Information

1. *Funding Instrument Type:* Grants.

2. *Anticipated Total Priority Area Funding per Budget Period:* AoA intends to make available, under this program announcement, grant awards for 6 to 10 projects at a federal share of approximately $30,000 per year for a project period of one year. The maximum award will be $40,000.

III. Eligibility Criteria and Other Requirements

1. *Eligible Applicants:* Eligibility for grant awards is limited to State Agencies on Aging.

2. *Cost Sharing or Matching:* Grantees are required to provide at least 25% percent of the total program costs from non-federal cash or in-kind resources in order to be considered for the award.

3. *DUNS Number:* All grant applicants must obtain a D–U–N–S number from Dun and Bradstreet. It is a nine-digit identification number, which provides unique identifiers of single business entities. The D–U–N–S number is free and easy to obtain from *http://www.dnb.com/US/duns_update/.*

4. *Intergovernmental Review:* Executive Order 12372, Intergovernmental Review of Federal Programs, is not applicable to these grant applications.

IV. Application and Submission Information

1. *Address to Request Application Package:* Application kits are available by writing to the U.S. Department of Health and Human Services, Administration on Aging, Office of Evaluation, Washington, DC 20201, by calling 202/357–0145, or online at *http://www.grants.gov.*

2. *Address for Application Submission:* Applications may be mailed to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, Washington, DC 20201, attn: Margaret Tolson.

Applications may be delivered (in person, via messenger) to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, One Massachusetts Avenue, NW., Room 4604, Washington, DC 20001, attn: Margaret Tolson.

If you elect to mail or hand deliver your application you must submit one original and two copies of the application; an acknowledgement card will be mailed to applicants. Instructions for electronic mailing of grant applications are available at *http://www.grants.gov/*

3. *Submission Dates and Times:* To receive consideration, applications must be received by the deadline listed in the **DATES** section of this Notice.

V. Responsiveness Criteria

Each application submitted will be screened to determine whether it was received by the closing date and time.

Applications received by the closing date and time will be screened for completeness and conformity with the requirements outlined in Sections III and IV of this Notice and the Program Announcement. Only complete applications that meet these requirements will be reviewed and evaluated competitively.

VI. Application Review Information

Eligible applications in response to this announcement will be reviewed according to the following evaluation criteria:

- Purpose and Need for Assistance—(20 points).
- Approach/Method "Workplan and Activities—(35 points).
- Outcomes/Evaluation/Dissemination—(25 points).
- Level of Effort—(20 points).

VII. Agency Contacts

Direct inquiries regarding programmatic issues to U.S. Department of Health and Human Services, Administration on Aging, Office of Evaluation, Washington, DC 20201, telephone: (202) 357–0145.

Dated: May 20, 2005.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 05–10420 Filed 5–24–05; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Request for Application (RFA) 05047]

Environmental Health Academic Programs; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2005 funds for a cooperative agreement program to improve State, tribal and local environmental health infrastructure by strengthening and diversifying accredited environmental health programs; preparing future professionals to enter the environmental public health workforce, and educating current professionals in the core competencies of environmental health, along with new and emerging environmental health technologies and methodologies; increasing recruitment, enrollment, retention and graduation rates at accredited environmental health programs; and increasing the number of programs accredited by the National Environmental Health Science and Protection Accreditation Council (NEHSPAC). The Catalog of Federal Domestic Assistance number for this program is 93.283.

B. Eligible Applicant

Application may be submitted by the Association of Environmental Health Academic Programs (AEHAP). No other applications are solicited.

AEHAP is the only organization eligible to conduct this program for the following reasons:

1. AEHAP is the only organization representing all of the undergraduate and graduate institutions with academic programs of environmental health accredited by National Environmental Health Science and Protection Accreditation Council (NEHSPAC) along with programs that are seeking accreditation.

2. AEHAP, through its close association with NEHSPAC, has established the critical framework for non-member institutions to gain membership in NEHSPAC as accredited members so that the technical competence, managerial capacity and leadership potential of accredited undergraduate and graduate programs in environmental health are increased.

3. AEHAP is uniquely positioned to frequently communicate and consult with all of the accredited undergraduate and graduate programs of environmental health, as well as those seeking accreditation because those programs are part of AEHAP existing membership.

4. AEHAP has the documented ability to build effective partnerships and collaborative relationships with federal health agencies and appropriate national organizations to increase accredited environmental health programs.

5. AEHAP provides the structure and experience for instituting mentoring programs to universities that do not have accredited environmental health programs, ultimately leading to strengthened environmental health systems at the State, tribal and local levels. For example AEHAP, through its existing affiliation with universities with non-accredited environmental health programs, can recruit, mentor and train new programs, and can encourage and promote growth of qualified academic institutions whose goal is to provide qualified entry-level environmental health practitioners.

6. AEHAP member programs have provided technical support and consultation to State, tribal and local environmental public health programs through partnerships that have existed for up to 35 years.

C. Funding

Approximately $164,000 is available in FY 2005 to fund this award. It is expected that the award will begin on or before August 31, 2005, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

D. Where to Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact:

Dorothy Stephens, Project Officer, 4770 Buford Highway, Atlanta, GA 30341, Telephone: 770–488–7099, Fax: 770–488–7310, E-mail: *dstephens@cdc.gov;* or

Mike Herring, Technical Officer, 4770 Buford Highway, Atlanta, GA 30341, Telephone: 770–488–7351, Fax: 770–488–7310, E-mail: *mherring@cdc.gov.*

For financial, grants management, or budget assistance, contact: Edna Green, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2743, E-mail: *egreen@cdc.gov.*

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–10404 Filed 5–24–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 6996, October 20, 1980, as amended most recently at 70 FR 28540–28541, dated May 18, 2005) is amended to establish the organizational structure within the Information Technology Services Office, Office of the Chief Operating Officer.

Section C–B Organization and Functions, is hereby amended as follows:

Delete in its entirety the title and functional statement for the *Information Technology Services Office (CAJ9), Office of the Chief Operating Officer (CAJ)* and insert the following:

Information Technology Services Office (CAJD). (1) Develops and coordinates CDC-wide plans, budgets, policies, and procedures for information theology (IT) infrastructure services including: Personal computing hardware and software, network and e-mail directories and associated services, e-mail, customer service support, infrastructure software, IT infrastructure security, networking, server support, videoconferencing, mainframe, remote access, and telecommunications; (2) provides all IT infrastructure services for CDC including consolidated IT infrastructure support contracts; (3) provides consulting services, technical advice, and assistance across CDC in the effective and efficient use of IT infrastructure technologies, assets, and services to carry out mission activities, enhance personal and organizational productivity, and develop information systems; (4) develops CDC's IT infrastructure architecture; (5) maintains state-of-the-art expertise in information science and technology; (6) conducts research and development, evaluation, and testing of new IT infrastructure technologies to support CDC's mission; (7) manages CDC's IT infrastructure capital investments and CDC-wide IT acquisitions of infrastructure technologies; (8) develops and coordinates the implementation of CDC infrastructure security programs; (9) manages and coordinates CDC-wide IT continuity of operations and disaster recovery facilities ensuring integrity, availability, security, and recoverability of critical data and systems; (10) provides IT infrastructure support services by triaging and responding to requests for services, problem reports, and taking necessary actions; (11) coordinates with the CDC Corporate University to identify training and educational programs needed by staff to effectively use IT infrastructure technologies and services; (12) conducts the IT infrastructure program in compliance with applicable federal laws, regulations, and policies.

Office of the Director (CAJD1). (1) Plans, directs, coordinates, and implements activities of the Information Technology Services Office (ITSO); (2) manages and directs CDC-wide plans and budgets for the management of IT infrastructure products and services; (3) develops and recommends policies and procedures relating to improved infrastructure service and management practices throughout CDC and with the CDC IT development community; (4) provides leadership in the implementation of standards, policies and procedures to promote improved infrastructure services and practices throughout CDC; (5) coordinates, manages and administers CDC-wide infrastructure services to include: Personal computing hardware and software, network and e-mail directories and associated services, e-mail, customer service support, infrastructure software, IT infrastructure security, networking, server support, videoconferencing, mainframe, remote access, and telecommunications; (6) maintains state-of-the-art expertise in information science and technology to promote the efficient and effective conduct of the CDC mission; (7) directs the CDC-wide Infrastructure Global Activities Program responsible for providing infrastructure and telecommunications support services to CDC international sites.

Operations Branch (CAJDB). (1) Plans, directs, and evaluates activities of the Operations Branch; (2) plans and coordinates the selection, development, management, promotion, training, and support of the CDC-wide Mainframe Data Center, Mid-Tier Data Center, and the campus-based Designated Server Sites (DSS); (3) provides operational support for users of the Mid-Tier Data Center to include external product/job acceptance and certification; (4) in coordination with the Infrastructure Architect, develops and maintains the physical architecture for the Data Center environments; (5) manages and coordinates CDC-wide date resources ensuring integrity, availability, security and recoverability for all Date Centers; (6) provides hosting facilities for disaster recovery and continuity of operations; (7) provides support for mainframe database tools.

Network Technology Branch (HCAJDC). (1) Plans, directs and evaluates activities of the Network Technology Branch; (2) designs, develops, implements, supports, and manages CDC's centralized networking facilities including voice, data, and video communications; (3) provides data network support services for CDC's local area network (LANs), wide area network (WAN), and metropolitan area network (MAN) including planning, managing, installing, diagnosing problems, maintaining and repairing the network; (4) provides level 3 technical support (to other ITSO technical staff for the most complex issues) for CDC Mid-Tier Data Center and Designated Server Sites (DSS); (5) assists in assuring maximum network reliability, availability, performance, and serviceability through monitoring, testing, and evaluating network architecture, implementation, and transmission characteristics; (6) in coordination with the Infrastructure Architecture, develops and maintains the CDC Network architecture; (7) manages, administers, and coordinates

CDC's Active Directory Services (ADS); (8) manages, administers, and coordinates CDC's electronic mail and communication gateways; (9) provides voice communications services, equipment, and support for CDC Atlanta facilities.

Customer Services Branch (HCAJDD). (1) Plans, directs, and evaluates activities of the Customer Services Branch; (2) plans and coordinates the selection, development, management, promotion, training, and support of CDC-wide Service Desk (level 1 user support provided via phone or on line) and the campus-based Customer Services Centers (CSC) providing level 2 personal computing support (onsite user support for more complex issues); (3) provides operational and technical support for the activities of the Remote/Field Staff (Domestic and International) including level 2 helpdesk support, microcomputer operating systems, specialized hardward/software, and other COTS software used at international and domestic field offices; (4) manages and directs CDC-wide IT Meeting Management Technologies activities including voice and web conferencing services, online video libraries, and support and maintenance of Video Teleconferencing (VTC).

Dated: April 28, 2005.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 05–10395 Filed 5–24–05; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority.

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67722–76, dated October 14, 1980, and corrected at 45 FR 69296, October 26, 1980, as amended most recently at 70 FR 28540–28541, dated May 18, 2005) is amended to reorganize the Office of Security and Emergency Preparedness, Office of the Chief Operating Officer.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the functional statement for the *Office of Security and Emergency Preparedness (CAJ8), Office of the Chief Operations Officer (CAJ)* and insert the following:

Office of Security and Emergency Preparedness (CAJJ). The Office of Security and Emergency Preparedness (OSEP), serves as CDEC's lead organizational entity for providing the overall framework, direction, coordination, implementation, oversight and accountability for the threat information analyses and infrastructure protection program. OSEP serves as the primary liaison for Homeland Security activities, provides a secure work environment for CDC/ATSDR personnel, visitors and contractors, and plans and implements the agency's crisis management activities which ensure a continued public health response to the nation.

Office of the Director (CAJJ1). (1) Directs, manages, coordinates and evaluates the programs and activities of the Office of Security and Emergency Preparedness (OSEP); (2) develops goals and objectives and provides leadership, policy formulation and guidance in program planning and development; (3) prepares, reviews, and coordinates budgetary, informational, and programmatic documents; (4) serves as the agency's primary link to federal, state, and local law enforcement intelligence, homeland security and emergency response agencies; (5) coordinates, in collaboration with the appropriate OSEP and CDC components, security and emergency preparedness activities; (6) advises the director, CDC, on policy matters concerning OSEP programs and activities; (7) coordinates development and review of regulatory documents and congressional reports; (8) analyzes proposed legislation with respect to OSEP's programs, goals and objectives; (9) provides leadership and operational and technical support for the development and implementation of intelligence activities; (10) gathers, analyzes and disseminates intelligence; and identifies training needs and recommends specific training objectives to be met and the methods to achieve them (i.e. Security Awareness Counterintelligence Awareness); (11) provides policy and implementation guidance on the standards for the use of classified document control for CDC; (12) manages and operates the agency's secure communications systems and classified documents control procedures; (13) acts as Communications Security Custodian for all classified matters involving the National Security Agency; (14) manages 24-hour operations of CDC's secure communications office; (15) transports classified and unclassified information between CDC and the Armed Forces Courier Service; (16) manages operation of the U.S. Department of State cable system for CDC; (17) maintains CDC's emergency destruction plan for classified material and equipment; (18) develops cost analysis for communications interoperability plans throughout CDC; (19) manages such frequency usage for CDC, Office of Security and Emergency Preparedness; (20) conducts preliminary investigations of security violations relative to the loss or compromise/suspected compromise of sensitive, classified or crypto-logic materials or devices throughout CDC; (21) performs prepublication review of Classified and Sensitive Information; (22) performs security audits, inspections, and staff assistance/training visits in CDC Field Offices and distant operating locations world-wide; (23) serves as the field locations primary link to OSEP physical security operations, personnel reliability operations, intelligence and counter intelligence operations, and emergency preparedness operations; (24) responsible for implementing, maintaining, and updating of CDCs Integrated Emergency Management Program, Emergency Response Plan (ERPs) and CDC Continuity Of Operations (COOP) communications vehicles; (25) provides leadership and coordination in planning and implementation for internal emergency incidents affecting any CDC leased or owned facilities; (26) coordinates and provides training to all campus Emergency Response Teams, the Emergency Support Team, and the Executive Management Team; (27) conducts and evaluates annual tabletop, functional, and full-scale exercises for all CDC facilities with ERPs, (28) provides recommendations for future emergency management and emergency response related programs, policies, and/or procedures; (29) provides global security oversight in coordination with US embassies.

Physical Security Operations Branch (CAJJB). (1) Provides coordination, guidance, and security operations to all facilities CDC-wide including all owned and leased sites; (2) provides campus-wide access control for all CDC facilities in the metro Atlanta area; (3) oversees Security Operations Center (SOC); (4) provides management and oversight of contract Guard Force and local police; (5) controls badge and ID operations; (6) responsible for physical security during emergency operations; (7) promotes theft prevention, provides training and conducts investigations; (8) conducts site surveys to assess all physical

security activities and correct deficiencies and implement improvement as necessary; (9) maintains all security related equipment, to include, but not limited to, x-ray machines metal detectors, CCTV systems, Cardkey Systems, etc.; (10) manages security at all owned and leased facilities in the Atlanta area; (11) manages Locksmith Office; (12) maintains inventory controls and measures and implements, installs, repairs, and re-keys all locks with emphasis on the overall physical security of CDC and its owned and leased facilities; (13) provides security recommendations to CIO's regarding capabilities and limitations of locking devices; (14) provides combination change services to organizations equipped with cipher locking devices; (15) coordinates with engineers and architects on CDC lock and keying requirements for new construction; (16) operates the security control room 24 hours a day, seven days a week; (17) maintains 24-hour emergency notification procedures; (18) manages and maintains the emergency alert system; (19) improves and expands video monitoring to ensure the security of all employees, visitors, contractors and the general public while at the CDC; (20) reviews and grants access to Select Agent laboratories for individuals when the properly approved paperwork is presented for processing.

Personnel Suitability and Select Agent Compliance Branch (CAJJC). (1) Maintains compliance with the Select Agent rule (42 CFR Part 73) for Select Agents housed within the CDC; (2) conducts background investigations and personnel suitability adjudications for employment with the Centers for Disease Control and Prevention in accordance with 5 CFR 731, Executive Order 12968 and Executive Order 10450; (3) submits documentation for security clearances, and maintains an access roster in a security clearance database; (4) implements high risk investigations such as Public Trust Investigations for employees GS–13s and above who meet Department of Health and Human Services (DHHS) criteria standards for employees working in Public Trust positions; (5) conducts adjudications for National Agency Check and Inquiry (NACI) cases and assists DHHS in adjudicating security clearance cases; (6) provides personnel security services for full time employees (FTEs), guest researchers, visiting scientists, students, contract employees, fellows, and the commissioned corps; (7) conducts initial "Security Education Briefing" and annual Operational Security (OPSEC) Training; (8) coordinate employee drug testing; (9) maintains inventory controls and manages inventory systems; (10) responsible for providing identification badges and cardkey access for personnel within all CDC metro Atlanta area facilities as well as some out-of-state CDC campuses; (11) enrolls particular individuals in the biometric encoding computer; (12) maintains hard copy records of all individuals' requests and authorizations for access control readers.

Dated: April 1, 2005.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 05–10397 Filed 5–24–05; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food Safety and Security Monitoring Project; Availability of Cooperative Agreements; Request for Applications: RFA–FDA–ORA–05–1; Catalog of Federal Domestic Assistance Number: 93.448

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

I. Funding Opportunity Description

The Food and Drug Administration (FDA), Office of Regulatory Affairs (ORA), Division of Federal-State Relations (DFSR), is announcing the availability of cooperative agreements for equipment, supplies, personnel, training, and facility upgrades to Food Emergency Response Laboratory Network (FERN) laboratories of State, local, and tribal governments. The cooperative agreements are to enable the analyses of foods and food products in the event that redundancy and/or additional laboratory surge capacity is needed by FERN for analyses related to chemical terrorism. These grants are also intended to expand participation in networks to enhance Federal, State, local, and tribal food safety and security efforts.

The goal of ORA's cooperative agreement program is to complement, develop, and improve State, local, and Indian tribal food safety and security testing programs. With cooperative agreement grant funds this will be accomplished through the provision of supplies, personnel, facility upgrades, training in current food testing methodologies, participation in proficiency testing to establish additional reliable laboratory sample analysis capacity, and analysis of surveillance samples. In the event of a large-scale chemical terrorism event affecting foods or food products, the recipient may be required to perform selected chemical analyses of domestic and imported food samples collected and supplied to the laboratory by FDA or other Federal agencies through FDA. These samples may consist of, but are not limited to, the following: Vegetables and fruits (fresh and packaged); juices (concentrate and diluted); grains and grain products; seafood and other fish products; milk and other dairy products; infant formula; baby foods; bottled water; condiments; and alcoholic products (beer, wine, scotch).

All grant application projects that are developed at State, local, and tribal levels must have national implication or application that can enhance Federal food safety and security programs. At the discretion of FDA, successful project formats will be made available to interested Federal, State, local, and tribal government FERN laboratories.

There are four key project areas identified for this effort:

(1) The use of Gas Chromatography/Mass Spectrometry (GC/MS) analysis for the screening and identification of poisons, toxic substances, and unknown compounds in foods;

(2) The use of Liquid Chromatography/Mass Spectrometry (LC/MS) analysis for the screening and identification of poisons, toxic substances, and unknown compounds in foods;

(3) The use of Inductively Coupled Plasma/Mass Spectrometry (ICP/MS) analysis for the screening and identification of heavy metals and toxic elements in foods; and,

(4) The use of Enzyme-Linked Immunosorbent Assay (ELISA) and other antibody-based analyses for the screening and identification of unknown toxins in foods.

FDA will support the projects covered by this notice under the authority of section 312 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) (Public Law 107–188). This program is described in the Catalog of Federal Domestic Assistance under number 93.448.

1. Background

ORA is the primary inspection and analysis component of FDA and has some 1,600 investigators, inspectors, and analysts who cover the country's approximately 95,000 FDA regulated

businesses. These investigators inspect more that 15,000 facilities a year and ORA laboratories analyze several thousand samples per year. ORA conducts special investigations, conducts food inspection recall audits, performs consumer complaint inspections, and collects samples of regulated products. Increasingly, ORA has been called upon to expand the testing program addressing the increasing threat to food safety and security through intentional chemical terrorism events. Toward these ends, ORA has developed a suite of chemical screening and analysis methodologies that are used to evaluate foods and food products in such situations. However, in the event of a large-scale emergent incident, analytical sample capacity in ORA field laboratories has a finite limit. Information from ongoing relationships with State partners indicates limited redundancy in State food testing laboratories, both in terms of analytical capabilities and analytical sample capacity. Several State food testing laboratories lack the specialized equipment to perform the analyses and/or the specific methodological expertise in the types of analyses performed for screening foods and food products involving chemical terrorism events.

The events of September 11, 2001, reinforced the need to enhance the security of the United States food supply. Congress responded by passing the Bioterrorism Act, which President George W. Bush signed into law on June 12, 2002. The Bioterrorism Act is divided into the following five titles:

- Title I—National Preparedness for Bioterrorism and Other Public Health Emergencies,
- Title II—Enhancing Controls on Dangerous Biological Agents and Toxins,
- Title III—Protecting Safety and Security of Food and Drug Supply,
- Title IV—Drinking Water Security and Safety, and
- Title V—Additional Provisions.

Subtitle A of the Bioterrorism Act, Protection of Food Supply, section 312–Surveillance and Information Grants and Authorities, amends part B of Title III of the Public Health Service Act to authorize the Secretary of Health and Human Services (the Secretary) to award grants to States and Indian tribes to expand participation in networks to enhance Federal, State, and local food safety efforts. This may include meeting the costs of establishing and maintaining the food safety surveillance, technical, and laboratory capacity needed for such participation.

2. Program Research Goals

The goal of ORA's cooperative agreement program is to complement, develop, and improve State, local, and Indian tribal food safety and security testing programs. This will be accomplished through the provision of equipment, supplies, personnel, facility upgrades, training in current food testing methodologies, and participation in proficiency testing to establish additional reliable laboratory sample analysis capacity and analysis of surveillance samples. In the event of a large-scale chemical terrorism event affecting foods or food products, the recipient may be required to perform selected chemical analyses of domestic and imported food samples collected and supplied to the laboratory by FDA or other Federal agencies through FDA. These samples may consist of, but are not limited to, the following: Vegetables and fruits (fresh and packaged); juices (concentrate and diluted); grains and grain products; seafood and other fish products; milk and other dairy products; infant formula; baby foods; bottled water; condiments; and alcoholic products (beer, wine, scotch).

II. Award Information

Support will be in the form of a cooperative agreement. Substantive involvement by the awarding agency is inherent in the cooperative agreement award. Accordingly, FDA will have substantial involvement in the program activities of the project funded by the cooperative agreement. Substantive involvement includes, but is not limited to, the following: (1) How often samples will be sent, (2) directions on how tests should be executed, (3) on-site monitoring, (4) supply of equipment, and (5) FDA training on processes.

FDA will provide specific procedures and protocols for the four project areas (see section I of this document) to be used for the analysis of toxic chemicals and toxins in food.

FDA will provide guidance on the specific foods to be collected and analyzed by the successful applicant. State personnel will be responsible for the collection and analysis of surveillance samples.

FDA will purchase and have all equipment delivered to the awardee's laboratory. The equipment purchased will remain the property of FDA until such time as released as surplus property.

Proposed projects designed to fulfill the specific objectives of any one or more of the project areas will be considered for funding. Applicants may also apply for only facility upgrades, personnel, training, and surveillance sample collection if they have the necessary equipment and it will be available for these projects. These grants are not to fund or conduct food inspections for food safety regulatory agencies.

It should be emphasized that in all of the projects, there is a particular desire to promote a continuing, reliable capability and capacity for laboratory sample analyses of foods and food products for the rapid detection and identification of toxic chemicals or toxins. With this in mind, it is desirable that sample analyses will be completed within 2 weeks of receipt, and the results will be reported to FERN. The format and reporting media will be established by FERN.

1. Award Amount

The total amount of funding available in Fiscal Year (FY) 2005 is $2,100,000. Cooperative agreements will be awarded up to $350,000 in total (direct plus indirect) costs per year for up to 3 years. It is anticipated that six awards will be made. Support of these cooperative agreements will be for the funding of supplies, facility upgrades, surveillance sample collection, personnel, the provision of training in current analytical methodology, and for the analysis of foods and food products.

2. Length of Support

The length of support will depend on the nature of the project. For those projects with an expected duration of more than 1 year, a second or third year of noncompetitive continuation of support will depend on performance during the preceding year and availability of Federal funds.

3. Funding Plan

It is anticipated that FDA will make six awards in FY 2005 for this program. The number of projects funded will depend on the quality of the applications received and is subject to availability of Federal funds to support the projects.

Funds may be requested in the budget to travel to FDA for meetings with program staff about the progress of the project.

III. Eligibility Information

1. Eligible Applicants

This cooperative agreement program is only available to State, local, and tribal government FERN laboratories and is authorized by section 312 of the Bioterrorism Act.

All grant application projects that are developed at State, local, and tribal levels must have national implication or

application that can enhance Federal food safety and security programs. At the discretion of FDA, successful project formats will be made available to interested Federal, State, local, and tribal government FERN laboratories.

2. Cost Sharing or Matching

Cost sharing is not required.

3. Other

A. Dun and Bradstreet Number (DUNS)

As of October 1, 2003, applicants are required to have a DUNS number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a 9-digit identification number that uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, call 1–866–705–5711. Be certain that you identify yourself as a Federal grant applicant when you contact Dun & Bradstreet, Inc.

IV. Application and Submission

1. Addresses to Request Application

The application request and the completed application should be submitted to Cynthia Polit, Grants Management Specialist, Division of Contracts and Grants Management (HFA–500), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7180, e-mail: *cynthia.polit@fda.gov* or *cpolit@oc.fda.gov*. If the application is hand-carried or commercially delivered it should be addressed to 5630 Fishers Lane, rm. 2105, Rockville, MD 20857.

The original and two copies of the completed grant application form PHS 5161–1, with copies of the appendices for each of the copies, should be submitted to Cynthia Polit (see previous paragraph). The outside of the mailing package should be labeled "Response to RFA–FDA–ORA–05–1."

FDA is also accepting applications for this program electronically via Grants.gov. Applicants are strongly encouraged to apply electronically by visiting the Web site *http://www.grants.gov* and following the instructions under "APPLY." In order to apply electronically, the applicant must have a DUNS number and register in the Central Contractor Registration (CCR) database as described in section IV.6.A of this document.

If the submission is electronic, the application package is posted under the "APPLY" section of this announcement under *http://www.grants.gov*. The required application PHS 424, which is part of the PHS 5161–1 form, can be completed and submitted online.

2. Content and Form of Application

A. Content of Application

The applicant must specifically address the following in the cooperative agreement application:

Laboratory Facilities. A complete description of the name and address of the facility, and the name of the most responsible individual of the facility where the equipment will be installed must be provided.

For the facility, the following information must be provided:

(1) Floor diagrams of the laboratory;

(2) Area where the equipment is to be installed. The installation of equipment in a laboratory will require adequate and appropriate space and physical plant supplies (power, water, etc.);

(3) A description of the envisaged space, to include a floor-plan diagram;

(4) Operational support areas to be used for the project, including details about the availability of ancillary laboratory safety and support equipment and facilities, such as the numbers and types of chemical fume hoods available;

(5) Details describing the sample receiving and sample storage areas and a description of any existing chain-of-custody procedures;

(6) A detailed description of the proposed facilities upgrade including drawings and cost estimates; and

(7) A detailed description of laboratory access procedures, including a description of practices and systems which limit access to laboratory space by unauthorized personnel. Additional procedures for access to the space(s) dedicated to the equipment provided, if any, should also be provided.

Laboratory Personnel Qualifications. Qualifications of all personnel that will be assigned to the project must be provided. In particular, information on personnel that have experience in GC/MS, LC/MS, ICP/MS, and ELISA must be provided.

Laboratory Management Practices. For the laboratory, the following management information must be provided:

(1) A summary description of any security procedures or processes to evaluate the background of laboratory personnel. This should include any procedures to evaluate subcontractors who have access to laboratory space, such as cleaning personnel;

(2) A summary description of any quality management system defined, in development, or in place as it relates to quality control and quality assurance procedures and practices;

(3) A summary description of staffing management, specifically to include abilities and procedures in place to recall personnel, establish extended workweeks, etc.; and

(4) A summary description of procedures in place to monitor sample workflow, including the tracking and monitoring of sample analyses in progress to include a description of the laboratory work product review process. Additionally, the ability to perform and complete the analyses and provide a report of a sample analysis within a 2-week time frame must be described.

Sample Analysis Commitment. The laboratory will be required to analyze surveillance and emergency response food samples. Therefore, an estimate of the number of food samples that will be analyzed for toxic chemicals and toxins by each project area (i.e., GC/MS, LC/MS, ICP/MS, ELISA), must be submitted. This estimate should be for a 3-year period. The estimate should also address the number of samples that can be analyzed in a 2-week period. The procedures to be used will be supplied by FDA. This information will be provided after the award is given so recipients will be aware of requirements/responsibilities.

In addition, if a cooperative agreement is awarded, awardees will be informed of any additional documentation that should be submitted to FERN.

B. Format for Application

Submission of the application must be on grant application form PHS 5161–1 (revised 7/00). All "General Information Instructions" and specific instructions in the application kit must be followed. The face page of the application should reflect the request for application number RFA–FDA–ORA–05–1 under "Federal Identifier."

Data and information included in the application will generally not be available publicly prior to the funding of the application. After funding has been awarded, data and information included in the application will be given confidential treatment to the extent permitted by the Freedom of Information Act (5 U.S.C. 552(b)(4)) and FDA's implementing regulations (including 21 CFR 20.61, 20.105, and 20.106 (21 CFR 20.61, 20.105, and 20.106)). By accepting funding, the applicant agrees to allow ORA to publish specific information about the grant.

The requirements requested on form PHS 5161–1 (revised 7/00) have been sent by PHS to the Office of Management and Budget (OMB) and have been approved and assigned OMB control number 0248–0043.

3. Submission Dates and Times

The application receipt date is June 24, 2005.

Applications will be accepted from 8 a.m. to 4:30 p.m., Monday through Friday, until the established receipt date. Applications will be considered received on time if hand delivered to the address noted previously (see *Addresses to Request Application* in section IV of this document) before the established receipt date, or sent or mailed by the receipt date as shown by a legible U.S. Postal Service dated postmark or a legible dated receipt from a commercial carrier. Private metered postmarks shall not be acceptable as proof of timely mailing. If not received on time applications will not be considered for review and will be returned to the applicant. (Applicants should note that the U.S. Postal Service does not uniformly provide dated postmarks. Before relying on this method, applicants should check with their local post office). Please do not send applications to the National Institutes of Health (NIH). Any application sent to NIH that is forwarded to FDA's Grants Management Office and not received in time for orderly processing will be judged nonresponsive and returned to the applicant. Applications must be submitted via U.S. mail or commercial carrier or hand delivered as stated previously in this document.

Applications submitted electronically must be received by close of business on the published receipt date.

No addendum material will be accepted after the receipt date.

4. Intergovernmental Review

The regulations issued under Executive Order 12372, Intergovernmental Review of Department of Health and Human Services Programs and Activities (45 CFR part 100) apply to the Food Safety and Security Monitoring Project. Applicants (other than federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert the SPOC to the prospective application(s) and to receive any necessary instructions on the State's review process. A current listing of SPOCs is included in the application kit or at *http://www.whitehouse.gov/omb/grants/spoc.html*. (FDA has verified the Web site address, but FDA is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.) The SPOC should send any State review process recommendations to the FDA administrative contact (see *Addresses to Request Application* in section IV of this document). The due date for the State process recommendations is no later than 60 days after the deadline date for the receipt of applications. FDA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cutoff.

5. Funding Restrictions

These grants are not to fund or conduct food inspections for food safety regulatory agencies. They may not be utilized for new building construction, however, remodeling of existing facilities is allowed, provided that remodeling costs do not exceed 25 percent of the grant award amount.

6. Other Submission Requirements

A. CCR

In anticipation of the Grants.gov electronic application process applicants are encouraged to register with the CCR database. This database is a governmentwide warehouse of commercial and financial information for all organizations conducting business with the Federal Government. Registration with CCR will eventually become a requirement and is consistent with the governmentwide management reform to create a citizen-centered web presence and build e-gov infrastructures in and across agencies to establish a "single face to industry." The preferred method for completing a registration is via the Internet at *http://www.ccr.gov*. (FDA has verified the Web site address, but FDA is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.) This web site provides a CCR handbook with detailed information on data needed prior to beginning the online registration, as well as steps to walk applicants through the registration process. The applicant must have a DUNS number to begin registration. Call Dun & Bradstreet, Inc., at the number listed in the previous paragraph of this document if you do not have a DUNS number.

In order to access Grants.gov an applicant will be required to register with the Credential Provider. Information about this requirement is available at *http://www.grants.gov/CredentialProvider*. (FDA has verified the Web site address, but FDA is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.)

V. Application Review Information

1. Criteria

A. Scientific/Technical Review Criteria

All grant application projects that are developed at State, local, and tribal levels must have national implication or application that can enhance Federal food safety and security programs. At the discretion of FDA, successful project formats will be made available to interested Federal, State, local, and tribal government FERN laboratories.

The ad hoc expert panel will review the application based on the following scientific and technical merit criteria which will carry equal weight:

- The adequacy of facilities, expertise of project staff, equipment, support services, commitment to analyze surveillance samples, commitment to analyze emergency response samples, and quality management practices needed for the project;
- Expertise in the use of GC/MS for the analysis of foods or animal tissues;
- Expertise in the use of LC/MS for the analysis of foods or animal tissues;
- Expertise in the use of ICP/MS for the analysis of foods or animal tissues;
- Expertise in use of ELISA and other antibody-based analyses for the identification of toxins in foods or animal tissues;
- Current food or animal tissue analysis programs;
- The rationale and design to meet the goals of the cooperative agreement;
- Quality control and quality assurance procedures and practices; and
- Abilities and procedures in place to recall personnel and establish extended workweeks.

2. Review and Selection Process

A. General Information

FDA grants management and program staff will review applications sent in response to this notice. To be responsive, an application must be submitted in accordance with the requirements of this notice and must bear the original signature of the applicant institution's/organization's authorized official. If submitted electronically the original signature requirement does not apply.

If an application is found to be nonresponsive it will be returned to the applicant without further consideration. Applicants are strongly encouraged to contact FDA to resolve any questions about criteria before submitting an application. Please direct all questions of a technical or scientific nature to ORA program staff and all questions of an administrative or financial nature to the grants management staff (see section VII of this document).

B. Program Review Criteria

All grant application projects that are developed at State, local, and tribal levels must have national implication or application that can enhance Federal food safety and security programs. At the discretion of FDA, successful project formats will be made available to interested Federal, State, local, and tribal government FERN laboratories.

Applications will be considered for funding on the basis of their overall technical merit as determined through the review process. Program criteria will include availability of funds and overall program balance in terms of geography with respect to existing and projected laboratory sample analysis and testing capacity. Final funding decisions will be made by the Commissioner of Food and Drugs (the Commissioner) or his designee.

A responsive application will be reviewed and evaluated for scientific and technical merit by an ad hoc panel of experts in the subject field of the specific application. Funding decisions will be made by the Commissioner or his designee.

A score will be assigned to each responsive application based on the scientific/technical review criteria. The review panel may advise the program staff about the appropriateness of the proposal to the goals of the ORA/ORO/DFSR cooperative agreement.

3. Anticipated Announcement and Award

Notification regarding the results of the review in the form of a summary statement is anticipated by September 1, 2005. It is anticipated that all awards will be made by September 29, 2005.

VI. Award Administration Information

1. Award Notices

FDA's Grants Management Office will notify applicants who have been selected for an award. Awards will either be issued on a Notice of Grant Award (PHS 5152) signed by the FDA Chief Grants Management Officer and be sent to the applicant by mail or transmitted electronically.

2. Administrative and National Policy Requirements

These agreements will be subject to all policies and requirements that govern the research grant programs of PHS, including provisions of 42 CFR part 52, 45 CFR parts 74 and 92, and the PHS Grants Policy Statement.

Applicants must adhere to the requirements of this notice. Special terms and conditions regarding FDA regulatory requirements and adequate progress of the study may be part of the awards notice.

PHS strongly encourages all grant recipients to provide a smoke-free workplace and to discourage the use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

FDA is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national effort designed to reduce morbidity and mortality and to improve quality of life. Applicants may obtain a paper copy of the "Healthy People 2010" objectives, vols. I and II, for $70 ($87.50 foreign) S/N 017–000–00550–9, by writing to the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Telephone orders can be placed to 202–512–2250. The document is also available in CD-ROM format, S/N 017–001–00549–5 for $19 ($23.50 foreign) as well as on the Internet at *http://www.healthypeople.gov* under "Publications." (FDA has verified the Web site address, but FDA is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.)

3. Reporting

A. Reporting Requirements

The original and two copies of an annual Financial Status Report (FSR) (SF–269) must be sent to FDA's grants management officer within 90 days of the budget period end date of the grant. Failure to file the FSR in a timely fashion will be grounds for suspension or termination of the grant. A final FSR will be due 90 days after the expiration of the project period as noted on the Notice of Grant Award.

For continuing cooperative agreements, quarterly reports and an annual program progress report are also required. For such cooperative agreements, the noncompeting continuation application (PHS 5161–1) will be considered the program progress report for the fourth quarter of the budget period.

Quarterly progress reports must contain, but are not limited to the following:

1. A status report on the installation, training, and operational readiness of any equipment that is provided;
2. A summary report on any proficiency testing performed;
3. A summary status of samples analyzed and time to complete individual sample testing; and
4. A summary description of any other testing performed on the equipment.

A final program progress report, FSR, and invention statement must be submitted within 90 days after the expiration of the project period as noted on the Notice of Grant Award.

The final program progress report must provide full written documentation of the project, and summaries of laboratory operations, as described in the grant application. The documentation must be in a form and contain sufficient detail such that other State, local, and tribal government FERN laboratories could reproduce the final project.

B. Monitoring Activities

The program project officer will monitor grantees periodically. The monitoring may be in the form of telephone conversations, e-mails, or written correspondence between the project office/grants management office and the principal investigator. Periodic site visits with officials of the grantee organization may also occur. The results of these monitoring activities will be recorded in the official grant file and will be available to the grantee upon request consistent with applicable disclosure statutes and with FDA disclosure regulations. Also, the grantee organization must comply with all special terms and conditions of the cooperative agreement, including those which state that future funding of the study will depend on recommendations from the project officer. The scope of the recommendation will confirm that: (1) There has been acceptable progress on the project; (2) there is continued compliance with all FDA regulatory requirements; (3) if necessary, there is an indication that corrective action has taken place; and (4) assurance that any replacement of personnel will meet the testing requirements.

VII. Agency Contacts

Regarding the administrative and financial management aspects of this notice: Cynthia Polit (see *Addresses to Request Application* in section IV of this document).

Regarding the programmatic or technical aspects of this notice: Thomas Savage, Division of Field Science, Office of Regulatory Affairs, Food and Drug Administration (HFC–140), 5600 Fishers Lane, rm. 12–41, Rockville, MD 20857, 301–827–1026, e-mail: *tsavage@ora.fda.gov*.

VIII. Other Information

Data included in the application, if restricted with the legend specified in this section of the document, may be entitled to confidential treatment as trade secret or confidential commercial

information within the meaning of the Freedom of Information Act and FDA's implementing regulations (21 CFR 20.61).

Unless disclosure is required under the Freedom of Information Act as amended (5 U.S.C. 552), as determined by the freedom of information officials of the Department of Health and Human Services or by a court, data contained in the portions of this application that have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information, shall not be used or disclosed except for evaluation purposes.

Dated: May 19, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–10435 Filed 5–20–05; 2:41 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pediatric Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues. The committee also advises and makes recommendations to the Secretary of the Department of Health and Human Services (DHHS) under 45 CFR 46.407 on research involving children as subjects that is conducted or supported by DHHS, when that research is also regulated by FDA.

Date and Time: The meeting will be held on Wednesday, June 29, 2005, from 12:30 p.m. to 5 p.m. and on Thursday, June 30, 2005, from 8 a.m. to 5 p.m.

Location: The Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

Contact Person: Jan N. Johannessen, Office of Science and Health Coordination of the Office of the Commissioner (HF–33), Food and Drug Administration, 5600 Fishers Lane (for express delivery, rm. 14C–06), Rockville, MD 20857, 301–827–6687, or by e-mail: *jjohannessen@fda.gov* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington. DC area), code 8732310001. Please call the Information Line for up-to-date information on this meeting.

Agenda: On Wednesday, June 29, 2005, the committee will hear and discuss the recommendation of the Pediatric Ethics Subcommittee from its meeting on June 28, 2005, regarding a referral by an Institution Review Board of a proposed clinical investigation involving children as subjects that is regulated by FDA and is conducted or supported by DHHS. The committee will also discuss a report by the agency on Adverse Event Reporting, as mandated in section 17 of the Best Pharmaceuticals for Children Act (BPCA), for ethinyl estradiol; norgestimate (ORTHO TRI-CYCLEN), ciprofloxacin (CIPRO), tolterodine (DETROL LA), leflunomide (ARAVE), paricalcitol (ZEMPLAR), zolmitriptan (ZOMIG), dorzolamide (TRUSOPT).

On Thursday, June 30, 2005, the committee will discuss a report by the agency on Adverse Event Reporting, as mandated in section 17 of the BPCA, for methylphendidate (CONCERTA and other methtylphenidates).

The background material will become available no later than the day before the meeting and will be posted under the Pediatric Advisory Committee (PAC) Docket site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm.* (Click on the year 2005 and scroll down to PAC meetings).

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 17, 2005. Oral presentations from the public will be scheduled on Wednesday, June 29, 2005, between approximately 3:20 p.m. and 3:50 p.m., and Thursday, June 30, 2005, between approximately 1:30 p.m. and 2:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person by June 17, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please notify Jan Johannessen at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 19, 2005.

Sheila Dearybury Walcoff,

Associate Commissioner for External Relations.

[FR Doc. 05–10436 Filed 5–24–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0184]

Pediatric Ethics Subcommittee of the Pediatric Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of the Pediatric Ethics Subcommittee of the Pediatric Advisory Committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Ethics Subcommittee of the Pediatric Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Pediatric Advisory Committee on certain regulatory issues with regard to FDA and Department of Health and Human Services (HHS).

Date and Time: The meeting will be held on June 28, 2005, from 8:30 a.m. to 4 p.m.

Addresses: Electronic copies of the documents for public review can be viewed at the Pediatric Advisory Committee (PAC) Docket site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm.* (Click on the year 2005 and scroll down to Pediatric Ethics Subcommittee meeting for 06–28–05.) Electronic comments should be submitted to *http://www.fda.gov/dockets/ecomments.* Select Docket No. 2005N–0184, entitled "Surfactant IRB Referral" and follow the prompts to submit your statement. Written comments should be submitted to Division of Dockets Management (HFA–

305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please submit comments by June 7, 2005. Received comments may be viewed on the FDA Web site at: *http://www.fda.gov/ohrms/dockets*, or may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Location: U.S. Food and Drug Administration, 5630 Fishers Lane, rm. 1066, Rockville, MD.

Contact Person: Jan N. Johannessen, Office of the Commissioner (HF–33), Food and Drug Administration, 5600 Fishers Lane (for express delivery, rm. 14C–06), Rockville, MD 20857, 301–827–6687, or by e-mail: *jjohannessen@fda.gov*. Please call the FDA Advisory Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 8732310001, for up-to-date information on this meeting.

Agenda: The Pediatric Ethics Subcommittee of the Pediatric Advisory Committee will meet to discuss a referral by an Institutional Review Board (IRB) of a proposed clinical investigation that involves both an FDA regulated product and research involving children as subjects that may be supported by HHS. The proposed clinical investigation is entitled "Precursor Preference in Surfactant Synthesis of Newborns." Because the proposed clinical investigation would be regulated by FDA, and conducted or supported by HHS; both FDA and the Office for Human Research Protections, HHS, will participate in the meeting.

After presentation of an overview of the IRB referral process, background information on surfactant synthesis, an overview of the protocol and the referring IRB's deliberations on the protocol, and a summary of public comments received concerning whether the protocol should proceed, the subcommittee will discuss the proposed protocol and develop a recommendation regarding whether the protocol should proceed. The subcommittee's recommendation will then be presented to the FDA Pediatric Advisory Committee on June 29, 2005; the announcement of the June 29 and June 30, 2005, meeting can be found elsewhere in this issue of the **Federal Register**.

Also elsewhere in this issue of the **Federal Register** is a notice announcing a public comment period concerning whether the proposed clinical investigation should proceed. Information regarding submitting comments during that period is contained in that notice.

The background materials for the subcommittee meeting will be made publicly available no later than one day before the meeting and will be posted under the PAC Docket site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*. (Click on the year 2005 and scroll down to Pediatric Advisory Committee, Pediatric Ethics Subcommittee meetings.)

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by June 17, 2005. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon.

Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person by June 17, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please notify Jan Johannessen at least 7 days prior to the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 19, 2005.

Sheila Dearybury Walcoff,

Associate Commissioner for External Relations.

[FR Doc. 05–10437 Filed 5–24–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0183]

Draft Guidance for Industry on Antiviral Drug Development—Conducting Virology Studies and Submitting the Data to the Agency; 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 entitled "Antiviral Drug Development—Conducting Virology Studies and Submitting the Data to the Agency." This guidance is being issued to assist sponsors in developing and submitting nonclinical and clinical virology data, which are important to support clinical trials of antiviral agents. Nonclinical and clinical virology reports are essential components in the review of investigational antiviral drugs. The information in this guidance will facilitate the development of antiviral drug products.

DATES: Submit written or electronic comments on the draft guidance by July 25, 2005. 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 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: Lisa K. Naeger, Center for Drug Evaluation and Research (HFD–530), Food and Drug Administration, 9201 Corporate Blvd., Rockville, MD 20857, 301–827–2330; or Julian O'Rear, Center for Drug Evaluation and Research (HFD–530), Food and Drug Administration, 9201 Corporate Blvd., Rockville, MD 20857, 301–827–2330.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Antiviral Drug Development—Conducting Virology Studies and Submitting the Data to the Agency." The purpose of this guidance is to assist sponsors in the development of antiviral drug products and to serve as a starting point for understanding the nonclinical and clinical virology data important to support clinical trials of antiviral agents. This guidance focuses on nonclinical and clinical virology studies, which are essential components in the review of

investigational antiviral drugs. Topics in this guidance include studies defining the mechanism of action, establishing specific antiviral activity of the investigative drug, providing data on the development of viral resistance to the investigational drug, and providing data identifying cross-resistance to approved drugs having the same target.

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 antiviral drug development; conducting virology studies and submitting the data to the agency. 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. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in this guidance was approved under OMB control number 0910–0014 (until January 31, 2006).

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. 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. The draft guidance and received comments are available for public examination 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: May 18, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–10431 Filed 5–24–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0184]

Solicitation of Public Review and Comment on Research Protocol: Precursor Preference in Surfactant Synthesis of Newborns

AGENCY: Office of Public Health and Science and Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Office for Human Research Protections (OHRP), Office of Public Health and Science, Department of Health and Human Services (HHS), and the Food and Drug Administration (FDA), are soliciting public review and comment on a proposed research protocol entitled "Precursor Preference in Surfactant Synthesis of Newborns." The proposed research would be conducted at the St. Louis Children's Hospital and supported by the National Heart, Lung and Blood Institute. Public review and comment are solicited regarding the proposed research protocol under the requirements of HHS and FDA regulations.

DATES: To be considered, written or electronic comments on the proposed research must be received on or before 4:30 p.m. on June 17, 2005.

ADDRESSES: Electronic copies of the documents for public review can be viewed at the Pediatric Advisory Committee Docket Web site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*. (Click on the year 2005 and scroll down to Pediatric Ethics Subcommittee meetings.) Submit written comments to the Division of Dockets Management (HFA–305), Docket No. 2005N–0184, Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. All comments should be identified with the docket number found in brackets in the heading of this document. Received comments may be viewed on FDA's Web site at *http://www.fda.gov/ohrms/dockets/dockets/05n0184/05n0184.htm*, or may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Kevin Prohaska, Office for Human Research Protections, The Tower Building, 1101 Wootton Pkwy., suite 200, Rockville, MD 20852, 301–496–7005, FAX: 301- 402–2071, e-mail: *kprohask@osophs.dhhs.gov*; or Jan N. Johannessen, Office of the Commissioner (HF–33), Food and Drug Administration, 5600 Fishers Lane (for express delivery, rm. 14C–06), Rockville, MD 20857, 301–827–6687, or by e-mail: *jjohannessen@fda.gov*.

SUPPLEMENTARY INFORMATION: All studies conducted or supported by HHS that are not otherwise exempt and that propose to involve children as subjects require Institutional Review Board (IRB) review in accordance with the provisions of HHS regulations for the protection of human subjects in 45 CFR part 46, subpart D. Under FDA's interim final rule effective April 30, 2001, FDA adopted similar regulations in part 50, subpart D (21 CFR part 50, subpart D) to provide safeguards for children enrolled in clinical investigations of FDA-regulated products. Because the proposed research, "Precursor Preference in Surfactant Synthesis of Newborns," would be supported by NIH, a component of HHS, and would be regulated by FDA, both HHS and FDA regulations apply to this proposed research.

Under HHS regulations in 45 CFR 46.407, and FDA regulations in § 50.54, if an IRB reviewing a protocol to be conducted or supported by HHS for a clinical investigation regulated by FDA does not believe that the proposed research involving children as subjects meets the requirements of HHS regulations in 45 CFR 46.404, 46.405, or 46.406, and FDA regulations in §§ 50.51, 50.52, or 50.53, the research may proceed only if the following conditions are met: (1) IRB finds that the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children; and (2) the Secretary (HHS) and the Commissioner (FDA), after consultation with experts in pertinent disciplines (e.g., science, medicine, education, ethics, law) and following opportunity for public review and comment, determine either: (a) That the research in fact satisfies the conditions of 45 CFR 46.404, 46.405, or 46.406 under HHS regulations, and §§ 50.51, 50.52, or 50.53 under FDA regulations, or (b) that the following conditions are met: (i) The research or clinical investigation presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children; (ii) the research or clinical investigation will be conducted in accordance with sound ethical principles; and (iii) adequate provisions are made for soliciting the assent of

children and the permission of their parents or guardians, as set forth in 45 CFR 46.408 and 21 CFR 50.55.

HHS has received a request on behalf of the Washington University Medical Center IRB to review under 45 CFR 46.407 the protocol entitled "Precursor Preference in Surfactant Synthesis of Newborns." The principal investigator proposes to administer to preterm and full-term newborns simultaneous 24-hour infusions of palmitate and acetate labeled with the stable (nonradioactive) isotope carbon-13, then measure the incorporation of each into surfactant, collected by tracheal aspiration. Subjects of the study would include approximately 10 full-term, intubated infants with normal lungs and 15 to 20 preterm (24 to 28 weeks gestational age), intubated infants with respiratory distress syndrome.

The overall goal of the proposed study is to better understand the potential differences in precursor preferences in surfactant synthesis between preterm infants with immature lungs (requiring mechanical ventilation) and full-term infants with normal lung function. The three specific aims of the study are to: (1) Determine the rate of surfactant synthesis using de novo synthesized fatty acids (acetate), (2) determine the rate of surfactant synthesis using preformed fatty acids (palmitate), and (3) compare the rates of incorporation in preterm infants versus full-term infants with normal lungs.

The Washington University Medical Center IRB determined that the protocol was not approvable under 45 CFR 46.404, 46.405, or 46.406 because the 24-hour isotope infusion and extra blood draws pose more than minimal risks to the subjects, there is no prospect of direct benefit to the individual subjects, the interventions or procedures do not present an experience to the control group that are reasonably commensurate with those inherent in their expected medical situation, and the control group does not have the condition or disorder under study. Accordingly, the Washington University Medical Center IRB forwarded the protocol to OHRP under 45 CFR 46.407 for consideration. Because this clinical investigation is regulated by FDA, FDA's regulations in part 50, subpart D, specifically § 50.54, apply as well.

In accordance with 45 CFR 46.407(b) and 21 CFR 50.54(b), OHRP and FDA are soliciting public review and comment on this proposed clinical investigation. In particular, comments are solicited on the following questions: (1) What are the potential benefits, if any, to the subjects and to children in general; (2) what are the types and degrees of risk that this research presents to the subjects; (3) are the risks to the subjects reasonable in relation to the anticipated benefits, and is the research likely to result in knowledge that can be generalized about the subjects' disorder or condition; and (4) does the research present a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children.

To facilitate the public review and comment process, FDA has established a public docket and placed in that docket information relating to the proposed clinical investigation, including the following: Correspondence from Washington University Medical Center referring the proposed research protocol to HHS for consideration under 45 CFR 46.407; correspondence from FDA and OHRP to Washington University Medical Center regarding the proposed protocol; the research protocol; NIH's grant funding the protocol; IRB's deliberations on the proposed research; the drug preparation protocol; certificate of analysis of the test compounds; the data safety monitoring plan; and the parental permission documents. Electronic copies of these documents can be viewed at the Pediatric Advisory Committee (PAC) Docket Web site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*. (Click on the year 2005 and scroll down to Pediatric Ethics Subcommittee meetings.) These materials are also available on OHRP's website at *http://www.hhs.gov/ohrp/children/*.

All written comments concerning this proposed research should be submitted to FDA's Division of Dockets Management under 21 CFR 10.20, no later than 4:30 p.m. on June 17, 2005. The background materials and received comments may be viewed on FDA's Web site at *http://www.fda.gov/ohrms/dockets/dockets/05n0184/05n0184.htm* or may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. The background materials may also be viewed on OHRP's Web site at *http://www.hhs.gov/ohrp/children/*.

Dated: May 19, 2005.

Sheila Dearybury Walcoff,

Associate Commissioner for External Relations.

[FR Doc. 05–10438 Filed 5–24–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

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

Proposed Project: Health Professions Student Loan (HPSL) Program and Nursing Student Loan (NSL) Program Administrative Requirements (Regulations and Policy)(OMB No. 0915–0047)—Extension

The regulations for the Health Professions Student Loan (HPSL) Program and Nursing Student Loan (NSL) Program contain a number of reporting and recordkeeping requirements for schools and loan applicants. The requirements are essential for assuring that borrowers are aware of rights and responsibilities that schools know the history and staus of each loan account that schools pursue aggressive collection efforts to reduce default rates, and that they maintain adequate records for audit and assessment purposes. Schools are free to use improved information technology to manage the information required by the regulations.

The estimated total annual burden is 34,558 hours. The burden estimates are as follows:

RECORDKEEPING REQUIREMENTS

Regulatory/section requirements	Number of recordkeepers	Hours per year	Total burden hours
HPSL Program:			
57.206(b)(2), Documentation of Cost of Attendance	547	1.17	640
57.208(a), Promissory Note	547	1.25	684
57.210((b)(1)(i), Documentation of Entrance Interview	547	1.25	684
57.210(b)(1)(ii), Documentation of Exit Interview	*576	0.33	190
57.215(a) & (d), Program Records	*576	10	5,760
57.215(b), Student Records	*576	10	5,760
57.215(c), Repayment Records	*576	18.75	10,800
HPSL Subtotal	576		24,518
NSL Program:			
57.306(b)(2)(ii), Documentation of Cost of Attendance	315	0.3	95
57.308(a), Promissory Note	315	0.5	158
57.310(b)(1)(i), Documentation of Entrance Interview	315	0.5	158
57.310(b)(1)(ii), Documentation of Exit Interview	*502	0.17	85
57.315(a)(1) & (a)(4), Program Records	*502	5	2,510
57.315(a)(2), Student Records	*502	1	502
57.315(a)(3), Repayment Records	*502	2.51	1,255
NSL Subtotal	502		4,763

*Includes active and closing schools.
HPSL data includes active and closing Loans for Disadvantaged Students (LDS) program schools.

REPORTING REQUIREMENTS

Regulatory/section requirements	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hour burden
HPSL Program:					
57.205(a)(2), Excess Cash	Burden included under 0915–0044				
57.206(a)(2), Student Financial Aid Transcript	4,679	1	4,679	.25	1,170
57.208(c), Loan Information Disclosure	547	68.73	37,595	.0833	3,132
57.210(a)(3), Deferment Eligibility	Burden included under 0915–0044				
57.210(b)(1)(i), Entrance Interview	547	68.73	37,595	0.167	6,278
57.210(b)(1)(ii), Exit Interview	*547	12	6,564	0.5	3,282
57.210(b)(1)(iii), Notification of Repayment	*547	30.83	16,864	0.167	2,816
57.210(b)(1)(iv), Notification Durng Deferment	*547	24.32	13,303	0.0833	1,108
57.210(b)(1)(vi), Notification of Delinquent Accounts	*547	10.28	5,623	0.167	518
57.210(b)(1)(x), Credit Bureau Notification	*547	8.03	4,392	0.6	2,635
57.210(b)(4)(i), Write-off of Uncollectible Loans	20	1.00	20	3.0	60
57.211(a) Disability Cancellation	8	1	8	.75	6
57.215(a) Reports	Burden included under 0915–0044				
57.215(a)(2), Administrative Hearings	0	0	0	0	0
57.215(a)(d), Administrative Hearings	0	0	0	0	0
HPSL Subtotal	8,681		109,779		16,703
NSL Program:					
57.305(a)(2), Excess Cash	Burden included under 0915–0044				
57.306(a)(2), Student Financial Aid Transcript	4,062	1	4,062	0.25	1,016

REPORTING REQUIREMENTS—Continued

Regulatory/section requirements	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hour burden
57.310(b)(1)(i), Entrance Interview	315	23.51	7,406	0.167	1,237
57.310(b)(1)(ii), Exit Interview	*502	3.77	1,892	0.5	946
57.301(b)(1)(iii), Notification of Repayment	*502	6.18	3,102	0.167	518
57.310(b)(1)(iv), Notification During Deferment	*502	0.65	326	0.083	27
57.310(b)(1)(vi), Notification of Delinquent Accounts	*502	4.61	2,314	0.167	386
57.310(b)(1)(x), Credit Bureau Notification	*502	8.3	4,167	0.6	2,500
57.310(b)(4)(i), Write-off of Uncollectible Loans	20	1.0	20	3.5	70
57.311(a), Disability Cancellation	7	1.0	7	0.8	5.6
57.312(a)(3), Evidence of Educational Loans	Inactive Provision Burden included under 0915–0044				
57.315(a)(1), Reports					
57.315(a)(1)(ii), Administrative Hearings	0	0	0	0	0
57.316(a)(d), Administrative Hearings	0	0	0	0	0
NSL Subtotal	6,914		23,296		6,706

* Includes active and closing schools.

Send comments to Susan G. Queen, PhD, HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: May 18, 2005.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 05–10430 Filed 5–24–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Infant Mortality; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Infant Mortality (ACIM).

Dates and Times: July 7, 2005, 9 a.m.–5 p.m., July 8, 2005, 8:30 a.m.–3 p.m.

Place: The Wyndham Washington Hotel, 1400 M Street, NW., Washington, DC 20005, (202) 429–1700.

Status: The meeting is open to the public with attendance limited to space availability.

Purpose: The Committee provides advice and recommendations to the Secretary of Health and Human Services on the following: Department programs that are directed at reducing infant mortality and improving the health status of pregnant women and infants; factors affecting the continuum of care with respect to maternal and child health care, including outcomes following childbirth; strategies to coordinate the variety of Federal, State, local and private programs and efforts that are designed to deal with the health and social problems impacting on infant mortality; and the implementation of the Healthy Start program and Healthy People 2010 infant mortality objectives.

Agenda: Topics that will be discussed include the following: Maternal and Child Health (MCH) Services Financing, Health Disparities in the MCH Population, and Improving Data and Public Health Practice. Substantial time will be spent in Subcommittee and full Committee discussions aimed at formulating the ACIM issues agenda. Proposed agenda items are subject to change as priorities indicate.

Time will be provided for public comments limited to five minutes each; comments are to be submitted no later than June 22, 2005.

FOR FURTHER INFORMATION CONTACT: Anyone requiring information regarding the Committee should contact Peter C. van Dyck, M.D., M.P.H., Executive Secretary, ACIM, Health Resources and Services Administration (HRSA), Room 18–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, Telephone: (301) 443–2170.

Individuals who are submitting public comments or who have questions regarding the meeting should contact Ann M. Koontz, C.N.M., Dr.P.H., HRSA, Maternal and Child Health Bureau, telephone: (301) 443–6327, e-mail: *akoontz@hrsa.gov.*

Dated: May 18, 2005.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 05–10429 Filed 5–24–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–21258]

National Boating Safety Advisory Council; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the National Boating Safety Advisory Council (NBSAC). NBSAC advises the Coast Guard on matters related to recreational boating safety.

DATES: Application forms should reach us on or before September 8, 2005.

ADDRESSES: You may request an application form by writing to Commandant, Office of Boating Safety

(G–OPB–1), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; by calling 202–267–1077; or by faxing 202–267–4285. Send your application in written form to the above street address. This notice and the application form are available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Phil Cappel, Executive Director of NBSAC, telephone 202–267–0988, fax 202–267–4285.

SUPPLEMENTARY INFORMATION: The National Boating Safety Advisory Council (NBSAC) is a Federal advisory committee under 5 U.S.C. App. 2. It advises the Coast Guard regarding regulations and other major boating safety matters. NBSAC's 21 members are drawn equally from the following three sectors of the boating community: State officials responsible for State boating safety programs, recreational boat and associated equipment manufacturers, and national recreational boating organizations and the general public. Members are appointed by the Secretary of the Department of Homeland Security.

NBSAC normally meets twice each year at a location selected by the Coast Guard. When attending meetings of the Council, members are provided travel expenses and per diem.

We will consider applications received in response to this notice for the following seven positions that expire or become vacant in December 2005: Three representatives of State officials responsible for State boating safety programs, two representatives of recreational boat and associated equipment manufacturers, and two representatives of national recreational boating organizations. The positions from the general public are not open for consideration this year. Applicants are considered for membership on the basis of their particular expertise, knowledge, and experience in recreational boating safety. Prior applicants should submit an updated application to ensure consideration for the vacancies announced in this notice. Each member serves for a term of up to 3 years. Some members may serve consecutive terms.

In support of the policy of the U. S. Coast Guard on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

Dated: May 16, 2005.

Scott H. Evans,

Captain, U.S. Coast Guard, Acting Director of Operations Policy.

[FR Doc. 05–10422 Filed 5–24–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Notice of Intent To Request Approval From the Office of Management and Budget (OMB) of One Public Collection of Information; Port Security Training Exercise Program

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: TSA invites public comment on a new information collection requirement abstracted below that will be submitted to OMB for approval in compliance with the Paperwork Reduction Act.

DATES: Send your comments by July 25, 2005.

ADDRESSES: Comments may be mailed or delivered to Katrina Wawer, Information Collection Specialist, Office of Transportation Security Policy, TSA–9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

FOR FURTHER INFORMATION CONTACT: Katrina Wawer at the above address or by telephone (571) 227–1995 or facsimile (571) 227–2594.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for submission to renew clearance of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Purpose of Data Collection

TSA is currently conducting a national effort to develop a Port Security Training Exercise Program (PortStep) that will increase the port industry's level of preparedness to prevent, respond to, and recover from a terrorist or security event. As part of this effort, TSA needs to collect data on various aspects of our nation's public and privately owned ports in order to group each port according to the level of potential vulnerability to terrorist threats. TSA has performed an exhaustive search for other potential sources of the data needed, including a search of reports and databases within the U.S. Army Corps of Engineers, U.S. Maritime Administration (MARAD), and U.S. Coast Guard (USCG). TSA was able to locate several limited sources of data; however, available data from these sources is five to ten years old, and did not include specific data activities and changes made as a result of the terrorist attacks of September 11, 2001.

Description of Data Collection

TSA will conduct the information collection via the Internet, using a Web-based survey. The information collection will target, nationwide, relevant port stakeholders, including Port Authorities, USCG Captains of the Port, USCG Area Maritime Security Committees, state and local transportation security managers, emergency managers and emergency responders, private port service providers, and industry and labor associations. TSA estimates the total number of respondents to be 360 and the estimated annual reporting burden to be 150 hours annually. TSA may need to re-administer this survey periodically after 2007 to refine and refresh data collections; however, this requirement is not certain.

Use of Results

Data will be compiled and assigned weights to produce a score that TSA will use to create a tiered list of prioritized ports that may selectively receive a PortStep training exercise. Data will be stored securely and will not be released publicly. The data will be used only for the purposes of creating the Tiered Approach Report.

TSA will use these results to determine which U.S. ports should receive a TSA-sponsored exercise, the type and sophistication of the exercise, and the level of TSA involvement.

Issued in Arlington, Virginia, on May 19, 2005.

Lisa S. Dean,

Privacy Officer.

[FR Doc. 05–10383 Filed 5–24–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Special Immigrant Visas for Fourth Preference Employment-Based Broadcasters File No. OMB–25.

The Department of Justice, U.S. Citizenship and Immigration and Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 23, 2005 at 70 FR 14707, allowed for a 60-day public comment period. No public 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 June 24, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate 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;

(2) Evaluate the accuracy of the agency's estimate of the burden of the 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 whose who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Special Immigrant Visas for Fourth Preference Employment-Based Broadcasters.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Agency Form Number (File No. OMB–25). U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected via the submitted supplemental documentation (as contained in 8 CFR 204.13(d)) will be used by the USCIS to determine eligibility for the requested classification as fourth preference employment-based immigrant broadcasters.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 2 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 200 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; 202–272–8377.

Dated: May 10, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–10447 Filed 5–24–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

ACTION: 30-day notice of information collection under review; Application to register permanent residence or adjust status, and supplement A to form I–485.

The Department of Justice, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 23, 2005 at 70 FR 14707, allowed for a 60-day public comment period. No comments were received by the USCIS 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 June 24, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate 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;

(2) Evaluate the accuracy of the agency's estimate of the burden of the 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:* Application to Register Permanent Residence or Adjust Status, and Supplement A to Form I–485.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Forms I–485 and I–485 Supplement A. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This collection allows an applicant to determine whether he or she must file under section 245 of the Immigration and Nationality Act, and it allows the Service to collect information needed for reports to be made to different government committees.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* I–485 Adult respondents is 314,793 at 5.25 hours per response; I–485 Children respondents is 247,289 at 4.5 hours per response; and I–485 Supplement A respondents is 73,418 at 13 minutes (.216) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection(s):* 2,781,321.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit our Web site at *http://www.uscis.gov*, go to the "Fingerprinting and Forms" link, then scroll down the page for this form. You may also contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; 209–272–8377.

Dated: May 10, 2005.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–10456 Filed 5–24–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4950–N–1B]

Notice of HUD's Fiscal Year (FY) 2005 Notice of Funding Availability Policy Requirements and General Section to SuperNOFA for HUD's Discretionary Grant Programs; Submission Deadline Date Grace Period Announcement

AGENCY: Office of the Secretary, HUD.

ACTION: Super Notice of Funding Availability (SuperNOFA) for HUD Discretionary Grant Programs; submission deadline date grace period announcement.

SUMMARY: On March 21, 2005, HUD published its Fiscal Year (FY) 2005, Notice of Funding Availability (NOFA) Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Grant Programs. This document announces a grace period for applicants submitting electronic applications through Grants.gov for the Historically Black Colleges and Universities (HBCU) Program, the Early Doctoral Student Research Grant Program, the Doctoral Dissertation Research Grant Program, the Community Development Work Study Program, the Fair Housing Initiative Programs, the Healthy Homes Technical Studies Program, the Lead Technical Studies Program, the Operation Lead Elimination Action Program, the Housing Choice Voucher Family Self-Sufficiency (FSS) Program Coordinators Program, the Homeownership Supportive Services Program, the Housing Opportunities for Persons with AIDS (HOPWA) Program, and the Housing for People who are Homeless and Addicted to Alcohol Program.

DATES: The deadline date grace periods for submission of applications for the programs affected by this notice are listed in the chart in the **SUPPLEMENTARY INFORMATION** section of the notice.

FOR FURTHER INFORMATION CONTACT: Barbara Dorf, Director, Office of Departmental Grants Management and Oversight, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2156, Washington, DC 20410–7000; telephone 202–708–0667 (this is not a toll-free number). Persons with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: On March 21, 2005 (70 FR 13575), HUD published its Notice of HUD's Fiscal Year (FY) 2005, Notice of Funding Availability Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Grant Programs (SuperNOFA). The application submission dates for all Program NOFAs were listed in the SuperNOFA. On May 11, 2005 (70 FR 24835), HUD published a Notice to the SuperNOFA, providing additional clarification on the utilization of HUD forms. On May 18, 2005 (70 FR 28553), HUD published a technical correction to the SuperNOFA extending due dates and providing instruction corrections for a number of programs published as part of the SuperNOFA.

On Tuesday, May 17, 2005, the Grants.gov website was the target of a "denial of service attack." Over the next 35 hours that the attack was underway, Grants.gov experienced a significant degradation in performance. The processing capacity degraded by this attack, coupled with a high volume of application submissions, rendered the Grants.gov website almost inaccessible during certain times between Tuesday, May 17, 2005 and Thursday, May 19, 2005. Information regarding the attack can be obtained at *http://www.cert.org/tech_tips/denial_of_service.html#1*.

HUD understands that eligible NOFA applicants submitting electronic submissions between Tuesday, May 17, 2005 and Thursday, May 19, 2005 may have had difficulty submitting their applications. Therefore, in order to give all NOFA applicants affected by the technical problem sufficient time to submit completed applications, this Notice published in today's **Federal Register** provides a grace period and extended deadline date for those affected NOFA competitions. The grace periods and extended electronic submission deadline date for the affected NOFA competitions are as follows:

BILLING CODE 4210–01–P

Grace Periods and Extended Electronic Submission Deadline Dates

Program Name	Application Submission Date	New Grace Period Submission Date
Community Development Work Study Program	May 18, 2005	June 1, 2005
Early Doctoral Student Research Grant Program	May 18, 2005	June 1, 2005
Doctoral Dissertation Research Grant Program	May 18, 2005	June 1, 2005
Housing for People who are Homeless and Addicted to Alcohol Program	May 19, 2005	June 2, 2005
Housing Choice Voucher Family Self Sufficiency (FSS) Program Coordinators Program	May 20, 2005	June 3, 2005
Fair Housing Initiatives Program	May 23, 2005	June 6, 2005
Historically Black Colleges and Universities (HBCU) Program	May 25, 2005	June 7, 2005
Homeownership Supportive Services Program	May 26, 2005	June 8, 2005
Housing Opportunities for Persons with AIDS (HOPWA) Program	May 27, 2005	June 9, 2005
Healthy Homes Technical Studies Program	June 8, 2005	June 13, 2005
Lead Technical Studies Program	June 8, 2005	June 13, 2005
Operation Lead Elimination Action Program	June 9, 2005	June 14, 2005

BILLING CODE 4210–01–C

Applicability of SuperNOFA General Section Requirements to Affected Programs

The complete NOFA competition descriptions, application submission information, and application review information for each of these affected competitions were published in HUD's SuperNOFA published on March 21, 2005 (70 FR 13575) as clarified by HUD's Notice of Additional Guidance to Applicants published May 11, 2005 (70 FR 24835) and HUD's Notice of Technical Corrections published May 18, 2005 (70 FR 28553). With the exception of the specific grace period deadline date extensions listed in the Notice published in today's **Federal Register**, all requirements published in the SuperNOFA and its technical correction are applicable to applicants submitting applications within the grace periods listed herein. All other Program submission dates remain unchanged. HUD will be publishing separate Notices in the **Federal Register** for the Rural Housing and Economic Development Program, the Section 202 Supportive Housing for the Elderly Program, and the Assisted Living Conversion Program applicants.

Publication of Change to Instructions on Grants.gov

HUD will place this Notice and all Notices impacting programs placed on Grants.gov/Find and Apply in the download instructions to the electronic application file found on Grants.gov. This Notice does not change the application download portion of the application package.

Frequently Asked Questions

As a service to our customers to assist them in going through the electronic application process, HUD has published Frequently Asked Questions on our Web site at *http://www.hud.gov/offices/adm/grants/fundavail.cfm*. The Frequently Asked Questions can be found under Helpful Tools.

Submission Instructions

If you have already submitted an application, you do not need to resubmit another application. However, if you choose to make any changes to an application that has already been submitted, you must resubmit an entirely new application. HUD will review the most recent application and disregard any earlier submitted applications.

Waiver of Electronic Submission Requirement

This Notice is not a basis for request of a waiver of an electronic submission. Applicants seeking a waiver of an electronic submission requirement must have followed the requirements described in the NOFA competition descriptions, application submission information, and application review information, published in HUD's SuperNOFA on March 21, 2005. If you currently do not have a waiver, you must file your application electronically. If you obtained a waiver to the electronic submission requirements pursuant to the General Section requirements, you may resubmit a paper submission. Similarly, if you submitted an electronic application, you may resubmit it electronically during the grace periods listed herein. In either case, if you choose to make any changes to an application already submitted, you must resubmit a completely new application. For the purpose of rating and ranking, HUD will review the most recent application and disregard any earlier submitted application.

Dated: May 23, 2005.

Darlene F. Williams,

General Deputy Assistant Secretary for Administration.

[FR Doc. 05–10556 Filed 5–24–05; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4950–C–34A]

Notice of HUD's Fiscal Year (FY) 2005 Notice of Funding Availability Policy Requirements and General Section to SuperNOFA for HUD's Discretionary Grant Programs; Rural Housing and Economic Development Program NOFA; Competition Reopening Announcement

AGENCY: Office of the Secretary, HUD.

ACTION: Super Notice of Funding Availability (SuperNOFA) for HUD Discretionary Grant Programs; Rural Housing and Economic Development Program NOFA; competition reopening announcement.

SUMMARY: On March 21, 2005, HUD published its Fiscal Year (FY) 2005, Notice of Funding Availability (NOFA) Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Grant Programs. The Rural Housing and Economic Development Program NOFA competition, which was included in the SuperNOFA, closed on May 17, 2005. This document announces the reopening of the Rural Housing and Economic Development Program NOFA competition.

DATES: The new application submission date for the Rural Housing and Economic Development Program is July 11, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Thann Young, Community Planning and Development Specialist, or Ms. Linda L. Streets, Community Development Specialist, Office of Rural Housing and Economic Development, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7137, Washington, DC 20410–7000; telephone 202–708–2290 (this is not a toll-free number). Persons with speech or hearing impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: On March 21, 2005 (70 FR 13575), HUD published its Notice of HUD's Fiscal Year (FY) 2005, Notice of Funding Availability (NOFA), Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Grant Programs. The Rural Housing and Economic Development Program, which was included in the SuperNOFA, made approximately $23.8 million available in HUD assistance. According to the SuperNOFA, the application submission date for the Rural Housing and Economic Development Program NOFA was May 17, 2005. On May 11, 2005 (70 FR 24835), HUD published a technical correction to the Rural Housing and Economic Development Program NOFA making clear that the competition's application submission date was May 17, 2005. On May 11, 2005 (70 FR 24835), HUD also published additional guidance to the General Section, which included a link to Frequently Asked Questions, located at *http://grants.gov/ForApplicants#*. Frequently asked questions can also be found on the HUD Web site at *http://www.hud.gov/offices/adm/grants/egrants/grantsgovfaqs.pdf*.

HUD understands that many eligible applicants may have had difficulty submitting their applications or had not completed their grants.gov registration. Therefore, in order to give all NOFA applicants sufficient time to submit completed electronic applications and complete the registration process for grants.gov electronic submission, this notice published in today's **Federal Register** reopens the Rural Housing and Economic Development Program NOFA competition. The new application submission date for the Rural Housing

and Economic Development Program NOFA competition is July 11, 2005.

Applicability of SuperNOFA General Section and Rural Housing and Economic Development Program NOFA Requirements to Reopened Competition

Please note that the Rural Housing and Economic Development Program NOFA competition description, application submission information, and application review information were published in HUD's Notice of HUD's Fiscal Year (FY) 2005, Notice of Funding Availability (NOFA) Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Grant Programs, on March 21, 2005 (70 FR 13575). With the exception of the new deadline date for applications, all requirements listed in the General Section and in the Rural Housing and Economic Development Program NOFA are applicable to this reopened competition.

Submission Instructions

If you have already submitted an application, you do not need to resubmit another application. If you submitted a paper application, however, without first obtaining a waiver from the electronic submission requirement, you must resubmit your applications electronically, unless you obtain a waiver, as noted below. In any case, if you choose to make any changes to an application already submitted, you must resubmit a completely new application. For the purpose of rating and ranking, HUD will review the most recent application and disregard any earlier submitted application.

Waiver of Electronic Submission Requirement

If you are unable to submit your application electronically and must submit a paper application, you may request a waiver from this requirement. Your waiver request must be in writing and state the basis for the request and explain why electronic submission is not possible. The waiver request should also include an applicant's e-mail, name, and mailing address of the organization where responses can be directed. Waiver requests must be submitted to Pamela Patenaude, Assistant Secretary for Community Planning and Development, and waiver requests may be submitted by e-mail to *rhed@hud.gov*, by fax to (202) 708–3363, or by letter to: U.S. Department of Housing and Urban Development, Attention: Pamela Patenaude, Assistant Secretary for Community Planning and Development, 451 Seventh Street, SW., Room 7100, Washington, DC 20410. The waiver request should also include an applicant's e-mail or name and mailing address where responses can be directed. All waiver requests must be received by HUD no later than June 9, 2005. Thus, in order to ensure your waiver request is received, you must submit your waiver request by e-mail, fax, or letter as soon as possible. The basis for waivers for cause may include but are not limited to (a) lack of available Internet access in the geographic location in which the applicant's business office is located or (b) physical disability of the applicant that prevents the applicant from accessing or responding to the application electronically.

Dated: May 20, 2005.

Pamela Patenaude,

Assistant Secretary for Community Planning and Development.

[FR Doc. 05–10557 Filed 5–24–05; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910–BK]

ES–053459, Group No. 19, Maine; Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; Maine.

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 calendar 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:

Township 3, Range 9, North of Waldo Patent, Penobscot County

The plat of the dependent resurvey and survey of the boundaries of lands held in trust by the United States, for the Passamaquoddy Tribe, in Township 3, Range 9, North of Waldo Patent, (T. 3, R. 9, N.W.P.), Penobscot County, Maine, and was accepted May 18, 2005. We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

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: May 18, 2005.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 05–10400 Filed 5–24–05; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910–BJ–4789]

ES–053483, Group No. 40, Missouri; Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; Missouri.

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 calendar 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 U.S. Army Corps of Engineers.

The lands we surveyed are:

Fifth Principal Meridian, Missouri

T. 53 N., Rs. 1 E. and 1 W.

The plat of survey represents the dependent resurvey of portions of U.S. Survey Nos. 1709 and 1758, portions of the township boundaries, portions of the subdivisional lines and the survey of the Lock and Dam No. 24 acquisition boundary, in Township 53 North, Ranges 1 East and 1 West, of the Fifth Principal Meridian, in the State of Missouri, and was accepted on May 3, 2005. We will place a copy of the plat we described in the open files. It will be made available to the public as a matter of information.

Dated: May 12, 2005.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 05–10401 Filed 5–24–05; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910–BJ–4789]

ES–053484, Group No. 42, Missouri; Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; Missouri.

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 calendar 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 U.S. Army Corps of Engineers.

The lands we surveyed are:

Fifth Principal Meridian, Missouri

T. 55 N., Rs. 2 and 3 W.

The plat of survey represents the dependent resurvey of portions of U.S. Survey No. 3226, portions of the township boundaries, portions of the subdivisional lines and the survey of the Lock and Dam No. 24 acquisition boundary, in Township 55 North, Ranges 2 and 3 West, of the Fifth Principal Meridian, in the State of Missouri, and was accepted on May 19, 2005. We will place a copy of the plat we described in the open files. It will be made available to the public as a matter of information.

Dated: May 19, 2005.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 05–10402 Filed 5–24–05; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0072).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 280, "Prospecting for Minerals Other than Oil, Gas, and Sulphur on the Outer Continental Shelf."

DATE: Submit written comments by July 25, 2005.

ADDRESSES: You may submit comments by any of the following methods listed below. Please use the Information Collection Number 1010–0072 as an identifier in your message.

- Public Connect on-line commenting system, *https://ocsconnect.mms.gov*. Follow the instructions on the Web site for submitting comments.
- Email MMS at *rules.comments@mms.gov*. Identify with Information Collection Number 1010–0072 in the subject line.
- Fax: 703–787–1093. Identify with Information Collection Number 1010–0072.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Process Team (RPT); 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference "Information Collection 1010–0072" in your comments.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Rules Processing Team at (703) 787–1600. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulation and the forms that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 280, Prospecting for Minerals Other than Oil, Gas, and Sulphur on the Outer Continental Shelf.

OMB Control Number: 1010–0072.

Forms: MMS–134, MMS–135, and MMS–136.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Section 1337(k) of the OCS Lands Act authorizes the Secretary "* * * to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding leases of any mineral other than oil, gas, and sulphur in any area of the outer Continental Shelf not then under lease for such mineral upon such royalty, rental, and other terms and conditions as the Secretary may prescribe at the time of offering the area for lease." An amendment to the OCS Lands Act (Pub. L. 103–426) authorizes the Secretary to negotiate agreements (in lieu of the previously required competitive bidding process) for the use of OCS sand, gravel, and shell resources for certain specified types of public uses. The specified uses will support construction of governmental projects for beach nourishment, shore protection, and wetlands enhancement; or any project authorized by the Federal Government.

Section 1340 states that "* * * any person authorized by the Secretary may conduct geological and geophysical [G&G] explorations in the outer Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this Act, and which are not unduly harmful to aquatic life in such area." The section further requires that, permits to conduct such activities may only be issued if it is determined that the applicant is qualified; the activities are not polluting, hazardous, or unsafe; they do not interfere with other users of the area; and they do not disturb a site, structure, or object of historical or archaeological significance. Respondents are required to submit form MMS–134 to provide the information necessary to evaluate their qualifications. Upon approval, respondents are issued a permit on either form MMS–135 or MMS–136 depending on whether they are prospecting or conducting scientific research for "geological" or "geophysical" mineral resources.

Section 1352 further requires that certain costs be reimbursed to the parties submitting required G&G information and data. Under the Act, permittees are to be reimbursed for the costs of reproducing any G&G data required to be submitted. Permittees are to be reimbursed also for the reasonable cost of processing geophysical information required to be submitted when processing is in a form or manner required by the Director and is not used in the normal conduct of the business of the permittee.

MMS OCS Regions collect information required under part 280 to ensure there is no environmental degradation, personal harm or unsafe operations and conditions, damage to historical or archaeological sites, or interference with other uses; to analyze and evaluate preliminary or planned drilling activities; to monitor progress and activities in the OCS; to acquire G&G data and information collected under a Federal permit offshore; and to

determine eligibility for reimbursement from the Government for certain costs.

Respondents are required to submit form MMS–134 to provide the information necessary to evaluate their qualifications. The information is necessary for MMS to determine if the applicants for permits or filers of notices meet the qualifications specified by the Act. The MMS uses the information collected to understand the G&G characteristics of hard mineral-bearing physiographic regions of the OCS. It aids MMS in obtaining a proper balance among the potentials for environmental damage, the discovery of hard minerals, and adverse impacts on affected coastal states. Information from permittees is necessary to determine the propriety and amount of reimbursement.

Responses are mandatory or required to obtain or retain a benefit. No questions of a "sensitive" nature are asked. The MMS protects information considered proprietary according to 30 CFR 280.70 and applicable sections of 30 CFR parts 250 and 252, and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2).

Frequency: On occasion, annual; and as required in the permit.

Estimated Number and Description of Respondents: Approximately one hard mineral permittee or one notice filer at any give time and one affected State.

Estimated Reporting and Recordkeeping "Hour" Burden: The currently approved annual reporting burden for this collection is 108 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 280	Reporting and recordkeeping requirement	Hour burden
10; 11(a); 12; 13; Permit Forms	Apply for permit (form MMS–134) to conduct prospecting or G&G scientific research activities, including prospecting/scientific research plan and environmental assessment or required drilling plan.	8
11(b); 12(c)	File notice to conduct scientific research activities related to hard minerals, including notice to MMS prior to beginning and after concluding activities.	8
21(a)	Report to MMS if hydrocarbon/other mineral occurrences or environmental hazards are detected or adverse effects occur.	1
22	Request approval to modify operations	1
23(b)	Request reimbursement for expenses for MMS inspection	1
24	Submit status and final reports quarterly or on specified schedule and final report	8
28	Request relinquishment of permit	1
31(b); 73(a), (b)	Governor(s) of adjacent State(s) submissions to MMS: Comments on activities involving an environmental assessment; request for proprietary data, information, and samples; and disclosure agreement.	1
33, 34	Appeal penalty, order, or decision—burden covered under 5 CFR 1320.4(a)(2), (c)	
40; 41; 50; 51; Permit Forms	Notify MMS and submit G&G data/information collected under a permit and/or processed by permittees or 3rd parties, including reports, logs or charts, results, analyses, descriptions, etc.	4
42(b); 52(b)	Advise 3rd party recipient of obligations. Part of licensing agreement between parties; no submission to MMS.	
42(c), 42(d); 52(c), 52(d)	Notify MMS of 3rd party transactions	1
60; 61(a)	Request reimbursement for costs of reproducing data/information & certain processing costs.	20
72(b)	Submit in not less than 5 days comments on MMS intent to disclose data/information	1
72(d)	Contractor submits written commitment not to sell, trade, license, or disclose data/information.	1
Part 280	General departure and alternative compliance requests not specifically covered elsewhere in part 280 regulations.	2
Permit Forms	Request extension of permit time period	1
Permit Forms	Retain G&G data/information for 10 years and make available to MMS upon request	1

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *".

Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the "non-hour cost" burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1,

1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedure: MMS's practice is to make comments, including names and addresses of respondents, available for public review. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor this request to the extent allowable by law; however, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: May 19, 2005.

William Hauser,

Chief, Regulations and Standards Branch.

[FR Doc. 05–10385 Filed 5–24–05; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF LABOR

Office of Disability Employment Policy; Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Office of Disability Employment Policy is soliciting comments concerning the proposed new collection of the data contained in the nomination packet for the Department of Labor's Inaugural New Freedom Initiative Award. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before July 25, 2005.

ADDRESSES: Submit comments to Lisa Lahrman, Office of Disability Employment, United States Department of Labor, 200 Constitution Avenue, NW., Room S–1303, Washington, DC 20210, (202) 693–7880 (this is not a toll free number), Internet Address: *lahrman-lisa@dol.gov,* and FAX: (202) 693–7888.

FOR FURTHER INFORMATION CONTACT: Lisa Lahrman, tel. (202) 693–7880. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

I. Background

This collection of information (solicitation of nominations to receive an award) is planned to honor individuals, corporations and non-profit organizations which have been exemplary in furthering the employment-related objectives of President George W. Bush's New Freedom Initiative. The New Freedom Initiative reflects the Administration's commitment to increasing development and access to assistive and universally designed technologies, expanding educational opportunities, further integrating Americans with disabilities into the workforce, and helping to remove barriers to their full participation in community life. Legal authority for this collection can be found in both the New Freedom itself, and by Pub. L. 106–554, the Consolidated Appropriations Act of 2001 which established the Office of Disability Employment Policy within the Department of Labor to bring a heightened and permanent focus on increasing the employment of persons with disabilities.

II. Review Focus

The Department of Labor is particularly interested in comments which:

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

III. Current Actions

To support ODEP's mission and recognize the employment of people with disabilities as an Administration priority, the Department of Labor is initiating the Inaugural New Freedom Initiative Award program. This award will be presented annually by the Secretary of Labor to honor individuals, corporations, and non-profit organizations which have been exemplary in furthering the employment related objectives of President George W. Bush's New Freedom Initiative.

Type of Review: Extension of a currently approved collection of Information.

Agency: Office of Disability Employment Policy.

Title: Inaugural New Freedom Initiative.

OMB Number: 1230–0002.

Affected Public: Individuals, businesses, non-profit organizations, and the federal government.

Total Respondents: 100.

Frequency: Annually.

Total Responses: 100.

Average Time per Response: 10 hours.

Estimated Total Burden Hours: 1,000 Burden Hours.

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

Dated: May 18, 2005.

Lisa Lahrman,

Supervisory Program Specialist, Office of Disability Employment Policy.

[FR Doc. E5–2633 Filed 5–24–05; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Payment of Compensation Without Award (LS–206). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before July 25, 2005.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, e-mail *bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act (LHWCA). The Act provides benefits to workers injured in maritime employment on the navigable waters of the United States or in an adjoining area customarily used by an employer in loading, unloading, repairing or building a vessel. Under Sections 914(b) and (c) of the Longshore Act, a self-insured employer or insurance carrier is required to pay compensation within 14 days after the employer has knowledge of the injury or death. Upon making the first payment, the employer or carrier shall immediately notify the district director of payment. Form LS–206 has been designated as the proper form on which report of first payment is to be made. The LS–206 is also used by OWCP district offices to determine the payment status of a given case. This information collection is currently approved for use through March 31, 2006.

II. Review Focus

The Department of Labor is particularly interested in comments which:

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

III. Current Actions

The Department of Labor seeks the approval of the extension of this information collection in order to carry out its responsibility to meet the statutory requirements to provide compensation or death benefits under the Act to workers covered under the Act.

Type of Review: Extension.
Agency: Employment Standards Administration.
Titles: Payment of Compensation Without Award.
OMB Number: 1215–0022.
Agency Numbers: LS–206.
Affected Public: Business or other for-profit.
Total Respondents: 700.
Total Annual responses: 24,500.
Estimated Total Burden Hours: 6,125.
Estimated Time Per Response: 15 minutes.
Frequency: On Occasion.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $10,902.50.

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

Dated: May 19, 2005.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E5–2638 Filed 5–24–05; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Certificate of Medical Necessity (CM–893). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addresses section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before July 25, 2005.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW. Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, *Email bell.hazel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs administers the Federal Black Lung Workers' Compensation Program. The enabling regulations of the Black

Lung Benefits Act, at 20 CFR 725.701, establishes miner eligibility for medical services and supplies for the length of time required by the miner's condition and disability. 20 CFR.706 stipulates there must be prior approval before ordering an apparatus where the purchase price exceeds $300.00. 20 CFR 725.707 provides for the ongoing supervision of the miner's medical care, including the necessity, character and sufficiency of care to be furnished; gives the authority to request medical reports and indicates the right to refuse payment for failing to submit any report required. Because of the above legislation and regulations, it was necessary to devise a form to collect the required information. The CM–893, Certificate of Medical Necessity is completed by the coal miner's doctor and is used by the Division of Coal Mine Worker's Compensation to determine if the miner meets impairment standards to qualify for durable medical equipment, home nursing, and/or pulmonary rehabilitation. This information collection is currently approved for use through November 30, 2005.

II. Review Focus

The Department of Labor is particularly interested in comments which:

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

III. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to determine the eligibility for reimbursement of medical benefits to Black Lung recipients.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Certificate of Medical Necessity.

OMB Number: 1215–0113.

Agency Number: CM–893.

Affected Public: Individuals or households; Business or other for profit, Not-for-profit institutions.

Total Respondents: 4,000.

Total Annual responses: 4,000.

Estimated Total Burden Hours: 1,567.

Time Per Response: 20 to 40 minutes.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

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

Dated: May 19, 2005.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. E5–2639 Filed 5–24–05; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,536, TA–W–56,536A, and TA–W–56,536B]

Butler Manufacturing Company, Subsidary of Bluescope Steel, Ltd, Buildings Division, Wall and Roof Panels Production, Trim and Componenets Production and Secondaries Production, Galesburg, IL; Negative Determination on Reconsideration

On April 6, 2005, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice of determination was published on April 25, 2005 in the **Federal Register** (70 FR 21247). Workers of the subject firm produce pre-engineered metal building system parts, including wall and roof panels, trim and components, and secondaries (non-structural parts).

The Department initially denied Trade Adjustment Assistance (TAA) to workers of Butler Manufacturing Company, Subsidiary of Bluescope Steel, LTD, Building Division, Wall and Roof Panels Production, Trim and Components Production, and Secondaries Production, Galesburg, Illinois, because neither the shift of production or the "contributed importantly" group eligibility requirements of the Trade Act of 1974, as amended, were met.

The petitioners requesting reconsideration questioned the Department's determination that criterion (a)(2)(A)(I.B.) was not met. The Department concurs and corrects that finding to read that criterion (a)(2)(A)(I.C.) was not met. Criterion (a)(2)(A)(I.C.) requires that 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.

In response to the petitioners' allegation that workers are not separately identifiable by product line, the Department contacted company officials and petitioners to address the issue. The determination that the workers are separately identifiable by product line was based on information provided by the subject company during the initial investigation. Based on information provided during the reconsideration investigation, the Department finds that workers are interchangeable and are not separately identifiable by production line.

The initial investigation also revealed that during the investigation period of 2003 through 2004, the subject company did not import products like or directly competitive with wall and roof panels, trim and components, or secondaries, nor did it shift production of these articles abroad.

A survey of the subject company's major declining customers conducted during the initial investigation revealed no imports of products like or directly competitive with those produced by the subject company during the investigatory period.

In the request for reconsideration, the petitioners also allege that the subject company will open foreign manufacturing facilities which would incorporate a Butler manufacturing facility for pre-engineered buildings: three facilities in India by May-June 2005, and two facilities in China by mid-2006.

While the alleged shifts of production fall outside the scope of the investigation, the Department contacted the subject company and the workers to address the petitioners' allegations.

A careful review of the information obtained from the subject company and the workers during the reconsideration investigation confirmed that during 2003 and 2004, the subject firm did not

shift either wall and roof panels, trim and components, or secondaries production abroad, and revealed that beginning in 2005, production of these articles is shifting to affiliated production facilities in Tennessee, Texas, and North Carolina.

In order for the Department to issue a certification of eligibility to apply for ATAA, the worker group must be certified eligible to apply for trade adjustment assistance (TAA). Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance and alternative trade adjustment assistance for workers and former workers of Butler Manufacturing Company, Subsidiary of Bluescope Steel, LTD, Building Division, Wall and Roof Panels Production, Trim and Components Production, and Secondaries Production, Galesburg, Illinois.

Signed at Washington, DC, this 11th day of May 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–2646 Filed 5–24–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,110]

Compeq International, Salt Lake City, UT; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 4, 2005 in response to a petition filed by a company official on behalf of workers of Compeq International, Salt Lake City, Utah.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 11th day of May, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–2640 Filed 5–24–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,778]

Eagle Picher Automotive, Hillsdale Division, Including On-Site Leased Workers of Hamilton-Ryker, Staffing Solutions and Randstad, Manchester, TN; 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) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on March 25, 2005, applicable to workers of Eagle Picher Automotive, Hillsdale Division, including on-site leased workers of Hamilton-Ryker and Staffing Solutions, Manchester, Tennessee. The notice was published in the **Federal Register** on May 2, 2005 (70 FR 22711).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. New information shows that leased workers of Randstad were employed on-site at the Manchester, Tennessee location of Eagle Picher Automotive, Hillsdale Division.

Based on these findings, the Department is amending this certification to include leased workers of Randstad working at Eagle Picher Automotive, Hillsdale Division, Manchester, Tennessee.

The intent of the Department's certification is to include all workers employed at Eagle Picher Automotive, Hillsdale Division who was adversely affected by increased imports.

The amended notice applicable to TA–W–56,778 is hereby issued as follows:

"All workers of the Hillsdale Division of Eagle Picher Automotive, including on-site leased workers of Hamilton-Ryker, Staffing Solutions, and Randstad, Manchester, Tennessee, who became totally or partially separated from employment on or after March 16, 2004, through March 25, 2007, 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 13th day of May 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–2644 Filed 5–24–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,069]

Eaton Corporation, Fluid Power Group, Vinita, OK; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 28, 2005 in response to petition filed by a company official on behalf of workers at Eaton Corporation, Fluid Power Group, Vinita, Oklahoma.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 11th day of May, 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–2641 Filed 5–24–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,944]

Johnson Controls, Inc., Controls SP Division, Goshen, IN; Notice of Revised Determination of Alternative Trade Adjustment Assistance on Reconsideration

In a letter dated May 3, 2005, a company official requested administrative reconsideration regarding Alternative Trade Adjustment Assistance (ATAA) for workers of the subject firm. The certification for Trade Adjustment Assistance was signed on April 21, 2005. The Department's notice of determination will soon be published in the **Federal Register.**

The initial investigation determined that the subject worker group possesses skills that are easily transferable.

In the request for reconsideration, the company official stated that the ATAA question regarding transferable skills was misunderstood and provided new information regarding the skills

possessed by members of the subject worker group.

During the reconsideration investigation, the Department sought additional information regarding the workers' skills from the subject company.

Based on the new information, the Department has determined that the workers possess skills which are not easily transferable to other positions in the local area.

The initial investigation revealed that at least five percent of the workforce at the subject firm is at least fifty years of age. Conditions within the controls industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of Section 246 of the Trade Act of 1974, as amended, have been met for workers of the subject firm.

In accordance with the provisions of the Act, I make the following certification:

"All workers of Johnson Controls, Inc., Controls SP Division, Goshen, Indiana, who became totally or partially separated from employment on or after April 6, 2004 through April 21, 2007, 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 in Washington, DC this 12th day of May 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–2643 Filed 5–24–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,026]

Mayflower Vehicle Systems, Inc., South Charleston Facility, South Charleston, WV; 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 Mayflower Vehicle Systems, Inc., South Charleston Facility, South Charleston, West Virginia. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–56,026; Mayflower Vehicle Systems, Inc., South Charleston Facility, South Charleston, West Virginia (May 16, 2005)

Signed at Washington, DC this 17th day of May 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–2647 Filed 5–24–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,067 and TA–W–57,067A]

Unit Parts Co., A Remy Inc. Company, Oklahoma City, OK; Unit Parts Co., A Remy Inc. Company, Edmond, OK; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 28, 2005 in response to a petition filed by a company official on behalf of workers at Unit Parts Co., a Remy Inc. Company, Oklahoma City, Oklahoma and Unit Parts Co., a Remy Inc. Company, Edmond, Oklahoma.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 12th day of May, 2005.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–2642 Filed 5–24–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker 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 periods of April and May 2005.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, 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 county 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 and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, 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.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–56,787; Video Display Corp., Chroma Video Div., White Mills, PA

TA–W–56,800; Alcoa, Inc., Badin Works, Electrode Department, Badin, NC

TA–W–56,828; Tarkett, Inc., Commercial Div., Florence, AL

TA–W–56,883; General Motors Corp., Powertrain Div., Warren, MI

TA–W–56,817 & A; Drive Plus, Inc., Axle Plant, Lock Haven, PA and Steering Plant, Lock Haven, PA

TA–W–56,782; FC Meyer Packaging, LLC/Millen Industries, Inc., Lawrence, MA

TA–W–56,836; Leggett and Platt, Inc., Fashion Bed Group-York, York, PA

TA–W–56,879; Integrated Device Technology, Inc., Salinas, CA

TA–W–56,810; Miracle Recreation Equipment Co., a subsidiary of Playpower, Advance, MO

The investigation revealed that criteria (a)(2)(A)(I.B.)(Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–56,785; Michigan Sugar Company, Carrollton, MI

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

TA–W–57,046; Bernhardt Furniture Co., Plant 7, Contract Office Furniture Div., Lenoir, NC

TA–W–56,963; Medsep Corp., d/b/a Pall Medical, Covina, CA

TA–W–56,994; Chan-X of California, San Jose, CA

TA–W–57,010; The Gwinn Agency, Spartanburg, SC

TA–W–56820A; Motorola, Inc., Embedded Communications Computing Division, Tempe, AZ

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–56,905; The Lane Co., a subsidiary of Lane Furniture Industries, Inc., a subsidiary of Furniture Brands International, Altavista, VA

TA–W–56,866; Sun Microsystems, Inc., Nashua IT Business Unit, Nashua, NH

TA–W–57,052; SITEL/NAFS, Norcross, GA

TA–W–56,936; Allied Personnel Services, leased workers at Guardian Life Insurance Co., Bethlehem, PA

TA–W–56,779; Aon Service Corporation, ASC–IT Subdivision, Glenview, IL

TA–W–56,955; Brookwood Medical Center, Medical Transcription Division, Birmingham, AL

TA–W–56,886; MCI, Inc., working on-site at NCO Group, Inc., Houston NCO Call Center, Houston, TX Tools, Inc., Batavia, NY

The investigation revealed that criterion (a)(2)(A)(I.C) (Increased imports and (a)(2)(B)(II.C) (has shifted production to a foreign country) have not been met.

TA–W–56,780; ETEC, an Applied Materials Co., a subsidiary of Applied Materials, Inc., Hillsboro, OR

TA–W–56,869; National Textiles, Textiles Div., Hodges, SC

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 (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–56,806; Carolina Glove Company, Wilkes Plant, N. Wilkesboro, NC: March 23, 2004.

TA–W–56,865; Meyers Ind., Hickory, NC: March 15, 2004.

TA–W–57,035; DeRoyal (Stat Medical), DeRoyal Patient Care, New Tazewell, TN: April 15, 2004.

TA–W–56,805; Glen Raven Technical Fabrics, LLC, Subsidiary of Glen Raven, Inc., Burnsville, NC: December 4, 2004.

TA–W–56,951; Nicole Shades, LLC, a div. of Emess Design Group, LLC., Cleveland, OH: March 23, 2004.

TA–W–57,003; Richloom Fabrics Corp., Richloom Home Fashions, Bailey Plant, including on-site leased workers of PMC Corp., Clinton, SC: April 13, 2004.

TA–W–56,809 & A; Halex A Scott Fetzer Co., Hamilton, IN and Bedford Heights, OH: March 16, 2004.

TA–W–56,807; Lexington Home Brands, Plants 2, 4 & 5, Lexington, NC: April 25, 2005.

TA–W–56,939; Blue Ridge Crest, LLC, Galax, VA: April 8, 2004.

TA–W–56,910; Carolina Mills, Inc., Plant #22, Gastonia, NC: April 1, 2004.

TA–W–56,899; Murray, Inc., Brentwood, TN: March 31, 2004.

TA–W–56,822; Seal Glove Manufacturing, Inc., Millersburg, PA: March 21, 2004.

TA–W–56,974; Max Marx Color Corp., Irvington, NJ: April 14, 2004.

TA–W–56,948 & A & B; Standard Commercial Corp., Miller Road Tobacco Processing Facility, Wilson, NC, Miller Road Corporate Headquarters, Wilson, NC and Stantonsburg Road Factory and Office Complex, Wilson, NC: March 25, 2004.

TA–W–56,997; Cinergy Solutions of Rock Hill, working at Celanese Acetate, LLC, Rock Hill, SC: April 5, 2004.

TA–W–56,783; Compupunch, Inc., Los Angeles, CA: March 10, 2004.

TA–W–56,870; Locklear Manufacturing, Inc., Fort Payne, AL: March 31, 2004.

TA–W–56,993 & A & B; Springs Industries, Inc., Grace Complex, including on-site leased workers of Phillips Staffing, Lancaster, SC, Elliott Plant, including on-site leased workers of Defender Services, Fort Lawn, SC and Frances Plant, including on-site leased workers of Defender Services, Fort Lawn, SC: April 16, 2004.

TA–W–56,844; Design Institute America, Inc., including on-site leased workers of Star Staffing and Action Temporary Services, Jasper, IN: March 21, 2004.

The following certifications have been issued. The requirements of (a)(2)(B)

(shift in production) of Section 222 have been met.

TA–W–57,068; Johnson & Johnson CPC, Operations Div., including on-site leased workers of Etcon, Inc., Vend, Inc., Jackson Lawn Care and Maintenance, ABM, and Securitas, Royston, GA: April 15, 2004.

TA–W–57,079; Lyons Diecasting Co., Buckner, MO: April 20, 2004.

TA–W–57,081; GE Security, including leased workers of Express and Spherion, Gladewater, TX: April 28, 2004.

TA–W–56,908 & A; Stoneridge Control Devices, Acuator Product Div., 4x4 Actuator Production, Boston, MA and Switch Products Div., General Motors Headlamp Production, Canton, MA: March 30, 2004.

TA–W–56,972; KAC Holdings, d/b/a Kester, Des Plaines, IL: March 29, 2004.

TA–W–57,014; Tyler Refrigeration, Carrier Commercial Refrigeration, Carrier Corporation, Waxahachie, TX: May 16, 2005.

TA–W–57,048; Osram Sylvania, Lake Zurich, IL: April 14, 2004.

TA–W–57,057; Com-Fo Hosiery Mills, Henderson, NC: April 20, 2004.

TA–W–56,834; Thomasville Furniture Industries, Inc., Plant M, Thomasville, NC: March 21, 2004.

TA–W–57,028; Rockford Powertrain, Inc., Loves Park, IL: April 18, 2004.

TA–W–56,912; Comarco Wireless Technologies, Inc., Power Adapter Production Line, a div. of Comarco, Inc., Irvine, CA: March 30, 2004.

TA–W–56,897; Square D Company, a div. of Schneider Electric, including leased workers of Adecco Personnel, Asheville, NC: May 9, 2005.

TA–W–56,863; Valspar-Furniture Sales Group & International Color Design Center, a subsidiary of Valspar Global Wood Coatings, High Point, NC: March 14, 2004.

TA–W–56,812; Vishay Transducers, Ltd, a division of Vishay Intertechnology, Inc., including leased workers of Volt, Benchmark, Thor, and Source One Staffing, Covina, CA: March 22, 2004.

TA–W–57,005; Burnes Group, LLC, a subsidiary of Global Home Products, including leased workers of Westaff, Claremont, NH: April 14, 2004. Products Division, Ronkonkoma, NY: March 29, 2004.

TA–W–57,012; Springs Industries, Springs Window Fashions, LP, including leased on site workers of Appleone, Integrity Staffing, & Staffmark, Reno, NV: April 7, 2004.

TA–W–56,934; Lennox Hearth Products, Inc., Subsidiary of Lennox International, Inc., Burlington, WA: April 8, 2004.

TA–W–56,988; Acuity Brands Lighting, Inc., a subsidiary of Acuity Brands, Inc., Peerless Lighting Div., including leased workers of Aerotek Staffing, Berkeley, CA.

TA–W–57,038; Sunroc, LLC, a subsidiary of Oasis Corp., including on-site leased workers from Ready Staffing and Adecco, Dover, DE: April 22, 2004.

TA–W–56,890; Wellington Cordage, LLC, Pilot Mountain, NC: March 8, 2004.

TA–W–56,975; U.S. Marine, A Brunswick Family Boat Company, Spokane, WA: April 13, 2004.

TA–W–57,144; Ultimate Manufacturing, Inc., San Antonio, TX: 2004.

TA–W–56,820; Manpower International, Inc., On-Site Leased Workers at Motorola, Inc., Embedded Communications Computing Div., Tempe, AZ: March 23, 2004.

The following certifications have been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–57,021; Plastic Moldings Company, LLC, Cincinnati Plant, including leased workers of Excel Staffing, Cincinnati, OH: April 12, 2004.

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issued 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.

In the following cases, it has been determined that the requirements of Section 246(a)(3)ii) have not been met for the reasons specified.

The Department as determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–57,038; Sunroc, LLC, a subsidiary of Oasis Corp., including on-site leased workers from Ready Staffing and Adecco, Dover, DE

TA–W–56,844; Design Institute America, Inc., including on-site leased workers of Star Staffing and Action Temporary Services, Jasper, IN

TA–W–56,890; Wellington Cordage, LLC, Pilot Mountain, NC

TA–W–56,934; Lennox Hearth Products, Inc., subsidiary of Lennox International, Inc., Burlington, WA

TA–W–56,975; U.S. Marine, a Brunswick Family Boat Co., Spokane, WA

TA–W–54,890; Inamed Corp., Santa Barbara, CA

TA–W–56,820; Manpower International, Inc., On-Site Leased Workers at Motorola, Inc., Embedded Communications Computing Division, Temple, AZ

The Department as determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W–56,783; Compupunch, Inc., Los Angeles, CA

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–56,787; Video Display Corp., Chroma Video Div., White Mills, PA

TA–W–56,800; Alcoa, Inc., Badin Works, Electrode Department, Badin, NC

TA–W–56,828; Tarkett, Inc., Commercial Division, Florence, AL

TA–W–56,883; General Motors Corp., Powertrain Division, Warren, MI

TA–W–56,817 & A; drive Plus, Inc., Axle Plant, Lock Haven, PA and Steering Plant, Lock Haven. PA

TA–W–56,782; FC Meyer Packaging, LLC/Millen Industries, Inc., Lawrence, MA

TA–W–56,836; Leggett and Platt, Inc., Fashion Bed Group—York, York, PA

TA–W–56,879; Integrated Device Technology, Inc., Salinas, CA

TA–W–57,046; Bernhardt Furniture Co., Plant 7, Contract Office Furniture Division, Lenoir, NC

TA–W–56,963; Medsep Corp., d/b/a Pall Medical, Covina, CA

TA–W–56,905; The Lane Co., a subsidiary of Lane Furniture Industries, Inc., a subsidiary of Furniture Brands International, Altavista, VA

TA–W–56,866; Sun Microsystems, In., Nashua IT Business Unit, Nashua, NH

TA–W–57,052; SITEL/NAFS, Norcross, GA

TA–W–56,936; Allied Personnel Services, leased workers at Guardian Life Insurance Company, Bethlehem, PA

TA–W–56,853; ITEMA America, Inc., Formerly Sultex USA, Spartanburg, SC

TA–W–56,779; Aon Service Corp., ASC–IT Subdivision, Glenview, IL

TA–W–56,955; Brookwood Medical Center, Medical Transcription Division, Birmingham, AL

TA–W–56,886; MCI, Inc., working on-site at NCO Group, Inc., Houston NCO Call Center, Houston, TX

TA–W–56,780; ETEC, an Applied Materials Co., a subsidiary of Applied Materials, Inc., Hillsboro, OR

TA–W–56,869; National Textiles, Textiles Div., Hodges, SC

TA–W–56,994; Chan-X of California, San Jose, CA
TA–W–57,010; The Gwinn Agency, Spartanburg, SC
TA–W–56,810; Miracle Recreation Equipment Co., a subsidiary of Playpower, Advance, MO
TA–W–56,785; Michigan Sugar Co., Carrollton, MI
TA–W–56,820A; Motorola, Inc., Embedded Communications Computing Div., Tempe, AZ

Affirmative Determinations for Alternative Trade Ajdustment Assistance

In order for the Division of Trade Adjustment Assistance to issued 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.

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 determinations.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

TA–W–56,806; Carolina Glove Co., Wilkes Plant, N. Wilkesboro, NC: March 23, 2004.
TA–W–56,865; Meyers Ind., Hickory, NC: March 15, 2004.
TA–W–57,035; DeRoyal (Stat Medical), DeRoyal Patient Care, New Tazewell, TN: April 15, 2004.
TA–W–56,805; Glen Raven Technical Fabrics, LLC, subsidiary of Glen Raven, Inc., Burnsville, NC: December 4, 2004.
TA–W–56,951; Nicole Shades, LLC, a Div. of Emess Design Group, LLC, Cleveland, OH: March 23, 2004. City, KY: April 7, 2004.
TA–W–57,003; Richloom Fabrics Corp., Richloom Home Fashions, Bailey Plant, including on-site leased workers of PMC Corp., Clinton, SC: April 13, 2004.
TA–W–56,809; Halex A Scott Fetzer Co., Hamilton, IN and Bedford Heights, OH: March 16, 2004.
TA–W–56,807; Lexington Home Brands, Plant 2, 4 and 5, Lexington, NC: April 25, 2005.
TA–W–56,939; Blue Ridge Crest, LLC, Galax, VA: April 8, 2004.
TA–W–56,910; Carolina Mills, Inc., Plant #22, Gastonia, NC: April 1, 2004.
TA–W–56,899; Murray, Inc., Brentwood, TN: March 31, 2004.
TA–W–56,822; Seal Glove Manufacturing, Inc., Millersburg, PA: March 21, 2004.
TA–W–56,974; Max Marx Color Corp., Irvington, NJ: April 14, 2004.
TA–W–56,948 A & B; Standard Commercial Corp., Miller Road Tobacco Processing Facility, Wilson, NC, Miller Road Corporate Headquarters, Wilson, NC and Stantonsburg Road Factory and Office Complex, Wilson, NC: March 25, 2004.
TA–W–56,997; Cinergy Solutions of Rock Hill, working at Celanese Acetate LLC, Rock Hill, SC: April 5, 2004.
TA–W–57,081; GE Security, including leased workers of Express and Spherion, Gladewater, TX: April 28, 2004.
TA–W–57,014; Tyler Refrigeration, Carrier Commercial Refrigeration, Carrier Corp., Waxahachie, TX: May 16, 2005.
TA–W–57,048; Osram Sylvania, Lake Zurich, IL: April 14, 2004.
TA–W–56,993 & A & B; Springs Industries, Inc., Grace Complex, including on-site leased workers of Phillips Staffing, Lancaster, SC, Elliott Plant, including on-site leased workers of Defender Services, Fort Lawn, SC, Frances Plant, including on-site leased workers of Defender Services, Fort Lawn, SC: April 16, 2004.
TA–W–57,068; Johnson & Johnson CPC, Operations Div., including on-site leased workers of Etcon, Inc., Vend, Inc., Jackson Lawn Care and Maintenance, ABM, and Securitas, Royston, GA: April 15, 2004.
TA–W–57,079; Lyons Diecasting Company, Buckner, MO: April 20, 2004.
TA–W–57,057; Com-Fo Hosiery Mills, Henderson, NC: April 20, 2004.
TA–W–56,908 & A; Stoneridge Control Devices, Acuator Product Div., 4x4 Actuator Production, Boston, MA and Switch Products Div., General Motors Headlamp Production, Canton, MA: March 30, 2004.
TA–W–56,972; KAC Holdings, d/b/a Kester, Des Plaines, IL: March 29, 2004.
TA–W–56,834; Thomasville Furniture Industries, Inc., Plant M, Thomasville, NC: March 21, 2004.
TA–W–57,028; Rockford Powertrain, Inc., Loves Park, IL: April 18, 2004.
TA–W–56,912; Comarco Wireless Technologies, Inc., Power Adapter Production Line, a div. of Comarco, Inc., Irvine, CA: March 30, 2004.
TA–W–56,897; Square D Company, a div. of Schneider Electric, including leased workers of Adecco Personnel, Asheville, NC: May 9, 2005.
TA–W–56,863; Valspar-Furniture Sales Group & International Color Design Center, a subsidiary of Valspar Global Wood Coatings, High Point, NC: March 14, 2004.
TA–W–56,812; Vishay Transducers, Ltd, a div. of Vishay Intertechnology, Inc. including leased workers of Volt, Benchmark, Thor, and Source One Staffing, Covina, CA: March 22, 2004.
TA–W–57,005; Burnes Group, LLC, a subsidiary of Global Home Products, including leased workers of Westaff, Claremont, NH: April 14, 2004.
TA–W–57,012; Springs Industries, Springs Window Fashions, LP, including leased on-Site Workers of Appleone, Integrity Staffing, and Staffmark, Reno, NV: April 7, 2004.
TA–W–56,988; Acuity Brands Lighting, Inc., a subsidiary of Acuity Brands, Inc., Peerless lighting Div., including leased workers of Aerotek Staffing, Berkeley, CA: April 18, 2004.
TA–W–57,144; Ultimate Manufacturing, Inc., San Antonio, TX: April 28, 2004.
TA–W–57,021; Plastic Moldings Company, LLC, Cincinnati Plant, including leased workers of Excel Staffing, Cincinnati, OH: April 12, 2004.

I hereby certify that the aforementioned determinations were issued during the months of April and May 2005. 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: May 18, 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–2649 Filed 5–24–05; 8:45 am]

BILLING CODE 4510–30–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 26, "Fitness for Duty Program."

2. *Current OMB approval number:* 3150–0146.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* All licensees authorized to construct or operate a nuclear power reactor; all licensees authorized to use, possess, or transport Category 1 nuclear material; and contractors/vendors who have developed a fitness-for-duty program that is formally reviewed and approved by a licensee, which meets the requirements of part 26.

5. *The number of annual respondents:* 69.

6. *The number of hours needed annually to complete the requirement or request:* 61,143 (5,853 hours reporting [an average of 4.3 hours/response] and 55,290 hours recordkeeping [an average of 801 hours/recordkeeper]).

7. *Abstract:* 10 CFR Part 26, "Fitness for Duty Program," requires licensees of nuclear power plants, contractors/vendors who have developed a fitness-for-duty program that is formally reviewed by a licensee, and licensees authorized to possess, use, or transport Category 1 nuclear material to implement fitness-for-duty programs to assure that personnel are not under the influence of any substance or mentally or physically impaired, to retain certain records associated with the management of these programs, and to provide reports concerning significant events and program performance. Compliance with these program requirements is mandatory for licensees subject to 10 CFR part 26. In addition, licensees of nuclear power plants are required to comply with security order EA–03–038, which implements work hour controls for security force personnel and requires licensees to retain certain records associated with the management of this security order.

Submit, by July 25, 2005, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC toproperly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site:*http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–5 F53, Washington, DC 20555–0001, by telephone at 301–415–7233, or by internet electronic mail at infocollects*nrc.gov*.

Dated at Rockville, Maryland, this 18th day of May, 2005.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E5–2632 Filed 5–24–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–348 and 50–364]

Southern Nuclear Operating Company, Inc., Alabama Power Company, Joseph M. Farley Nuclear Plant, Units 1 and 2; Notice of Consideration of Issuance of Amendments to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC, the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–2 and NPF–8, issued to Southern Nuclear Operating Company, Inc. (the licensee) for operation of the Joseph M. Farley Nuclear Plant (FNP), Units 1 and 2, located in Houston County, Alabama.

The proposed amendments would revise FNP, Units 1 and 2 Technical Specifications Plant Systems Section 3.7 and Design Features Section 4.3 to establish spent fuel cask storage area boron concentration limits and to restrict the minimum burn up of spent fuel assemblies associated with spent fuel cask loading operations.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR) section 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Cask loading operations will not require any physical changes to part 50 structures, systems, or components, nor will their performance requirements be altered. The potential to handle a spent fuel cask was considered in the original design of the plant. Therefore, the response of the plant to previously analyzed Part 50 accidents and related radiological releases will not be adversely impacted, and will bound those postulated during cask loading activities in the cask storage area. Accordingly, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Existing fuel handling procedures and associated administrative controls remain applicable for cask loading operations. Additionally, the soluble boron concentration required to maintain $K_{eff} \leq 0.95$ for postulated criticality accidents associated with cask loading operations was also

evaluated. The results of the analyses, using a methodology previously approved by the NRC, demonstrate that the amount of soluble boron required to compensate for the positive reactivity associated with these postulated accidents (659 ppm) remains well below the existing spent fuel pool minimum boron concentration limit of 2000 ppm. Accordingly, the same limit has been proposed for cask loading operations in the cask storage area. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Does the proposed change involve a significant reduction in a margin of safety?

An NRC approved methodology was used to perform the criticality analysis which provides the basis to incorporate a new burn up versus enrichment curve into the plant Technical Specifications to ensure criticality requirements are met during spent fuel cask loading. Accordingly, the existing minimum boron concentration limit for the spent fuel of 2000 ppm will continue to remain bounding during cask loading operations. Existing criticality limits will also be maintained should it be postulated that the spent fuel pool be flooded when connected to the cask storage area with unborated water ($K_{eff} < 1.0$) or should it become flooded with borated water to 400 ppm ($K_{eff} \leq 0.95$) during cask loading operations. This determination accounts for uncertainties at a 95-percent/95-percent probability/confidence level. Proposed Technical Specification 3.7.17 requires that the spent fuel transfer canal gate and the cask storage area gate be open except when moving the spent fuel cask into or out of the cask storage area. The cask storage area will be isolated from the spent fuel pool volume during movement of the cask into and out of the cask storage area. Due to the minimal time that spent fuel will be stored in the cask storage area with the cask storage area isolated from the spent fuel pool volume, a boron dilution event is not considered credible while the cask storage area is isolated. However, should it be postulated that a boron dilution event does occur during this time period, K_{eff} will remain less than 1.0 should the cask storage area become fully flooded with unborated water. Therefore, there will not be a significant reduction in a margin of safety.

Based upon the preceding information, SNC has concluded that the requested license amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A

petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *hearingdocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated May 17, 2005, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. 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, (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 19th day of May, 2005.

For the Nuclear Regulatory Commission.

Evangelos Marinos,

Chief, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–2630 Filed 5–24–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–05004]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Northern States Power Company D.B.A. Xcel Energy Pathfinder Site, Sioux Falls, SD

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Chad Glenn, Project Manager, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6722; fax number: (301) 415–5398; e-mail: *cjg1@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Materials License No. 22–08799–02 issued to Northern States Power Company D.B.A. Xcel Energy (the licensee) to authorize decommissioning at its Pathfinder site in Minnehaha County, South Dakota for unrestricted use and termination of this license. NRC has prepared an Environmental Assessment (EA) in support of this amendment in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this Notice.

II. EA Summary

The purpose of the proposed amendment is to authorize decommissioning of the licensee's Pathfinder site in Sioux Falls, South Dakota for unrestricted use to allow for license termination. Specifically, the proposed amendment would incorporate the Pathfinder Decommissioning Plan (DP) into the license and authorize decommissioning activities in accordance with the DP. On February 17, 2004, Xcel Energy submitted the Pathfinder DP for NRC approval and requested a license amendment. Xcel Energy's request was published in the **Federal Register** on August 4, 2004 (69 FR 47185) with a notice of an opportunity to request a hearing and an opportunity to provide comments on the amendment and its environmental impacts. The NRC staff has received no hearing request or comments on the proposed amendment.

The NRC staff has prepared an EA in support of the proposed license amendment. The staff has reviewed the Pathfinder DP and examined the environmental impacts of decommissioning. Based on its review, the staff has also determined that the environmental impacts are enveloped by the generic analysis performed in support of "Radiological Criteria for License Termination" (62 FR 39058). Additionally, no non-radiological impacts were identified. The staff also finds that the proposed decommissioning of the site is in compliance with 10 CFR 20.1402, the radiological criteria for unrestricted use.

III. Finding of No Significant Impact

On the basis of the EA, NRC has concluded that there are no significant environmental impacts from the proposed amendment and has

determined not to prepare an environmental impact statement for the proposed amendment.

IV. Further Information

Documents related to this action, including the application for amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the EA related to this notice is (ML050960256). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland this 19th day of May, 2005.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Director, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 05–10408 Filed 5–24–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Opportunity To Comment on Model Safety Evaluation on Technical Specification Improvement Regarding Revision to the Completion Time in STS 3.6.1.3, "Primary Containment Isolation Valves" for General Electric Boiling Water Reactors Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment.

SUMMARY: Notice is hereby given that the staff of the U.S. Nuclear Regulatory Commission (NRC) has prepared a model safety evaluation (SE) relating to changes to the completion time (CT) in Standard Technical Specification (STS) 3.6.1.3 "Primary Containment Isolation Valves (PCIVs)." The proposed change to the Technical Specifications (TS) would extend to 7 days the CT (or allowed outage time (AOT)) to restore an inoperable PCIV or isolate the affected penetration flow path for selected primary containment penetrations with two (or more) PCIVs and for selected primary containment penetrations with only one PCIV. This change is based on analyses provided in a generic topical report (TR) submitted by the Boiling Water Reactors Owner's Group (BWROG). The BWROG participants in the TS Task Force (TSTF) proposed this change to the STS in Change Traveler No. TSTF–454, Revision 0. This notice also includes a model no significant hazards consideration (NSHC) determination relating to this matter.

The purpose of these models is to permit the NRC to efficiently process amendments to incorporate this change into plant-specific TS for General Electric boiling water reactors (BWRs). Licensees of nuclear power reactors to which the models apply can request amendments conforming to the models. In such a request, a licensee should confirm the applicability of the SE and NSHC determination to its plant. The NRC staff is requesting comments on the model SE and model NSHC determination before announcing their availability for referencing in license amendment applications.

DATES: The comment period expires 60 days from the date of this publication. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be submitted either electronically or via U.S. mail.

Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Hand deliver comments to: 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays.

Submit comments by electronic mail to: CLIIP@nrc.gov.

Copies of comments received may be examined at the NRC's Public Document Room, One White Flint North, Public File Area O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Bhalchandra Vaidya, Mail Stop: O–7D1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3308.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, "Consolidated Line Item Improvement Process [CLIIP] for Adopting Standard Technical Specifications Changes for Power Reactors," was issued on March 20, 2000. The CLIIP is intended to improve the efficiency and transparency of NRC licensing processes. This is accomplished by processing proposed changes to the STS in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on proposed changes to the STS following a preliminary assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. This notice is soliciting comment on a proposed change to the STS that changes the PCIV CTs for the BWR/4 and BWR/6 STS, NUREG–1433, Revision 3 and NUREG–1434, Revision 3, respectively. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or proceed with announcing the availability of the change for proposed adoption by licensees. Those licensees opting to apply for the subject change to TSs are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability would be processed and noticed in accordance with applicable NRC rules and procedures.

This notice involves an increase in the allowed CTs to restore an inoperable PCIV or isolate the affected penetration flow path when selected PCIVs are inoperable at BWRs. By letter dated September 5, 2003, the BWROG proposed this change for incorporation into the STS as TSTF–454, Revision 0. This change is based on the NRC staff-approved generic analyses contained in the BWROG TR NEDC–33046, "Technical Justification to Support Risk-Informed Primary Containment Isolation Valve AOT Extensions for BWR Plants," submitted on May 3, 2002, as supplemented by letter dated July 30, 2003, and as approved by the NRC by letter and Safety Evaluation dated October 8, 2004, accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic

Reading Room on the Internet (ADAMS Accession No. ML042660055) 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 Public Document Room Reference staff by telephone at 1–800–397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Applicability

This proposed change to revise the TS CTs for selected PCIVs is applicable to General Electric BWRs.

To efficiently process the incoming license amendment applications, the NRC staff requests each licensee applying for the changes addressed by TSTF–454, Revision 0, using the CLIIP to address the seven plant-specific conditions and the one commitment identified in the model SE, as follows:

Conditions

1. Because not all penetrations have the same impact on core damage frequency (CDF), large early release frequency (LERF), incremental conditional core damage frequency (ICCDP), or incremental conditional large early release frequency (ICLERP), a licensee's application must provide supporting information that verifies the applicability of TR NEDC–33046, including verification that the PCIV configurations for the specific plant match the licensing topical report (LTR) and the risk parameter values used in the LTR are bounding for the specific plant. Any additional PCIV configurations or non-bounding risk parameter values not evaluated by the LTR should be included in the licensee's plant-specific analysis. [Note that PCIV configurations or non-bounding risk parameter values outside the scope of the LTR will require NRC staff review of the specific penetrations and related justifications for the proposed CTs.]

2. The licensee's application must provide supporting information that verifies that external event risk, either through quantitative or qualitative evaluation, will not have an adverse impact on the conclusions of the plant-specific analysis for extending the PCIV AOTs.

3. Because TR NEDC–33046 was based on generic plant characteristics, each licensee adopting the TR must provide supporting information that confirms plant-specific Tier 3 information in their individual submittals. The licensee's application must provide supporting information that discusses conformance to the requirements of the maintenance rule (10 CFR 50.65(a)(4)), as they relate to the proposed PCIV AOTs and the guidance contained in NUMARC 93.01, Section 11, as endorsed by Regulatory Guide (RG) 1.182, including verification that the licensee's maintenance rule program, with respect to PCIVs, includes a LERF/ICLERP assessment as part of the maintenance rule process.

4. The licensee's application must provide supporting information that verifies that a penetration remains intact during maintenance activities, including corrective maintenance activities. Regarding maintenance activities where the pressure boundary would be broken, the licensee must provide supporting information that confirms that the assumptions and results of the LTR remain valid. This includes the assumption that maintenance on a PCIV will not break the pressure boundary for more than the currently allowed AOT.

5. The licensee's application must provide supporting information that verifies the operability of the remaining PCIVs in the associated penetration flow path before entering the AOT for the inoperable PCIV.

6. Simultaneously entering the extended AOT for multiple PCIVs and the resulting impact on risk were not specifically evaluated by the BWROG. However, TR NEDC–33046 does state that multiple PCIVs can be out of service simultaneously during extended AOTs and does not preclude the practice. Therefore, since the current STS also allows separate condition entry for each penetration flow path, the licensee's application will provide supporting information that verifies that the potential for any cumulative risk impact of failed PCIVs and multiple PCIV extended AOT entries has been evaluated and is acceptable. The licensee's Tier 3 configuration risk management program (10 CFR 50.65(a)(4)) must provide supporting information that confirms that such simultaneous extended AOT entries for inoperable PCIVs in separate penetration flow paths will not exceed the RG 1.174 and RG 1.177 acceptance guidelines, as confirmed by the analysis presented in TR NEDC–33046, and that adequate defense-in-depth for safety systems is maintained.

7. The licensee shall provide supporting information that verifies that the plant-specific probabilistic risk assessment (PRA) quality is acceptable for this application in accordance with the guidelines given in RG 1.174. To ensure the applicability of TR NEDC–33046, to a licensee's plant, additional information on PRA quality will be required from each licensee requesting an amendment in the following areas:

a. Justification that the plant-specific PRA reflects the as-built, as-operated plant.

b. Applicable PRA updates including individual plant examinations/individual plant examinations of external events (IPE/IPEEE) findings.

c. Conclusions of the peer review including any A or B facts and observations (F and Os) applicable to the proposed PCIV extended CTs.

d. The PRA quality assurance program and associated procedures.

e. PRA adequacy, completeness, and applicability with respect to evaluating the proposed PCIV extended AOT plant specific impact.

Commitment

1. The RG 1.177 Tier 3 program ensures that while the plant is in a limiting condition for operation (LCO) condition with an extended AOT for an inoperable PCIV, additional activities will not be performed that could further degrade the capabilities of the plant to respond to a condition the inoperable PCIV or system was designed to mitigate and, as a result, increase plant risk beyond that assumed by the LTR analysis. A licensee's implementation of RG 1.177 Tier 3 guidelines generally implies the assessment of risk with respect to CDF. However, the proposed PCIV AOT impacts containment isolation and consequently LERF as well as CDF. Therefore, a licensee's configuration risk management program (CRMP), including those implemented under the maintenance rule of 10 CFR 50.65(a)(4), must be enhanced to include a LERF methodology/assessment and must be documented in a licensee's plant-specific submittal.

The CLIIP does not prevent licensees from requesting an alternative approach or proposing the changes without providing the information described in the above 7 conditions, or making the requested commitment. Variations from the approach recommended in this notice may, however, require additional review by the NRC staff and may increase the time and resources needed for the review.

Public Notices

This notice requests comments from interested members of the public within 60 days of the date of this publication. Following the NRC staff's evaluation of comments received as a result of this notice, the NRC staff may reconsider the proposed change or may proceed with announcing the availability of the change in a subsequent notice (perhaps with some changes to the SE or

proposed NSHC determination as a result of public comments). If the NRC staff announces the availability of the change, licensees wishing to adopt the change will submit an application in accordance with applicable rules and other regulatory requirements. The NRC staff will, in turn, issue for each application a notice of consideration of issuance of amendment to facility operating license(s), a proposed NSHC determination, and an opportunity for a hearing. A notice of issuance of an amendment to operating license(s) will also be issued to announce the revised requirements for each plant that applies for and receives the requested change.

Proposed Safety Evaluation

U.S. Nuclear Regulatory Commission

Office of Nuclear Reactor Regulation
Consolidated Line Item Improvement

Technical Specification Task Force (TSTF) Change Traveler No. TSTF–454, Revision 0, "Increase PCIV Completion Times From 4 hours, 24 hours [note that the 24-hour portion was withdrawn], and 72 hours to 7 days (NEDC–33046)"

1.0 Introduction

By application dated [ ], [Licensee] (the licensee) requested changes to the Technical Specifications (TSs) for [facility]. The proposed changes would revise TS 3.6.1.3, "Primary Containment Isolation Valves (PCIVs)," by extending to 7 days the completion time (CT) to restore an inoperable PCIV or isolate the affected penetration flow path for selected primary containment penetrations with two (or more) PCIVs and for selected primary containment penetrations with only one PCIV.

2.0 Regulatory Evaluation

The existing Limiting Condition for Operation (LCO) 3.6.1.3, requires that each PCIV be operable. The operability of PCIVs ensures that the containment is isolated during a design-basis accident (DBA) and is able to perform its function as a barrier to the release of radioactive material. For boiling water reactor (BWR)/4 plants, if a PCIV is inoperable in one or more penetrations, the current required action is to isolate or restore the inoperable PCIV to operable status within 4 hours for penetrations with 2 PCIVs (except for the main steam line, in which case 8 hours is allowed), and within 4 hours for penetrations with a single PCIV (except for excess flow check valves (EFCVs) and penetrations with a closed system, and for other cases if justified with a plant-specific evaluation, in which case 72 hours is allowed). Regarding the leakage rate of EFCVs, 72 hours is also currently allowed to restore EFCV leakage to within limit. For BWR/6 plants, the current required actions are the same as those for the BWR/4 plants with the exception that there are no TSs for EFCVs. The times specified for performing these actions were considered reasonable, given the time required to isolate the penetration and the relative importance of ensuring containment integrity during plant operation. In the case of a single EFCV PCIV or a single PCIV and a closed system, the specified CT takes into consideration the ability of the instrument and the small pipe diameter (associated with the EFCV) or the closed system to act as a penetration boundary.

On May 3, 2002, as supplemented by letter dated July 30, 2003, the Boiling Water Reactor (BWR) Owners Group (BWROG) submitted the generic Topical Report (TR) NEDC–33046, which provided a risk-informed justification for extending the TS allowed outage time (AOT) (also referred to as completion time), for a specific set of inoperable PCIVs from the current 4 hours or 72 hours to 7 days. Specifically, for BWR/4 plants, if a PCIV is inoperable in one or more penetrations, the proposed action is to isolate or restore the inoperable PCIV to operable status within 7 days for penetrations with 2 PCIVs (except for the feedwater isolation valves (FWIVs) and the residual heat removal (RHR) shutdown cooling suction line PCIVs, in which case the 4 hours is kept, and except for the main steam line isolation valves (MSIVs), in which case the 8 hours is kept); and within 4 hours for penetrations with a single PCIV, except for EFCVs and penetrations with a closed system, in which case 7 days is allowed (and except for other cases if justified with a plant-specific evaluation, in which case the 72 hours is kept). Regarding the leakage rate of EFCVs, 7 days is also proposed to restore EFCV leakage to within the limit. For BWR/6 plants, the proposed actions are the same as those for the BWR/4 plants with the exception that for penetrations with 2 PCIVs, there is an additional exception to the 7-day AOT (for the low pressure core spray system PCIVs, in which case the 4 hours is kept); and with the exception that there are no TSs for EFCVs.

The NRC staff used the guidance of Regulatory Guide (RG) 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Current Licensing Basis, 1998," and RG 1.177, "An Approach for Plant-Specific, Risk-Informed Decision Making: Technical Specifications, 1998," in performing its review of this TR. RG 1.174 provides the guidelines to determine the risk level associated with the proposed change. RG 1.177 provides a three-tiered approach to evaluate the risks associated with proposed license amendments. The first tier evaluates the probabilistic risk assessment (PRA) model and the impacts of the changes on plant operational risk. The second tier addresses the need to preclude potentially high risk configurations, should additional equipment outages occur during the AOT. The third tier evaluates the licensee's configuration risk management program (CRMP) to ensure that the removal of equipment from service immediately prior to or during the proposed AOT will be appropriately assessed from a risk perspective. The NRC staff's safety evaluation (SE) dated October 8, 2004, also discusses the applicable regulations and additional applicable regulatory criteria/guidelines that were considered in its review of TR NEDC–33046.

3.0 Technical Evaluation

3.1 Statement of Proposed Changes

The proposed changes to TS 3.6.1.3 include:

1. For the Condition of one or more penetration flow paths with one PCIV inoperable in a penetration flow path with two [or more] PCIVs, the Completion Times for isolating the affected penetration (in Standard Technical Specification (STS) 3.6.1.3 Required Action A.1) are revised from "4 hours except for main steam line *AND* 8 hours for main steam line," to "4 hours for feedwater isolation valves (FWIVs), residual heat removal (RHR) shutdown cooling suction line PCIVs, and *Low Pressure Core Spray (LPCS) System PCIVs (NUREG–1434 only) AND* 8 hours for main steam line isolation valves (MSIVs) *AND* 7 days except for FWIVs, RHR shutdown cooling suction line PCIVs, *LPCS System PCIVs (NUREG–1434 only)*, and MSIVs." For PCIVs not analyzed in NEDC–33046 (*i.e.*, FWIVs and MSIVs), the current Completion Times of 4 hours and 8 hours (of STS 3.6.1.3 Required Action A.1) are maintained; 4 hours for FWIVs and 8 hours for main steam lines (*i.e.*, MSIVs as described in the current Bases for STS 3.6.1.3 Required Action A.1). For PCIVs analyzed in NEDC–33046 that did not meet the criterion for extension (*i.e.*, RHR shutdown cooling suction line PCIVs (for all BWRs) and LPCS System PCIVs (for BWR/5 and BWR/6 designs only), the current Completion Time (of 4 hours of STS 3.6.1.3 Required Action A.1) is maintained. The Completion

Time for other PCIVs, associated with penetrations with two [or more] PCIVs, is extended to 7 days.

2. For the Condition of one or more penetration flow paths with one PCIV inoperable in a penetration flow path with only one PCIV, the Completion Times for isolating the affected penetrations (STS 3.6.1.3 Required Action C.1) are revised from "4 hours except for excess flow check valves (EFCVs) and penetrations with a closed system *AND* 72 hours for EFCVs and penetrations with a closed system," to "4 hours except for excess flow check valves (EFCVs) and penetrations with a closed system *AND* [72 hours] [7 days] for EFCVs and penetrations with a closed system." (For NUREG–1434, the Completion Times for STS 3.6.1.3 Required Action C.1 are revised from "4 hours except for penetrations with a closed system *AND* 72 hours for penetrations with a closed system," to "4 hours except for penetrations with a closed system *AND* [72 hours] [7 days] for penetrations with a closed system.")

3. For the Condition of one or more [secondary containment bypass leakage rate,] [MSIV leakage rate,] [purge valves leakage rate,] [hydrostatically tested line leakage rate,] [or] [EFCV leakage rate] not within limit, the Completion Time for restoring leakage rate to within limit, when the leakage rate exceeded is the EFCV leakage rate (in STS 3.6.1.3 Required Action D.1), is revised from "[72 hours]" to "[7 days]" by adding a new Completion Time, "[*AND* 7 days for EFCV leakage]." (The EFCV leakage rate Completion Time change is not applicable to NUREG–1434.)

3.2 Evaluation of Proposed Changes

The NRC staff's SE on TR NEDC–33046, dated October 8, 2004, found that based on the use of bounding risk parameters for General Electric (GE)-designed plants, for the proposed increase in the PCIV AOT from 4 hours (for penetrations with 2 or more PCIVs) or 72 hours (for penetrations with a single EFCV PCIV, and penetrations with a single PCIV and a closed system) or 72 hours (for EFCV leakage) to 7 days, the risk impact of the proposed 7-day AOT for the PCIVs as estimated by core damage frequency (CDF), large early release frequency (LERF), incremental conditional core damage probability (ICCDP), and incremental conditional large early release probability (ICLERP), is consistent with the acceptance guidelines specified in RG 1.174, RG 1.177, and NRC staff guidance outlined in Chapter 16.1 of NUREG–0800. The NRC staff found that the risk analysis methodology and approach used by the BWROG to estimate the risk impacts were reasonable and of sufficient quality.

The NRC staff's October 8, 2004, SE also found the following. The Tier 2 evaluation did not identify any risk-significant plant equipment configurations requiring TS, procedure, or compensatory measures. TR NEDC–33046 implements a CRMP (Tier 3) using 10 CFR 50.65(a)(4) to manage plant risk when PCIVs are taken out-of-service. PCIV reliability and availability will also be monitored and assessed under the maintenance rule (10 CFR 50.65) to confirm that performance continues to be consistent with the analysis assumptions used to justify extended PCIVs AOTs.

The NRC staff's October 8, 2004, SE also found that the following conditions and commitment must be addressed by licensees adopting TR NEDC–33046 in plant-specific applications that seek approval of TSTF–454, Revision 0 for their plants:

Conditions

1. Because not all penetrations have the same impact on core damage frequency (CDF), large early release frequency (LERF), incremental conditional core damage frequency (ICCDP), or incremental conditional large early release frequency (ICLERP), a licensee's application must provide supporting information that verifies the applicability of TR NEDC–33046, including verification that the PCIV configurations for the specific plant match the licensing topical report (LTR) and the risk parameter values used in the LTR are bounding for the specific plant. Any additional PCIV configurations or non-bounding risk parameter values not evaluated by the LTR should be included in the licensee's plant-specific analysis. [Note that PCIV configurations or non-bounding risk parameter values outside the scope of the LTR will require NRC staff review of the specific penetrations and related justifications for the proposed CTs.]

2. The licensee's application must provide supporting information that verifies that external event risk, either through quantitative or qualitative evaluation, will not have an adverse impact on the conclusions of the plant-specific analysis for extending the PCIV AOTs.

3. Because TR NEDC–33046 was based on generic plant characteristics, each licensee adopting the TR must provide supporting information that confirms plant-specific Tier 3 information in their individual submittals. The licensee's application must provide supporting information that discusses the conformance to the requirements of the maintenance rule (10 CFR 50.65(a)(4)), as they relate to the proposed PCIV AOTs and the guidance contained in NUMARC 93.01, Section 11, as endorsed by Regulatory Guide (RG) 1.182, including verification that the licensee's maintenance rule program, with respect to PCIVs, includes a LERF/ICLERP assessment as part of the maintenance rule process.

4. The licensee's application must provide supporting information that verifies that a penetration remains intact during maintenance activities, including corrective maintenance activities. Regarding maintenance activities where the pressure boundary would be broken, the licensee must provide supporting information that confirms that the assumptions and results of the LTR remain valid. This includes the assumption that maintenance on a PCIV will not break the pressure boundary for more than the currently allowed AOT.

5. The licensee's application must provide supporting information that verifies the operability of the remaining PCIVs in the associated penetration flow path before entering the AOT for the inoperable PCIV.

6. Simultaneously entering the extended AOT for multiple PCIVs and the resulting impact on risk were not specifically evaluated by the BWROG. However, TR NEDC–33046 does state that multiple PCIVs can be out of service simultaneously during extended AOTs and does not preclude the practice. Therefore, since the current STS also allows separate condition entry for each penetration flow path, the licensee's application will provide supporting information that verifies that the potential for any cumulative risk impact of failed PCIVs and multiple PCIV extended AOT entries has been evaluated and is acceptable. The licensee's Tier 3 configuration risk management program (10 CFR 50.65(a)(4)) must provide supporting information that confirms that such simultaneous extended AOT entries for inoperable PCIVs in separate penetration flow paths will not exceed the RG 1.174 and RG 1.177 acceptance guidelines, as confirmed by the analysis presented in TR NEDC–33046, and that adequate defense-in-depth for safety systems is maintained.

7. The licensee shall provide supporting information that verifies that the plant-specific probabilistic risk assessment (PRA) quality is acceptable for this application in accordance with the guidelines given in RG 1.174. To ensure the applicability of TR NEDC–33046, to a licensee's plant, additional information on PRA quality will be

required from each licensee requesting an amendment in the following areas:

a. Justification that the plant-specific PRA reflects the as-built, as-operated plant.

b. Applicable PRA updates including individual plant examinations/ individual plant examinations of external events (IPE/IPEEE) findings.

c. Conclusions of the peer review including any A or B facts and observations (F and Os) applicable to the proposed PCIV extended CTs.

d. The PRA quality assurance program and associated procedures.

e. PRA adequacy, completeness, and applicability with respect to evaluating the proposed PCIV extended AOT plant specific impact.

Commitment

1. The RG 1.177 Tier 3 program ensures that while the plant is in a limiting condition for operation (LCO) condition with an extended AOT for an inoperable PCIV, additional activities will not be performed that could further degrade the capabilities of the plant to respond to a condition the inoperable PCIV or system was designed to mitigate and, as a result, increase plant risk beyond that assumed by the LTR analysis. A licensee's implementation of RG 1.177 Tier 3 guidelines generally implies the assessment of risk with respect to CDF. However, the proposed PCIV AOT impacts containment isolation and consequently LERF as well as CDF. Therefore, a licensee's configuration risk management program (CRMP), including those implemented under the maintenance rule of 10 CFR 50.65(a)(4), must be enhanced to include a LERF methodology/ assessment and must be documented in a licensee's plant-specific submittal.

Staff Findings

The NRC staff has reviewed the proposed TS changes and finds that they are consistent with previous staff reviews of TR NEDC–33046 as supplemented by letter dated July 30, 2003, and as approved by the NRC by letter and Safety Evaluation dated October 8, 2004, and TSTF–454, Revision 0, and are acceptable. The NRC staff has also reviewed the licensee's supporting information and the statements regarding the above conditions and commitment and finds them acceptable. Therefore, the NRC staff finds that the increase in the CTs from 4 hours (for penetrations with 2 or more PCIVs) or 72 hours (for penetrations with a single EFCV PCIV, and penetrations with a single PCIV and a closed system) or 72 hours (for EFCV leakage) to 7 days is justified.

4.0 Regulatory Commitment

The licensee's letter dated [ ], contained the following regulatory commitment:

[State the licensee's commitment and ensure that it satisfies the commitment in this SE, in Section 3.2 above.]

The NRC staff finds that reasonable controls for the implementation and for subsequent evaluation of proposed changes pertaining to the above regulatory commitment are best provided by the licensee's administrative processes, including its commitment management program. The above regulatory commitment does not warrant the creation of a regulatory requirement (item requiring prior NRC approval of subsequent changes).

5.0 State Consultation

In accordance with the Commission's regulations, the [State] State official was notified of the proposed issuance of the amendments. The State official had [choose one: (1) No comments, or (2) the following comments—with subsequent disposition by the staff].

6.0 Environmental Consideration

The amendment changes a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR part 20. The NRC staff has determined that the amendment involves no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendment involves no significant hazards consideration, and there has been no public comment on such finding (XX FR XXXXX). Accordingly, the amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b) no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendment.

7.0 Conclusion

The Commission has concluded, based on the considerations discussed above, that: (1) There is reasonable assurance that the health and safety of the public will not be endangered by the operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public.

Proposed No Significant Hazards Consideration Determination

Description of Amendment Request: The proposed amendment extends the completion time (CT) for penetration flow paths with one valve inoperable from 4 hours or 72 hours to 7 days. The change is applicable to both primary containment penetrations with two (or more) primary containment isolation valves (PCIVs) and with one PCIV. This change is not applicable to the feedwater isolation valves (FWIVs), the residual heat removal (RHR) shutdown cooling suction line PCIVs, the low pressure core spray (LPCS) PCIVs (boiling water reactor (BWR)/6 only), the main steam isolation valves (MSIVs), and [list of plant-specific valves].

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes revise the completion times (CTs) for restoring an inoperable primary containment isolation valve (PCIV) (or isolating the affected penetration) within the scope of the Boiling Water Reactor (BWR) Owners Group (BWROG) Topical Report (TR) NEDC–33046, "Technical Justification to Support Risk-Informed Primary Containment Isolation Valve AOT [Allowed Outage Time] Extensions for BWR Plants," submitted on May 3, 2002, as supplemented by letter dated July 30, 2003, and as approved by the NRC by letter and Safety Evaluation (SE) dated October 8, 2004, from 4 hours or 72 hours to 7 days. PCIVs are not accident initiators in any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased.

PCIVs, individually and in combination, control the extent of leakage from the primary containment following an accident. The proposed CT extensions apply to the reduction in redundancy in the primary containment isolation function by the PCIVs for a limited period of time, but do not alter the ability of the plant to meet the overall primary containment leakage

requirements. In order to evaluate the proposed CT extensions, a probabilistic risk assessment (PRA) evaluation was performed in TR NEDC–33046, submitted on May 3, 2002, as supplemented by letter dated July 30, 2003, and as approved by the NRC by letter and SE dated October 8, 2004. The PRA evaluation concluded that, based on the use of bounding risk parameters for the General Electric (GE)-designed plants, the proposed increase in the PCIV CTs from 4 hours or 72 hours to 7 days does not alter the ability of the plant to meet the overall primary containment leakage requirements. It also concluded that the proposed changes do not result in an unacceptable incremental conditional core damage probability (ICCDP) or incremental conditional large early release probability (ICLERP) according to the guidelines of Regulatory Guide (RG) 1.177. As a result, there would be no significant increase in the consequences of an accident previously evaluated. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes revise the CTs for restoring an inoperable PCIV (or isolating the affected penetration) within the scope of TR NEDC–33046 submitted on May 3, 2002, as supplemented by letter dated July 30, 2003, and as approved by the NRC by letter and Safety Evaluation dated October 8, 2004, from 4 hours or 72 hours to 7 days. PCIVs, individually and in combination, control the extent of leakage from the primary containment following an accident. The proposed CT extensions apply to the reduction in redundancy in the primary containment isolation function by the PCIVs for a limited period of time, but do not alter the ability of the plant to meet the overall primary containment leakage requirements. The proposed changes do not change the design, configuration, or method of operation of the plant. The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed). Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not involve a significant reduction in a margin of safety. The proposed changes revise the CTs for restoring an inoperable PCIV (or isolating the affected penetration) within the scope of the TR NEDC–33046 submitted on May 3, 2002, as supplemented by letter dated July 30, 2003, and as approved by the NRC by letter and SE dated October 8, 2004, from 4 hours or 72 hours to 7 days. PCIVs, individually and in combination, control the extent of leakage from the primary containment following an accident. The proposed CT extensions apply to the reduction in redundancy in the primary containment isolation function provided by the PCIVs for a limited period of time, but do not alter the ability of the plant to meet the overall primary containment leakage requirements. In order to evaluate the proposed CT extensions, a PRA evaluation was performed in TR NEDC–33046 submitted on May 3, 2002, as supplemented by letter dated July 30, 2003, and as approved by the NRC by letter and SE dated October 8, 2004. The PRA evaluation concluded that, based on the use of bounding risk parameters for GE-designed plants, the proposed increase in the PCIV CTs from 4 hours or 72 hours to 7 days does not alter the ability of the plant to meet the overall primary containment leakage requirements. It also concluded that the proposed changes do not result in an unacceptable ICCDP or ICLERP according to the guidelines of RG 1.177. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on the above, the proposed change involves no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and accordingly, a finding of no significant hazards consideration is justified.

Dated at Rockville, Maryland, this 19th day of May, 2005.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–2631 Filed 5–24–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51704; File No. SR–CBOE–2005–29]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to the Composition of the Exchange's Modified Trading System Appointments Committee

May 18, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 19, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend CBOE Rule 8.82 relating to the composition of the Exchange's Modified Trading System Appointments Committee ("MTS Committee" or "Committee"). Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

Chapter VIII

Market-Makers, Trading Crowds and Modified Trading Systems

* * * * *

Section C: Designated Primary Market Makers

* * * * *

Rule 8.82—MTS Committee

[(a)] The *selection of MTS Committee members and the determination of the composition of the* MTS Committee shall *be made in accordance with Rule 2.1.* [consist of the Vice-Chairman of the Exchange, the Chairman of the Market Performance Committee, and nine persons elected by the membership of the Exchange.

(b) The nine elected MTS Committee members shall include: three members

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

whose primary business is as a Market-Maker; three members whose primary business is as a Market-Maker or as a DPM Designee; and three members whose primary business is as a Floor Broker, at least two of whom represent public customer orders in the course of their activities as a Floor Broker. One of the nine elected positions on the MTS Committee may instead be filled by a person (i) who directly or indirectly owns and controls a membership with respect to which the person acts as a lessor, (ii) whose primary business is not as a Market-Maker, DPM Designee, or Floor Broker, and (iii) whose primary residence is located within 80 miles of the Exchange's trading floor. No elected member of the MTS Committee may be affiliated (as defined under Rule 1.1(j)) with any other elected member of the MTS Committee. The nine elected MTS Committee members shall have three-year terms, three of which shall expire each year.

(c) The election procedures for the nine elected MTS Committee members shall be the same as the election procedures for elected Directors that are set forth in Article IV and Article V of the Exchange Constitution. Accordingly, the following shall occur as part of these procedures: The Nominating Committee shall select nominees to fill expiring terms and vacancies on the MTS Committee. Nominations may also be made by petition, signed by not less than 100 voting members and filed with the Secretary of the Exchange no later than 5 p.m. (Chicago time) on the Monday preceding the 1st Friday in November, or the first business day thereafter in the event that Monday occurs on a holiday. The election to fill the expiring terms and vacancies on the MTS Committee shall be held as part of the annual election. The term of office of each MTS Committee member elected at an annual election meeting shall commence at the time of the first regular Board of Directors meeting of the calendar year following that annual election meeting and shall continue until the first regular Board meeting of the third succeeding calendar year. Elected MTS Committee members shall hold office for the terms for which they are elected and until their successors are duly elected and qualified or until their earlier death, resignation, or removal.

(d) Candidates for election to the MTS Committee, whether nominated by the Nominating Committee or by petition, shall be eligible for election in any of the categories for which they qualify both at the time of their nomination and at the time of their election. The sole judge of whether a candidate satisfies the applicable qualifications for election to the MTS Committee in a designated category shall be the Nominating Committee in the case of candidates nominated by the Nominating Committee, and shall be the Executive Committee in the case of candidates nominated by petition, and the decision of the respective committee shall be final. In the event a person's status changes following election to the MTS Committee, the sole judge of whether the person continues to satisfy the applicable qualifications for service on the MTS Committee shall be the Board of Directors.

(e) In the event of the refusal, failure, neglect, or inability of any MTS Committee member to discharge that person's duties, or for any cause affecting the best interests of the Exchange, the sufficiency of which the Board of Directors shall be the sole judge, the Board shall have the power, by the affirmative vote of at least two-thirds of the Directors then in office, to remove that MTS Committee member from the Committee.

(f) Any vacancy occurring among the members of the MTS Committee may be filled by a qualified person appointed by the Vice Chairman of the Board with the approval of the Board of Directors. The term of any MTS Committee member so chosen shall be from the date of appointment until the first regular Board meeting of the calendar year following the next annual election meeting and until the person's successor is duly elected and qualified, or until the person's earlier death, resignation, or removal. The remaining portion of the unexpired term of an MTS Committee member, if any, shall be served by a person elected at the next annual election meeting.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to revise the manner in which the members of the Exchange's MTS Committee[3] are chosen, as governed by existing CBOE Rule 8.82. Currently, members of the MTS Committee are elected to serve on the Committee by the Exchange's membership at the Exchange's annual election.[4] Committee candidates are nominated by the Exchange's Nominating Committee (or by petition).[5] The Committee's composition, terms of the Committee's members, procedures for filling vacancies on the Committee and other matters relating to the Committee's structure also are specifically provided for in CBOE Rule 8.82.

The Exchange asserts that in the interest of efficiency and uniformity, the Exchange now proposes to amend CBOE Rule 8.82 to provide that the members of the MTS Committee should be appointed in a manner consistent with other Exchange committees, specifically, in accordance with CBOE Rule 2.1 (Committees of the Exchange). CBOE Rule 2.1 provides, in part, that the Vice Chairman of the Board of Directors ("Vice Chairman"), with the approval of the Board of Directors, shall appoint the chairmen and members of certain committees provided for in CBOE Rule 2.1, or any other committee established in accordance with the Exchange's Constitution, to serve for terms expiring at the first regular meeting of the Board of Directors in each calendar year. CBOE Rule 2.1 also provides that the Vice Chairman has the authority to remove any member of such committees and to fill any vacancies for the remainder of the pertinent committee term. This rule change proposes to have the appointment of MTS Committee members covered under the provisions of CBOE Rule 2.1.

Additionally, other than the MTS Committee, the Nominating Committee and the Board-level committees, the Exchange's rules do not define the composition of the Exchange's

[3] Generally, under CBOE rules, the MTS Committee is assigned the authority to make determinations concerning whether to grant or withdraw the approval to act as a designated primary market maker ("DPM"), among other things. *See*, specifically, CBOE Rule 8.80 and, generally, CBOE Rules 8.80 through 8.94, which provide the scope of the MTS Committee's authority over DPMs.

[4] *See* Articles IV and V (Conduct of Annual Election) of the Exchange's Constitution.

[5] *See* CBOE Rule 8.82.

committees. Consistent with that approach, CBOE Rule 8.82 would no longer mandate a particular composition for the MTS Committee and, instead, would provide that the MTS Committee's composition shall also be determined in accordance with CBOE Rule 2.1.

2. Statutory Basis

The Exchange believes that this proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that the proposal should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so findings or (ii) as to which the Exchange consents, the Commission will:

(a) By order approve such proposed rule change; or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2005–29 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2005–29. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–29 and should be submitted on or before June 15, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–2602 Filed 5–24–05; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51705; File No. SR–CBOE–2005–35]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Eliminating the Remote Market-Maker Inactivity Fee

May 18, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 26, 2005, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. On May 11, 2005, the CBOE submitted Amendment No. 1 to the proposed rule change.[3] On May 17, 2005, the CBOE submitted Amendment No. 2 to the proposed rule change.[4] The CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CBOE under Section 19(b)(3)(A)(ii) of the Act,[5] and Rule 19b–4(f)(2) thereunder,[6] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate the Remote Market-Maker ("RMM") inactivity fee. Below is the text of the proposed rule change, as amended. Proposed new language is *italicized;* proposed deletions are in [brackets].

Chicago Board Options Exchange, Inc. Fees Schedule

[Aril 20, 2005] *May 13, 2005*

1. Options Transaction Fees
(1)(3)(4)(7): Per Contract
Equity Options (13):
I.–VIII. Unchanged.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange clarified the description of the purpose of the inactivity fee and amended the proposal's rule text to indicate the date of its Fees Schedule.

[4] In Amendment No. 2, the Exchange made technical corrections to the proposal's rule text and further revised the date of its Fees Schedule.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

IX. Remote Market-Maker [(16)]—$.26
QQQQ and SPDR Options:
I.–VI. Unchanged.
VII. Remote Market-Maker [(16)]—$.26
2.–4. Unchanged
Notes:
(1)–(15) Unchanged
[(16) Effective May 1, 2005, RMMs may be assessed an inactivity fee, as described in Section 22.]
5.–21. No change
22. RMM Inactivity Fee
A one-time inactivity fee will be charged to RMMs, on a per product basis, for each product for which an RMM receives an appointment through the initial RMM allocation process but does not submit quotes, as described below.

An inactivity fee of $1,000 per product will be assessed upon an RMM for each product: (a) In which the RMM receives an appointment during the initial RMM allocation process; (b) that the RMM maintains as part of its appointment for the entire period commencing with the date of the initial RMM allocation process and ending thirty days after the termination of the rollout of the RMM program; and (c) in which the RMM does not submit any quotations during the period described in (b). The termination of the rollout of the RMM program will not occur prior to July 15, 2005.

An inactivity fee of $1,000 per product will be assessed upon an RMM for each product: (a) In which the RMM receives an appointment during the initial RMM allocation process; (b) in which the RMM relinquishes its appointment at any time during the period commencing with the date of the initial RMM allocation process and ending thirty days after the termination of the rollout of the RMM program; and (c) in which the RMM does not submit any quotations during the period described in (b). The termination of the rollout of the RMM program will not occur prior to July 15, 2005. RMM organizations that relinquish appointments by virtue of the fact that they obtained an appointment in the identical product either as a DPM or e-DPM will not be required to pay the inactivity fee.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange received approval of its RMM program on March 14, 2005.[7] On April 14, 2005, the Commission approved the Exchange's inactivity fee, which basically is imposed upon members that receive initial allocations of products as RMMs but then cancel those appointments prior to quoting those products.[8] The inactivity fee was also to be imposed when an RMM received an appointment of an option class, retained its appointment in the option class, but did not submit quotes in that product during any portion of the rollout of the RMM program. The purpose of the inactivity fee was to prevent members from applying for appointments in products in which they had no intention of quoting, thereby preventing other members from securing appointments in products.

Now that the initial appointment allocation process is over, all RMMs have received all of their requested appointments and there are no waiting lists. In this regard, the threat of the inactivity fee served its purpose. The Exchange now proposes to eliminate it, thereby allowing free movement (*i.e.*, allowing RMMs to freely change appointments). Because there is no waiting list in any products, the Exchange does not believe retaining the inactivity fee serves any purpose. Any RMM, currently, may request and receive an appointment in any class, so preventing some RMMs from changing appointments by virtue of the threat of the inactivity fee serves no purpose. Upon elimination of this fee, any RMM will be free to give up its appointments without owing any Exchange fees. The proposal eliminates the possible imposition of a fee upon any RMM that gives up its appointments in a product without having submitted any quotes in that product.

2. Statutory Basis

For the reasons described above, the CBOE believes that the proposed rule change, as amended, is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change, as amended, is consistent with Section 6(b)(4) of the Act[10] in that it provides for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change, as amended, establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and subparagraph (f)(2) of Rule 19b–4 thereunder.[12] Accordingly, the proposal will take effect upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

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[7] *See* Securities Exchange Act Release No. 51366 (March 14, 2005), 70 FR 13217 (March 18, 2005).

[8] *See* Securities Exchange Act Release No. 51542 (April 14, 2005), 70 FR 20952 (April 22, 2005).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on May 17, 2005, the date on which the Exchange submitted Amendment No. 2. *See* 15 U.S.C. 78s(b)(3)(C).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2005–35 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2005–35. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–35 and should be submitted on or before June 15, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–2603 Filed 5–24–05; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51717; File No. SR–CBOE–2004–59]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change and Amendment Nos. 1, 2, and 3 and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 4 and 5 Relating to Back-Up Trading Arrangements

May 19, 2005.

I. Introduction

On August 27, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish rules covering emergency procedures for CBOE members and back-up trading arrangements in the event that the Exchange's main facility is unavailable. On October 21, 2004, the Exchange amended its proposal.[3] On October 26, 2004, the Exchange further amended its proposal.[4] On March 23, 2005, the Exchange submitted a third amendment.[5] The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on April 14, 2005.[6] The Commission received no comment letters regarding the proposed rule change. On May 11, 2005, CBOE submitted a clarifying amendment.[7] On May 16, 2005, CBOE submitted an additional clarifying amendment.[8] This order approves the proposed rule change, as modified by Amendment Nos. 1, 2 and 3. Simultaneously, the Commission provides notice of filing of Amendment Nos. 4 and 5 and grants accelerated approval of Amendment Nos. 4 and 5.

II. Description of Proposal

CBOE proposes to adopt new rules that will facilitate the CBOE entering into arrangements with one or more other exchanges that would provide back-up trading facilities for CBOE listed options at another exchange if CBOE's facility becomes disabled and trading is prevented for an extended period of time, and similarly provide trading facilities at CBOE for another exchange to trade its listed options if that exchange's facility becomes disabled. The Exchange also proposes an amendment to its Fee Schedule relative to the fees that shall apply to transactions in the options of a Disabled Exchange effected on a Back-up Exchange. Additionally, the Exchange proposes to adopt a new Rule 6.17, which addresses Exchange procedures under emergency conditions and is similar to rules that have been adopted by other exchanges. Finally, the rule proposal will replace and supersede current CBOE Rule 3.22, which the Exchange adopted following the events of September 11, 2001.

A. Rule 6.16—Back-Up Trading Arrangements

a. Background

As set forth in the Notice, the Exchange proposes to adopt new CBOE Rule 6.16, *Back-Up Trading Arrangements,* which will facilitate the CBOE entering into arrangements with one or more other exchanges (each a "Back-up Exchange") to permit CBOE and its members to use a portion of a Back-up Exchange's facilities to conduct the trading of CBOE exclusively listed options[9] in the event of a Disabling

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jaime Galvan, Attorney, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated October 20, 2004 ("Amendment No. 1"). In Amendment No. 1, the Exchange modified the text of proposed CBOE Rule 6.16 and made certain other clarifying changes to the original submission. Amendment No. 1 replaced CBOE's original filing in its entirety.

[4] *See* letter from Jaime Galvan, Attorney, CBOE, to Brian Trackman, Special Counsel, Division, Commission, dated October 25, 2004 ("Amendment No. 2"). In Amendment No. 2, the Exchange corrected typographical errors in the proposed rule text.

[5] *See* Amendment No. 3, dated March 23, 2005 ("Amendment No. 3"). In Amendment No. 3, the Exchange modified portions of the proposed rule text and corresponding sections of the Form 19b–4 describing the rule proposal. Amendment No. 3 replaces CBOE's previously amended filing in its entirety. CBOE also submitted with its Amendment No. 3 a copy of the back-up trading agreement it has negotiated with the Philadelphia Stock Exchange ("Phlx") as Exhibit 3.A to its Form 19b–4, together with a copy of a first amendment to the agreement as Exhibit 3.B. These exhibits are available for viewing on the Commission's Web site, *www.sec.gov/rules/sro.shtml*, and at the Exchange and the Commission.

[6] *See* Securities Exchange Act Release No. 51510 (April 8, 2005), 70 FR 19812 ("Notice").

[7] *See* Amendment No. 4, dated May 11, 2005 ("Amendment No. 4"). In Amendment No. 4, the Exchange made one minor correction to the rule text in Section (d)(2) of proposed CBOE Rule 6.16 to state that any arbitration relating to trading of CBOE exclusively listed options on the facility of CBOE at the Back-up Exchange will be conducted in accordance with the rules of the Back-up Exchange, unless otherwise agreed by the parties.

[8] *See* Amendment No. 5, dated May 16, 2005 ("Amendment No. 5"). In Amendment No. 5, the Exchange changed the number of the footnote it proposes to add to its Fee Schedule from 17 to 16.

[9] For purposes of proposed CBOE Rule 6.16, the term "exclusively listed option" means an option

Event, and similarly will permit the CBOE to provide trading facilities at CBOE for another exchange's exclusively listed options if that exchange (a "Disabled Exchange") is prevented from trading due to a Disabling Event.

Proposed Rule 6.16 would also permit the CBOE to enter into arrangements with a Back-up Exchange to provide for the listing and trading of CBOE singly listed options [10] by the Back-up Exchange if CBOE's facility becomes disabled, and conversely provide for the listing and trading by CBOE of the singly listed options of a Disabled Exchange.[11]

b. If CBOE Is the Disabled Exchange

Section (a) of proposed Rule 6.16 describes the back-up trading arrangements that would apply if CBOE were the Disabled Exchange. Under proposed paragraph (a)(1)(B), the facility of the Back-up Exchange used by CBOE to trade some or all of CBOE's exclusively listed options will be deemed to be a facility of CBOE, and such option classes shall trade as listings of CBOE.

Since the trading of CBOE exclusively listed options will be conducted using the systems of the Back-up Exchange, proposed paragraph (a)(1)(C) provides that the trading of CBOE exclusively listed options on CBOE's facility at the Back-up Exchange shall be conducted in accordance with the rules of the Back-up Exchange, except that (i) such trading shall be subject to CBOE rules with respect to doing business with the public, margin requirements, net capital requirements, listing requirements and position limits, (ii) CBOE members that are trading on CBOE's facility at the Back-up Exchange (not including members of the Back-up Exchange who become temporary members of CBOE pursuant to paragraph (a)(1)(F)) will be subject to CBOE rules governing or applying to the maintenance of a person's or a firm's status as a member of CBOE, and (iii) CBOE Rule 8.87.01 may be utilized to establish a lower DPM participation rate applicable to trading on CBOE's facility on the Back-up Exchange than the rate that is applicable under the rules of the Back-up Exchange if agreed to by CBOE and the Back-up Exchange. In addition, CBOE and the Back-up Exchange may agree that other CBOE rules will apply to such trading. The Back-up Exchange rules that govern trading on CBOE's facility at the Back-up Exchange shall be deemed to be CBOE rules for purposes of such trading.

Proposed paragraph (a)(1)(D) reflects that the Back-up Exchange has agreed to perform the related regulatory functions with respect to trading of CBOE exclusively listed options on CBOE's facility at the Back-up Exchange, in each case except as CBOE and the Back-up Exchange may specifically agree otherwise. The Back-up Exchange and CBOE will coordinate with each other regarding surveillance and enforcement respecting such trading. CBOE shall retain the ultimate legal responsibility for the performance of its self-regulatory obligations with respect to CBOE's facility at the Back-up Exchange.

Under proposed paragraph (a)(1)(E), CBOE shall have the right to designate its members that will be authorized to trade CBOE exclusively listed options on CBOE's facility at the Back-up Exchange and, if applicable, its member(s) that will be a Lead Market-Maker ("LMM") or Designated Primary Market-Maker ("DPM") in those options. If the Back-up Exchange is unable to accommodate all CBOE members that desire to trade on CBOE's facility at the Back-up Exchange, CBOE may determine which members shall be eligible to trade at that facility by considering factors such as whether the member is a DPM or LMM in the applicable product(s), the number of contracts traded by the member in the applicable product(s), market performance, and other factors relating to a member's contribution to the market in the applicable product(s).

Under proposed paragraph (a)(1)(F), members of the Back-up Exchange shall not be authorized to trade in any CBOE exclusively listed options, except that (i) CBOE may deputize willing floor brokers of the Back-up Exchange as temporary CBOE members to permit them to execute orders as brokers in CBOE exclusively listed options traded on CBOE's facility at the Back-up Exchange,[12] and (ii) the Back-up Exchange has agreed that it will, at the instruction of CBOE, select members of the Back-up Exchange that are willing to be deputized by CBOE as temporary CBOE members authorized to trade CBOE exclusively listed options on CBOE's facility at the Back-up Exchange for such period of time following a Disabling Event as CBOE determines to be appropriate, and CBOE may deputize such members of the Back-up Exchange as temporary CBOE members for that purpose. The second of the foregoing exceptions would permit members of the Back-up Exchange to trade CBOE exclusively listed options on the CBOE facility on the Back-up Exchange if, for example, circumstances surrounding a Disabling Event result in CBOE members being delayed in arriving at the Back-up Exchange in time for prompt resumption of trading.

Section (a)(2) of the proposed rule provides for the continued trading of CBOE singly listed options at a Back-up Exchange in the event of a Disabling Event at CBOE. Proposed paragraph (a)(2)(B) provides that CBOE may enter into arrangements with a Back-up Exchange under which the Back-up Exchange will agree, in the event of a Disabling Event, to list for trading option classes that are then singly listed only by CBOE. Such option classes would trade on the Back-up Exchange as listings of the Back-up Exchange and in accordance with the rules of the Back-up Exchange. Under proposed paragraph (a)(2)(C), any such options class listed by the Back-up Exchange that does not satisfy the standard listing and maintenance criteria of the Back-up Exchange will be subject, upon listing by the Back-up Exchange, to delisting (and, thus, restrictions on opening new series, and engaging in opening transactions in those series with open interest, as may be provided in the rules of the Back-up Exchange).

CBOE singly listed option classes would be traded by members of the Back-up Exchange and by CBOE members selected by CBOE to the extent the Back-up Exchange can accommodate CBOE members in the capacity of temporary members of the Back-up

that is listed exclusively by an exchange (because the exchange has an exclusive license to use, or has proprietary rights in, the interest underlying the option).

[10] For purposes of proposed Rule 6.16, the term "singly listed option" means an option that is not an "exclusively listed option" but that is listed by an exchange and not by any other national securities exchange.

[11] In its proposal, CBOE stated that the back-up trading arrangements contemplated by proposed Rule 6.16 represent the Exchange's immediate plan to ensure that CBOE's exclusively listed and singly listed options will have a trading venue if a catastrophe renders its primary facility inaccessible or inoperable. The Exchange noted that, in September 2003, it had entered into separate Memoranda of Understanding with the American Stock Exchange LLC ("Amex"), Pacific Exchange ("PCX") and Philadelphia Stock Exchange ("Phlx") to memorialize their mutual understanding to work together to develop bi-lateral back-up trading arrangements in the event that trading is prevented at one of the exchanges. Since then, the Exchange has been working with each of these exchanges to put in place written agreements outlining essential commercial terms with respect to the arrangements as well as operational plans that describe the operational and logistical aspects of the arrangements. At present, CBOE and Phlx have signed an agreement relative to back-up trading arrangements and are in the process of completing the operational plan for those arrangements. *See supra* note 5.

[12] The exchanges that acted as Back-up Exchanges in the emergency situations noted above also deputized its floor brokers in this manner. *See infra* note 16.

Exchange. If the Back-up Exchange is unable to accommodate all CBOE members that desire to trade CBOE singly listed options at the Back-up Exchange, CBOE may determine which members shall be eligible to trade such options at the Back-up Exchange by considering the same factors used to determine which CBOE members are eligible to trade CBOE exclusively listed options at the CBOE facility at the Back-up Exchange.

Proposed Section (a)(3) provides that CBOE may enter into arrangements with a Back-up Exchange to permit CBOE members to conduct trading on a Back-up Exchange of some or all of CBOE's multiply listed options in the event of a Disabling Event. While continued trading of multiply listed options upon the occurrence of a Disabling Event is not likely to be as great a concern as the continued trading of exclusively and singly listed options, CBOE nonetheless believes a provision for multiply listed options should be included in the rule so that the exchanges involved will have the option to permit members of the Disabled Exchange to trade multiply listed options on the Back-up Exchange. Such options shall trade as a listing of the Back-up Exchange and in accordance with the rules of the Back-up Exchange.

c. If CBOE Is the Back-Up Exchange

Section (b) of proposed Rule 6.16 describes the back-up trading arrangements that would apply if CBOE were the Back-up Exchange. In general, the provisions in Section (b) are the converse of the provisions in Section (a). With respect to the exclusively listed options of the Disabled Exchange, the facility of CBOE used by the Disabled Exchange to trade some or all of the Disabled Exchange's exclusively listed options will be deemed to be a facility of the Disabled Exchange, and such option classes shall trade as listings of the Disabled Exchange. Trading of the Disabled Exchange's exclusively listed options on the Disabled Exchange's facility at CBOE shall be conducted in accordance with CBOE rules, except that (i) such trading shall be subject to the Disabled Exchange's rules with respect to doing business with the public, margin requirements, net capital requirements, listing requirements and position limits, and (ii) members of the Disabled Exchange that are trading on the Disabled Exchange's facility at CBOE (not including CBOE members who become temporary members of the Disabled Exchange pursuant to paragraph (b)(1)(D)) will be subject to the rules of the Disabled Exchange governing or applying to the maintenance of a person's or a firm's status as a member of the Disabled Exchange. In addition, the Disabled Exchange and CBOE may agree that other Disabled Exchange rules will apply to such trading.

CBOE will perform the related regulatory functions with respect to such trading, in each case except as the Disabled Exchange and CBOE may specifically agree otherwise. Proposed paragraph (b)(1)(C) reflects that the Disabled Exchange has agreed to retain the ultimate legal responsibility for the performance of its self-regulatory obligations with respect to the Disabled Exchange's facility at CBOE.

Sections (b)(2) and (b)(3) describe the arrangements applicable to trading of the Disabled Exchange's singly and multiply listed options at CBOE, and are the converse of Sections (a)(2) and (a)(3). One difference is in paragraph (b)(2)(A), which includes a provision that would permit CBOE to allocate singly listed option classes of the Disabled Exchange to a CBOE DPM in advance of a Disabling Event, without utilizing the allocation process under CBOE Rule 8.95, to enable CBOE to quickly list such option classes upon the occurrence of a Disabling Event.

d. Member Obligations

Section (c) describes the obligations of members and member organizations with respect to the trading by "temporary members" on the facilities of another exchange pursuant to Rule 6.16. Section (c)(1) sets forth the obligations applicable to members of a Back-up Exchange who act in the capacity of temporary members of the Disabled Exchange on the facility of the Disabled Exchange at the Back-up Exchange.

Section (c)(1) provides that a temporary member of the Disabled Exchange shall be subject to, and obligated to comply with, the rules that govern the operation of the facility of the Disabled Exchange at the Back-up Exchange. This would include the rules of the Disabled Exchange to the extent applicable during the period of such trading, including the rules of the Disabled Exchange limiting its liability for the use of its facilities that apply to members of the Disabled Exchange. Additionally, (i) such temporary member shall be deemed to have satisfied, and the Disabled Exchange has agreed to waive specific compliance with, rules governing or applying to the maintenance of a person's or a firm's status as a member of the Disabled Exchange, including all dues, fees and charges imposed generally upon members of the Disabled Exchange based on their status as such, (ii) such temporary member shall have none of the rights of a member of the Disabled Exchange except the right to conduct business on the facility of the Disabled Exchange at the Back-up Exchange to the extent described in the Rule, (iii) the member organization associated with such temporary member, if any, shall be responsible for all obligations arising out of that temporary member's activities on or relating to the Disabled Exchange, and (iv) the Clearing Member of such temporary member shall guarantee and clear the transactions of such temporary member on the Disabled Exchange.

Section (c)(2) sets forth the obligations applicable to members of a Disabled Exchange who act in the capacity of temporary members of the Back-up Exchange for the purpose of trading singly and multiply listed options of the Disabled Exchange. Such temporary members shall be subject to, and obligated to comply with, the rules of the Back-up Exchange that are applicable to the Back-up Exchange's own members, including the rules of the Back-up Exchange limiting its liability for the use of its facilities that apply to members of the Back-up Exchange. Temporary members of the Back-up Exchange have the same obligations as those set forth in Section (c)(1) that apply to temporary members of the Disabled Exchange, except that, in addition, temporary members of the Back-up Exchange shall only be permitted (i) to act in those capacities on the Back-up Exchange that are authorized by the Back-up Exchange and that are comparable to capacities in which the temporary member has been authorized to act on the Disabled Exchange, and (ii) to trade in those option classes in which the temporary member is authorized to trade on the Disabled Exchange.

e. Member Proceedings

As noted above, proposed CBOE Rule 6.16 provides that the rules of the Back-up Exchange shall apply to the trading of the singly and multiply listed options of the Disabled Exchange traded on the Back-up Exchange's facilities, and (with certain limited exceptions) the trading of exclusively listed options of the Disabled Exchange traded on the facility of the Disabled Exchange at the Back-up Exchange. The proposed rule contemplates that the Back-up Exchange has agreed to perform the related regulatory functions with respect to such trading (except as the Back-up Exchange and the Disabled Exchange may specifically agree otherwise).

Section (d) of proposed Rule 6.16 provides that if a Back-up Exchange initiates an enforcement proceeding with respect to the trading during a back-up period of singly or multiply listed options of the Disabled Exchange by a temporary member of the Back-up Exchange or exclusively listed options of the Disabled Exchange by a member of the Disabled Exchange (other than a member of the Back-up Exchange who is a temporary member of the Disabled Exchange), and such proceeding is in process upon the conclusion of the back-up period, the Back-up Exchange may transfer responsibility for such proceeding to the Disabled Exchange following the conclusion of the back-up period. This approach to the exercise of enforcement jurisdiction is also consistent with past precedent.

With respect to arbitration jurisdiction, proposed Section (d) provides that arbitration of any disputes with respect to any trading during a back-up period of singly or multiply listed options of the Disabled Exchange or of exclusively listed options of the Disabled Exchange on the Disabled Exchange's facility at the Back-up Exchange will be conducted in accordance with the rules of the Back-up Exchange, unless the parties to an arbitration agree that it shall be conducted in accordance with the rules of the Disabled Exchange.

f. Member Preparations

To ensure that members are prepared to implement CBOE's back-up trading arrangements, proposed Section (e) of proposed CBOE Rule 6.16 requires CBOE members to take appropriate actions as instructed by CBOE to accommodate CBOE's back-up trading arrangements with other exchanges and CBOE's own back-up trading arrangements.

g. Interpretations and Policies

Proposed Interpretation and Policy .01 to CBOE Rule 6.16 clarifies that to the extent the rule text provides that another exchange will take certain action, it is reflecting what that exchange has agreed to do by contractual agreement with CBOE, but Rule 6.16 itself is not binding on the other exchange.

B. Fee Schedule

The Exchange proposes to add a footnote to its Fee Schedule to inform its members regarding what fees will apply to transactions in the listed options of a Disabled Exchange effected on a Back-up Exchange under CBOE Rule 6.16. The footnote provides that if CBOE is the Disabled Exchange, the Back-up Exchange has agreed to apply the per contract and per contract side fees in the CBOE fee schedule to transactions in CBOE exclusively listed options traded on the CBOE facility on the Back-up Exchange.[13] If any other CBOE listed options are traded on the Back-up Exchange (such as CBOE singly listed options that are listed by the Back-up Exchange) pursuant to CBOE Rule 6.16, the fee schedule of the Back-up Exchange shall apply to such trades. The footnote contains a second paragraph stating the converse if CBOE is the Back-up Exchange under its Rule 6.16.

C. Proposed Rule 6.17—Authority To Take Action Under Emergency Conditions

The Exchange proposes to adopt a general emergency rule in proposed CBOE Rule 6.17. Although not directly related to the implementation of the back-up trading arrangements, the Exchange believes that it is appropriate to adopt such a rule in conjunction with implementing the back-up trading arrangements. Currently, there is no Exchange rule that grants specific authority in an emergency to any person or persons to take all actions necessary or appropriate for the maintenance of a fair and orderly market or the protection of investors. Authority to take actions affecting trading or the operation of CBOE systems is currently granted to the Board of Directors, floor officials and other individuals under several Exchange rules (*e.g.*, CBOE Rules 4.16, 6.3, 6.6 and 24.7).

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that CBOE's proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder, applicable to a national securities exchange.[14] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[15] which requires that the rules of an exchange, among other things, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, serve to protect investors and the public interest.

In light of the heightened security risks to the financial markets since the September 11, 2001 attacks on the World Trade Centers in New York City, the Commission has encouraged and worked with the national securities exchanges to develop contingency plans, emergency procedures, and back-up trading arrangements in order to minimize the potential disruption and market impact that a future Disabling Event could cause. The present rule change proposal is a direct response to that effort.

The Commission believes that CBOE's proposed rule changes are reasonably designed to address the key elements necessary to mitigate the effects of a Disabling Event affecting the Exchange, minimize the impact of such an event on market participants, and help ensure that a liquid and orderly marketplace for securities listed and traded on CBOE will continue to exist. Specifically, the back-up trading arrangements contemplated by proposed CBOE Rule 6.16 are designed to provide a trading venue for the Exchange's exclusively listed and, to the extent feasible, its singly listed options in the event that a catastrophe required the Exchange's primary facility to be closed for an extended period.[16] The proposed rule also provides authority for CBOE to provide a back-up trading venue should another exchange be affected by a Disabling Event.

CBOE also proposes a new Rule 6.17 granting authority to take action under emergency conditions to the Chairman, President or such other person or persons as may be designated by the Board. The proposed rule text closely tracks that of other exchanges.[17] The Commission finds that proposed CBOE Rule 6.17 is consistent with the Act and should enable key actions to be taken by Exchange representatives in the event of a Disabling Event.

The Commission likewise finds that the proposed change to the Exchange's Fee Schedule is consistent with the Act. By affirming that CBOE and, by mutual

[13] When Phlx Dell options relocated to Annex in June 1998, Phlx fees applied to transactions in Dell options on the Amex. *See infra* note 16.

[14] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] The Commission notes that it has approved the basic approach set forth in the proposal of deeming a portion of the Back-up Exchange's facilities to be a facility of the Disabled Exchange. *See* Securities Exchange Act Release No. 27365 (October 19, 1989), 54 FR 43511 (October 25, 1989) (approving trading of options listed on the Pacific Stock Exchange at other exchanges in wake of earthquake); Securities Exchange Act Release No. 40088 (June 12, 1998), 63 FR 33426 (June 18, 1998) (approving trading of Dell options listed on Phlx at Amex on a temporary basis).

[17] *See, e.g.*, New York Stock Exchange Rule 51.

agreement, the Back-up Exchange will apply the per contract and per contract side fees normally applicable to exclusively listed options under the Disabled Exchange's fee schedule, the Commission believes that the proposed rule change appears to be reasonably designed to minimize the disruption associated with back-up trading of such options. The proposal also clarifies that, with regard to singly listed and multiply listed options, the fees charged shall be those set forth in the Back-up Exchange fee schedule where trading occurs at a Back-up Exchange, or, where trading occurs at CBOE, the CBOE fee schedule.

The Commission finds good cause, consistent with Sections 6(b)(5) and 19(b) of the Act,[18] to approve the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Amendment No. 4 simply corrects a reference to "Back-up Exchange" in Section (d)(2) of CBOE Rule 6.16. Likewise, Amendment No. 5 changes the number of the footnote CBOE proposes to add to its Fee Schedule from 17 to 16 to avoid a gap in the numbering of the notes. Because Amendment Nos. 4 and 5 propose minor corrections to the rule text that are consistent with the clear intent of the proposal, the Commission finds that it is appropriate to approve Amendment Nos. 4 and 5 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 4 and 5, including whether each of these amendments is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2004–59 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–59. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–59 and should be submitted on or before June 15, 2005.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–CBOE–2004–59), as amended by Amendment Nos. 1, 2 and 3, is hereby approved, and that Amendment Nos. 4 and 5 to the proposed rule change are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–2634 Filed 5–24–05; 8:45 am]

BILLING CODE 8010–01–P

[18] 15 U.S.C. 78f(b)(5) and 78s(b).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51720; File No. SR–CBOE–2005–33]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Increased Class Quoting Limits in AAPL, GOOG, MNX, QQQQ

May 19, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 21, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the CBOE. The CBOE has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to increase the class quoting limits in a select number of active options classes. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com*), the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission approved the Exchange's Remote Market-Maker ("RMM") program ("Program") on March 14, 2005.[5] CBOE Rule 8.3A, Maximum Number of Market Participants Quoting Electronically per

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* Securities Exchange Act Release No. 51366 (March 14, 2005), 70 FR 13217 (March 18, 2005).

Product, establishes class quoting limits ("CQLs") for each class traded on the Hybrid Trading System.[6] A CQL is the maximum number of quoters that may quote electronically in a given product and the current levels are established from 25–40, depending on the trading activity of the particular product.

CBOE Rule 8.3A.01(c) provides a procedure by which the President of the Exchange may increase the CQL for a particular product. In this regard, the President of the Exchange may increase the CQL in exceptional circumstances, which are defined in the rule as "* * * substantial trading volume, whether actual or expected."[7] The effect of an increase in the CQL is procompetitive in that it increases the number of market participants that may quote electronically in a product. The purpose of this filing is to increase the CQLs for four products trading on the Exchange: Apple Computer (AAPL), options on the Nasdaq-100 Index Tracking Stock (QQQQ), options on the mini-Nasdaq 100 index (MNX), and Google (GOOG). Specifically, the Exchange proposes to increase the CQLs in these products by the following amounts: AAPL CQL increased by 4; MNX CQL increased by 4; QQQQ CQL increased by 2; and GOOG CQL increased by 3.

Each of these products routinely is among the most actively-traded on the Exchange for both index and equity products and, therefore, there is substantial trading volume in each of these products. Increasing the CQLs in each of these products will enable the Exchange to enhance the liquidity offered, thereby offering deeper and more liquid markets. Each of these products has a "waiting list" of market participants waiting to quote and, per CBOE Rule 8.3A's requirements, quoting spots will be offered on a time priority basis, starting with the first person on each list. The Exchange represents that it will comply with all of the requirements of CBOE Rule 8.3A in increasing the CQLs in these products and, if it determines subsequently to reduce such CQLs, in reducing the CQLs in these products.[8] Changes to the CQLs will be announced to the membership via Information Circular.

2. Statutory Basis

The CBOE believes that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change will take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(i) of the Act[11] and Rule 19b–4(f)(1) thereunder,[12] because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2005–33 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2005–33. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2005–33 and should be submitted on or before June 15, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–2636 Filed 5–24–05; 8:45 am]

BILLING CODE 8010–01–P

[6] *See* CBOE Rule 8.3A.01.

[7] "Any actions taken by the President of the Exchange pursuant to this paragraph will be submitted to the SEC in a rule filing pursuant to Section 19(b)(3)(A) of the Exchange Act." CBOE Rule 8.3A.01(c).

[8] The Exchange has represented that it will follow the procedures outlined in CBOE Rule 8.3A.01(a) for assigning new CQLs, based on revised trading volume statistics, at the end of the calendar quarter and that if the new CQLs are lower than the increased CQLs assigned as a result of this proposed rule change, the procedures outlined in CBOE Rule 8.3A.01(a) will be followed. Telephone conversation of May 18, 2005, between Patrick Sexton, Assistant General Counsel, CBOE and David Michehl, Attorney, Division of Market Regulation, Commission.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(i).

[12] 17 CFR 240.19b–4(f)(1).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51703; File No. SR–NASD–2004–033]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving a Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto Seeking to Modify the Nasdaq Market Center Execution Service To Add an Optional Routing Feature

May 18, 2005.

I. Introduction

On February 25, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change seeking to modify the Nasdaq Market Center execution service to add an optional routing feature. On July 15, 2004, Nasdaq submitted Amendment No. 1 to the proposed rule change.[3] On February 23, 2005, Nasdaq submitted Amendment No. 2 to the proposed rule change.[4] On April 7, 2005, Nasdaq submitted Amendment No. 3 to the proposed rule change.[5] The proposed rule change, as amended, was published for comment in the **Federal Register** on April 13, 2005.[6] The Commission received no comments on the proposal.

II. Description

Nasdaq has proposed to modify the Nasdaq Market Center execution service to create an optional outbound order routing feature that will route orders in Nasdaq-listed securities to other markets when those markets are displaying quotes at prices superior to those displayed on Nasdaq and that are accessible through the router.[7] Under the proposal, Nasdaq Market Center Participants will be able to choose on an order-by-order basis whether they want an order routed outside the Nasdaq Market Center. Such routed orders will be executed pursuant to the rules and regulations of the destination market. If more than one market is at a price level that is superior to Nasdaq's displayed price, the computer algorithm of the Nasdaq Market Center router will determine the market, or markets, to which the order will be sent, based on several factors including the number of shares being displayed, response time, likelihood of undisplayed trading interest, and the cost of accessing the market. If an order (or a portion of the order) remains unfilled after being routed, it will be returned to Nasdaq where, if the order is marketable, it will be returned to the Non-Directed Order processing queue, where it can be executed in Nasdaq, or routed again, if Nasdaq is not at the best price when the order is next in line in the processing queue. Once a routed limit order is no longer marketable, whether it becomes non-marketable upon return to Nasdaq or while in the execution queue, it will be placed on the Nasdaq Market Center book, if consistent with the order's time in force condition. Once on the book, however, an order will not be routed out of the Nasdaq Market Center, even if it becomes marketable against the quotes of another market.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a self-regulatory organization.[8] In particular, the Commission believes that the proposed rule change, as amended, is consistent with Section 15A(b)(6) of the Act,[9] which requires, among other things, that NASD's rules be designed to protect investors and the public interest.

The Commission notes that the proposed routing functionality is an optional feature and that Nasdaq Market Center Participants will be able choose whether or not to participate in routing on an order-by-order basis. The Commission also notes that orders flagged for routing will only in fact route when a superior price is available in another market that is accessible through the router. Therefore, the Commission believes that the proposed outbound order routing feature should help investors to reach better prices available outside the Nasdaq Market Center and thereby enhance the national market system.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–NASD–2004–033), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–2605 Filed 5–24–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the originally filed proposed rule change.

[4] Amendment No. 2 replaced and superseded the originally filed proposed rule change, as amended.

[5] Amendment No. 3 replaced and superseded the originally filed proposed rule change, as amended.

[6] *See* Securities Exchange Act Release No. 51504 (April 7, 2005), 70 FR 19538 (April 13, 2005) (SR–NASD–2004–033).

[7] Under the proposal, Nasdaq will access the quotes of exchanges through its broker-dealer subsidiary, Brut. *See* Securities Exchange Act Release No. 51326 (March 7, 2005), 70 FR 12521 (March 14, 2005).

[8] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51706; File No. SR–NYSE–2005–27]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 2 Thereto Relating to the Listing of PIES℠ Issued by Sierra Pacific Resources Under Section 703.19

May 18, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 19, 2005, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On May 16, 2005, the Exchange filed Amendment No. 1 to the proposed rule change. On May 18, 2005, the Exchange withdrew Amendment No. 1 and filed Amendment No. 2.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 2, the Exchange requested that the proposal, which had initially been submitted under section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A), and Rule 19b–4(f)(6) thereunder, 17 CFR 240.19b–4(f)(6), be approved pursuant to section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2) and Rule 19b–4(a) thereunder, 17 CFR 240.19b–4(a).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade Premium Income Equity Securities (PIES℠) (the "New PIES"), each of which consists of a purchase contract issued by Sierra Pacific Resources ("SPR") that requires the holder to purchase a variable amount of SPR common stock and a 5% undivided beneficial ownership interest in a senior note of SPR with a principal amount of $1,000 due November 15, 2007 (unless its maturity is extended as described below).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 703.19 of the NYSE Listed Company Manual (the "Manual"), the Exchange may approve for listing and trading securities not otherwise covered by the criteria of sections 1 and 7 of the Manual, provided the issue is suited for auction market trading.[4] The Exchange proposes to list and trade, under section 703.19 of the Manual, the New PIES, each of which consists of (1) a purchase contract ("Purchase Contract") issued by SPR and (2) a 5% undivided beneficial ownership interest in a senior note of SPR with a principal amount of $1,000 (the "Note", and collectively, the "Notes") due November 15, 2007.[5]

The New PIES are being offered pursuant to an exchange offer, the full terms of which are set out in the Registration Statement.[6] Specifically, SPR offers to exchange the New PIES and a cash payment of $0.125 for each validly tendered and accepted currently existing Corporate PIES of SPR (collectively referred to as the "Old PIES"), subject to, among other things, the condition that the Old PIES remain listed on the Exchange.

Each Purchase Contract obligates the holder of a New PIES to purchase from SPR, no later than November 15, 2005 (the "Purchase Contract Settlement Date"), for a price of $50, the following number of shares of SPR common stock, $1.00 par value: (a) If the average of the closing prices of SPR's common stock over the 20-trading day period ending on the third trading day prior to the Purchase Contract Settlement Date (the "Applicable Market Value") is equal to or greater than $16.62, 3.0084 shares; (b) if the Applicable Market Value is less than $16.62 but greater than $13.85, a number of shares determined by dividing the stated amount of $50 by the Applicable Market Value; and (c) if the Applicable Market Value over the same period is less than or equal to $13.85, 3.6101 shares. SPR will also pay New PIES holders a quarterly fixed amount in cash, called a contract adjustment payment, at a rate of 1.07% per year of the stated amount of $50 per New PIES, or $0.535 per year.

The Notes will constitute senior obligations of SPR. Prior to the Purchase Contract Settlement Date, the ownership interest in the Notes will be pledged to secure the New PIES holders' obligation to purchase SPR's common stock under the purchase contract. SPR will appoint one or more remarketing agents to remarket, the Notes to third party investors at any time during the period for early remarketing, which is the period beginning the day following the consummation of the exchange offer on May 18, 2005 and ending on the ninth business day prior to the Purchase Contract Settlement Date in one or more three-day remarketing periods that consist of three sequential possible remarketing dates selected by SPR, or during a final remarketing period, which is the period beginning on the fifth business day, and ending on and including the third business day, preceding the Purchase Contract Settlement Date. New PIES holders may choose to opt out of the remarketing of the Notes to third party investors to satisfy their payment obligations on the Contract Settlement Date. A New PIES holder who opts out of the remarketing of the Notes would be required to settle each Purchase Contract for $50.00 in cash.

Prior to a successful remarketing of the Notes, SPR will pay New PIES holders interest at a rate of 7.93% per year on the principal amount of the Note, payable quarterly. In connection with a successful remarketing of the Notes, certain terms of the Notes, including the interest rate (which may be reset to a rate greater or less than 7.93% per year), the maturity date (which may be extended to a maximum term of 11 years from the remarketing settlement date), the redemption provisions, the interest payment dates and the addition of covenants applicable to the Notes, may be modified to allow a remarketing of the Notes.

The material differences between the Old PIES and New PIES are illustrated in the table below.

	Old PIES	New PIES
Remarketing Date	The senior notes beneficially owned by each holder of Old PIES will be remarketed on August 10, 2005, unless the remarketing agent delays the remarketing to a later date.	The Notes associated with the New PIES may be remarketed • at any time during the period for early remarketing, which is the period beginning the day following the consummation of the exchange offer and ending on the ninth business day prior to the Purchase Contract Settlement Date in one or more three-day remarketing periods that consist of three sequential possible remarketing dates selected by SPR, or • during the final remarketing period, which is the period beginning on the fifth business day, and ending on and including the third business day, immediately preceding the Purchase Contract Settlement Date.

[4] Securities Exchange Act Release No. 28217 (July 18, 1990), 55 FR 30056 (July 24, 1990).

[5] SPR filed a Form S–4 relating to the New PIES (the "Registration Statement") on April 15, 2005. The information provided in this Rule 19b–4 filing relating to the New PIES is based entirely on information included in the Registration Statement.

[6] In particular, the Registration Statement provides a detailed discussion and comparison of the Old PIES and the New PIES so that holders can evaluate whether it is in their best interests to participate in the exchange offer.

	Old PIES	New PIES
Terms of the Notes Upon Remarketing.	In connection with the remarketing of the senior notes, the interest rate on all senior notes, whether or not a part of Old PIES, will be reset to an interest rate sufficient to allow a remarketing of the senior notes. The senior notes mature November 15, 2007.	In connection with the remarketing of the Notes, the interest rate on all Notes will be reset and certain terms of the Notes may be modified, including the interest rate, the maturity date (which may be extended to a maximum term of 11 years from the remarketing settlement date), the redemption provisions, the interest payment dates and the addition of covenants applicable to Notes. However, terms set forth in the indenture under which the Notes were issued, such as ranking and events of default, may not be modified in connection with the remarketing, except pursuant to the terms of the indenture.

The New PIES represent both an equity and fixed income investment in SPR. The equity investment is in the form of the Purchase Contract, which, unless earlier terminated, requires a New PIES holder to purchase a variable number of shares of SPR common stock on the Purchase Contract Settlement Date. The fixed income investment is in the form of the Notes, which are senior indebtedness of SPR.

The New PIES will conform to the issuer listing criteria under section 703.19 of the Manual and be subject to the relevant continuing listing criteria under section 801 and 802 of the Manual.[7] The Exchange will impose the issuer listing requirements of section 703.19 on SPR. Under section 703.19, among other things, if the issuer is an NYSE-listed company, it must be a company in good standing. SPR is an NYSE-listed company in good standing. The New PIES will also meet the equity listing standards found in section 703.19(2) of the Manual, except that the New PIES will not have the minimum life of one year required for equity listings. However, the Exchange does not believe that the New PIES will raise any significant new regulatory issues. Because the New PIES will meet or exceed the other equity listing requirements under section 703.19, the Exchange believes that the New PIES will have sufficient liquidity and depth of market, even if listed for a period shorter than one year. The Exchange also notes that the underlying SPR common stock from which the value of the New PIES is in part derived will remain outstanding and listed on the Exchange following maturity of the New PIES on the Purchase Contract Settlement Date.

The Exchange's existing equity trading rules will apply to trading of the New PIES. The Exchange will also have in place certain other requirements to provide additional investor protection. First, pursuant to Exchange Rule 405, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the New PIES.[8] Second, the New PIES will be subject to the equity margin rules of the Exchange.[9] Third, the Exchange will, prior to trading the New PIES, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the New PIES and highlighting the special risks and characteristics of the New PIES. With respect to suitability recommendations and risks, the Exchange will require members, member organizations, and employees thereof recommending a transaction in the New PIES: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the New PIES. Specifically, the Exchange will rely on its existing surveillance procedures governing equity, which have been deemed adequate under the Exchange Act.

2. Statutory Basis

The Exchange states that the basis for the proposed rule change is the requirement under section 6(b)(5)[10] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2005–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2005–27. This file number should be included on the subject line if e-mail is used. To help the

[7] Section 801.00 provides, in relevant part, that when an issuer that has fallen below any of the continued listing criteria has more than one class of securities listed, the Exchange will give consideration to delisting all such classes. Section 802.01D states, in relevant part, that delisting of specialized securities will be considered when the number of publicly-held shares is less than 100,000; the number of holders is less than 100; and aggregate market value of shares outstanding is less than $1 million. The Exchange also notes that it may, at any time, suspend a security if it believes that continued dealings in the security on the Exchange are not advisable.

[8] NYSE Rule 405 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

[9] *See* NYSE Rule 431.

[10] 15 U.S.C. 78f(b)(5).

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2005–27 and should be submitted on or before June 15, 2005.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act.[11] The Commission notes that the proposal is substantially similar to approved instruments currently listed and traded on the NYSE.[12] Accordingly, the Commission finds that the listing and trading of the Units is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with section 6(b)(5) of the Act.[13]

As described more fully above, the Exchange proposes to list and trade the New PIES, which represent both an equity and fixed income investment in SPR. The equity investment is in the form of the Purchase Contract, which, unless earlier terminated, requires a New PIES holder to purchase a variable number of shares of SPR common stock on the Purchase Contract Settlement Date. The fixed income investment is in the form of the Notes, which are senior indebtedness of SPR. As set forth above, the New PIES are being offered pursuant to an exchange offer, the full terms of which are explained in the Registration Statement.[14] The Registration Statement contains a comparison of Old PIES and New PIES so that holders can evaluate whether it is in their best interests to participate in the exchange offer.

The Commission notes that the Exchange's rules and procedures address the special concerns attendant to the trading of certain types of hybrid securities. In particular, by requiring the New PIES to comply with the initial listing standards under section 703.19 of the Manual and the continued listing standards under section 801 and 802 of the Manual, as well as the equity trading rules, suitability standards, and disclosure requirements described above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the PIES. The Commission also notes that the Exchange will distribute a circular to its members regarding member firm compliance responsibilities when handling transactions in the New PIES and highlighting the special risks and characteristics of the New PIES.

The Exchange's "Other Securities" listing standards in section 703.19 of the Manual provide that issuers satisfying earnings and net tangible assets requirements may issue securities such as the New PIES, provided that the issue is suited for auction market trading. The Exchange has represented that the New PIES will meet all of the relevant listing standards found in section 703.19 of the Manual except that they will not have the minimum life of one year.[15] Because the New PIES are being offered in connection with an exchange offer, the Commission believes that the New PIES will have sufficient liquidity and depth of market, even if listed for a period of shorter than one year. Further, because the issuer of the New PIES is SPR (the Purchase Contract issued by SPR and the Note issued by SPR and guaranteed by SPR), the Commission does not object to the Exchange's reliance on SPR to meet the issuer listing requirements of section 703.19 of the Manual.

The Commission also notes that the Exchange's existing equity trading rules and equity margin rules will apply to trading of the New PIES, and, as discussed more fully above, the Exchange will also have in place certain other requirements to provide additional investor protection. The Commission notes that the Exchange will rely on its existing surveillance procedures governing equity, which the Exchange represents have been deemed adequate under the Act.

The Commission finds good cause, consistent with sections 6(b)(5) and 19(b)(2) of the Act,[16] to approve the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** Accelerating approval of the proposal will enable the Exchange to accommodate the listing of the New PIES on or shortly after May 18, 2005, the expiration date of the exchange offer pursuant to which the New PIES are being offered. The Commission notes that it has previously approved a substantially similar proposal involving another listed company.[17] The Commission believes that permitting the expeditious listing of New PIES will serve the interests of investors and the public interest. Accordingly, the Commission finds that it is appropriate to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–NYSE–2005–27) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–2604 Filed 5–24–05; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78f(b)(5).

[12] *See, e.g.*, Securities Exchange Act Release No. 49112 (January 21, 2004), 69 FR 4196 (January 28, 2004) (SR–NYSE–2003–40) (approving the listing and trading of Premium Equity Participating Security Units issued by PPL Corporation).

[13] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] *See supra* note 6.

[15] Specifically, the Exchange has represented the following in accordance with the listing standards of section 703.19 of the Manual: (1) SPR is an NYSE-listed company in good standing; (2) there will be at least 1 million securities outstanding; (3) there will be at least 400 holders; and (4) at least $4 million from which the value of the New PIES is in part derived will remain outstanding and listed on the Exchange following maturity of the New PIES.

[16] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[17] See Securities Exchange Act Release No. 49112 (January 21, 2004), 69 FR 4196 (January 28, 2004) (SR–NYSE–2003–40).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51715; File No. SR–Phlx–2004–83]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto Relating to the Matching of Certain Incoming Orders With Certain Phlx Existing Orders Through the PACE System

May 19, 2005.

I. Introduction

On November 26, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify Phlx Rule 229 to permit the PACE System[3] to match certain incoming orders with certain Phlx existing orders (the "Matching Rule"). On March 10, 2005, the Phlx filed Amendment No. 1 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on March 24, 2005.[5]

The Commission received no comments on the proposal. On May 6, 2005, the Phlx filed Amendment No. 2 to the proposed rule change.[6] This order approves the proposed rule change as amended. Simultaneously, the Commission provides notice of filing of Amendment No. 2, grants accelerated approval to Amendment No. 2, and solicits comments from interested persons on Amendment No. 2.

II. Description of the Proposal

Under the proposal, the Phlx PACE System will check incoming orders against existing orders, and if possible, automatically execute those incoming orders against the existing orders prior to submitting them for execution by the specialist. The Phlx has represented that the purpose of the proposal is to help preserve the priority of orders and reduce incidents of inadvertent trading ahead of customer orders, and believes the proposal, among other things, will protect investors by increasing the number of orders that are matched without the participation of a dealer.

To this end, under the proposed rule change, as amended, round-lot market and limit orders and the round-lot portion of non-all-or-none PRL[7] market and limit orders entered after the opening will generally execute against existing round-lot market and limit orders and the round-lot portion of existing non-all-or-none PRL market and limit orders that have not been marked for layoff, if executable within the Modified PACE Quote.[8] Incoming round lot all-or-none orders will be eligible for matching only if the size of the incoming all-or-none order is equal to or smaller than the first existing order it would match against. Conversely, if the incoming all-or-none order is larger than the first existing order it could match against, the incoming order will not automatically match, but will be handled by the specialist.[9]

Under the Matching Rule, the price of the execution will be dependent on the Midpoint Price, meaning the midpoint of the Modified PACE Quote as rounded (if applicable),[10] and the type of orders that are being matched.[11] Existing Phlx orders generally will be executed in price/time priority with the highest bid/lowest offer executed first, with existing market orders, for purposes of enhanced matching priority, being treated as limit orders priced at the Midpoint Price. As part of the proposed rule change, the Phlx is also modifying language in other sections of Phlx Rule 229 to reflect and account for the operation of the new Matching Rule.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[13] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Under the proposal, the PACE System will seek to execute eligible incoming customer orders against existing customer orders automatically, prior to submitting them for execution by the specialist. The Matching Rule will apply generally to non-all-or-none round-lot market and limit orders and the round-lot portions of non-all-or-none PRL orders entered after the opening, as well as to round-lot all-or-none orders and the round-lot portion of PRL all-or-none orders to the extent that such orders are smaller in size than an available contra-side order. Moreover, it will apply to

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] PACE is the Exchange's automated order routing, delivery, execution and reporting system for equities. *See* Phlx Rule 229.

[4] In Amendment No. 1, which replaced the original proposal in its entirety, Phlx modified two concepts contained in the original proposed rule change (those of the Midpoint Price and the Modified PACE Quote), clarified the operation of the proposed rule change, reorganized the rule text of proposed new Supplementary Material .04A to Phlx Rule 229 into subsections, and made corresponding changes to other portions of the Supplementary Material to Phlx Rule 229 to reflect the applicability of the proposed rule change.

[5] *See* Securities Exchange Act Release No. 51394 (Mar. 18, 2005), 70 FR 15141 (Mar. 24, 2005) ("Notice").

[6] In Amendment No. 2, which supplemented the proposal as noticed, the Phlx modified Supplementary Material .02 to Phlx Rule 229 to clarify that if specialists offer access to PACE for orders without participating in the PACE execution guarantees for agency orders, where the entering member organization has generally elected not to receive automatic execution or primary market print protection for electronically delivered limit orders, those orders will be eligible for enhanced matching under Supplementary Material .04A to Phlx Rule 229.

[7] "PRL" refers to a combined round-lot and odd-lot order. *See* Phlx Rule 229.

[8] The "PACE Quote" means the best bid/ask quote among the American, Boston, National, Chicago, New York, or Philadelphia Stock Exchanges, the Pacific Exchange, or the Intermarket Trading System/Computer Assisted Execution System ("ITS/CAES") quote, as appropriate. *See* Phlx Rule 229. The "Modified PACE Quote" is defined in the proposed rule change to mean the PACE Quote, unless the PACE Quote is comprised of another market's quote of 100 shares or less, in which case the Modified PACE Quote will be one cent away from such 100 share away quote.

[9] Orders that have been marked for lay-off (*i.e.*, orders that are being sent to other marketplaces for execution and appropriately marked by the specialist within PACE) would not be eligible under the proposal to be matched against an incoming order. Further, no order for which the entering member organization has elected primary market high-low protection (as provided in Phlx Rule 229, Supplementary Material .07(a)(ii)) would be matched if the execution price of such execution would be outside the primary market high-low range for the day. In addition, notwithstanding Phlx Rule 229, Supplementary Material .01 regarding priority, existing Phlx orders would be executed in price/time priority with the highest bid/lowest offer executed first, with existing market orders, for purposes of enhanced matching priority, being treated as limit orders priced at the Midpoint Price (defined below). *See* Notice for examples and further details.

[10] Rounding of the Modified PACE Quote will be applicable if the midpoint of the Modified PACE Quote is not a penny increment, in which case the Midpoint Price shall be rounded down (up) to the nearest penny if the existing Phlx order is an order to buy (sell).

[11] When one or more of the orders to be matched are limit orders, the execution price would be the price closest to the Midpoint Price that will allow the limit order(s) to execute. *See* Notice for examples and further details.

[12] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

non-agency orders in PACE securities, even in the event that the PACE specialist does not agree to provide PACE execution guarantees for such non-agency orders. The Commission believes that, by thus increasing the automated handling of customer orders and matching incoming orders with existing orders without the participation of the specialist, the proposed rule change should better facilitate a wide range of transactions, help preserve the priority of existing orders, and reduce incidents of inadvertent trading ahead of customer orders as contemplated by the Exchange.

The Commission believes that the midpoint of the Modified PACE Quote, the best bid/ask quote among the equities exchanges except in the case where the best bid/ask quote is comprised of an away market quote of 100 shares or less, is a reasonable price upon which to base the price at which customer orders are executed pursuant to the Matching Rule, subject to the rounding principles and provisions designed to accommodate the matching of limit orders, as described above.[14] Moreover, the proposed rule change sets forth in detail for investors the procedures by which orders will be matched in the PACE System and the basis upon which the execution prices for such transactions will be determined.

The Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of the publication of notice thereof in the **Federal Register**. The Commission notes that Amendment No. 2 does not modify the proposed Matching Rule itself, but merely extends the improvements it offers to non-agency orders entered into the PACE System. The Commission therefore believes that it is appropriate to accelerate approval of Amendment No. 2 so that the proposed rule change, as amended, may be implemented without delay.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2004–83 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Phlx–2004–83. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2004–83 and should be submitted on or before June 15, 2005.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–Phlx–2004–83), as amended, be, and it hereby is, approved, with Amendment No. 2 being approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–2635 Filed 5–24–05; 8:45 am]

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[14] *See supra* notes 10 and 11.

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51718; File No. SR–Phlx–2004–65]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2 and 3 Thereto Relating to Backup Trading Arrangements

May 19, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b–4[2] thereunder, notice is hereby given that on October 18, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. On April 29, 2005, the Exchange submitted Amendment No. 1 to the proposal.[3] On May 12, 2005, the Exchange submitted Amendment No. 2 to the proposal.[4] On May 16, 2005, the Exchange submitted Amendment No. 3 to the proposal.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange substantially revised the proposed rule text and added a new paragraph (d), Member Proceedings, to establish disciplinary jurisdiction as between the Disabled Exchange and the Back-up Exchange in situations where there is an ongoing disciplinary action involving a member of the Disabled Exchange at the time of termination of the back-up period. The Exchange also proposed amendments to its fee schedules, which incorporate Rule 99.

[4] In Amendment No. 2, the Exchange made minor revisions to the proposed rule text and corresponding description of the proposal. Phlx also refiled corrected versions of the exhibits submitted with the proposal. Amendment No. 2 replaces and supersedes Phlx's earlier submissions in their entirety.

[5] In Amendment No. 3, the Exchange submitted a revised Exhibit 5 to its amended Form 19b–4 to correctly identify the new rule text in the proposal, including Exchange Rule 99 and changes to the Phlx Fee Schedule.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt a rule that will permit Phlx to enter into arrangements with one or more other exchanges that would provide trading facilities for Phlx listed options at another exchange in the event that the functions of Phlx are severely and adversely affected by an emergency or extraordinary circumstances (a "Disabling Event"), and similarly provide trading facilities at Phlx for another exchange to trade its listed options if that exchange's facility experiences a Disabling Event. Additionally, the Exchange has submitted a corresponding back-up trading agreement between itself and the Chicago Board Options Exchange, Incorporated ("CBOE") as Exhibit B to its Form 19b–4 filing. This back-up trading agreement is available for viewing on the Commission's Web site, *http://www.sec.gov/rules/sro.shtml*, and at the Exchange and the Commission.[6]

The Exchange also proposes an amendment to its Fee Schedule relative to the fees that shall apply to transactions in the options of a Disabled Exchange effected on a Back-up Exchange.

The text of the proposed rule change is set forth below. Proposed new language is in *italics*.

* * * * *

Backup Trading Arrangements

Rule 99

(a) Phlx is Disabled Exchange.

(i) Exchange ("Phlx") Exclusively Listed Options.

(A) For purposes of this Rule 99, the term "exclusively listed option" means an option that is listed exclusively by an exchange (because such exchange has an exclusive license to use, or has proprietary rights in, the interest underlying the option).

(B) The Phlx may enter into arrangements with one or more other exchanges (each a "Backup Exchange") to permit the Phlx and its members and associated persons and other personnel to use a portion of the Backup Exchange's facilities to conduct the trading of some or all of the Phlx's exclusively listed options in the event that the functions of the Phlx are, or are threatened to be, severely and adversely affected by an emergency or extraordinary circumstances (a "Disabling Event"). Such options shall trade as listings of Phlx. The facility of the Backup Exchange used by the Phlx for this purpose will be deemed to be a facility of the Phlx.

(C) Trading of Phlx exclusively listed options shall be conducted in accordance with the rules of the Backup Exchange, except that such trading shall be subject to Phlx rules with respect to doing business with the public, margin requirements, net capital requirements, listing requirements, and position limits. In addition, the Phlx and the Backup Exchange may agree that other rules of the Phlx will apply to such trading. The Phlx and the Back-up Exchange have agreed to communicate to their respective members which rules apply in advance of trading. The Backup Exchange rules that govern trading on Phlx's facility at the Back-up Exchange shall be deemed to be Phlx rules for purposes of such trading.

(D) The Back-up Exchange has agreed to perform the related regulatory functions with respect to trading of Phlx exclusively listed options on Phlx's facility at the Back-up Exchange, in each case except as Phlx and the Back-up Exchange may specifically agree otherwise. The Back-up Exchange and Phlx have agreed to coordinate with each other regarding surveillance and enforcement respecting trading of Phlx exclusively listed options on Phlx's facility at the Back-up Exchange. Phlx shall retain the ultimate legal responsibility for the performance of its self-regulatory obligations with respect to Phlx's facility at the Back-up Exchange.

(E) If the Backup Exchange is unable to accommodate all Phlx members that desire to trade on Phlx's facility at the Backup Exchange pursuant to paragraph (a)(i)(A), the Phlx may determine which members shall be eligible to trade at that facility. Factors to be considered in making such determinations may include, but are not limited to, any one or more of the following: Whether the member is a specialist in the applicable product(s), the number of contracts traded by the member or member organization in the applicable product(s), market performance, and other factors relating to a member's contribution to the market in the applicable product(s) during a specific period.

(F) Members of the Backup Exchange shall not be authorized to trade in any Phlx exclusively listed options, except that (i) Phlx may deputize willing floor brokers of the Back-up Exchange as temporary Phlx members to permit them to execute orders as brokers in Phlx exclusively options traded on Phlx's facility at the Back-up Exchange; and (ii) the Back-up Exchange has agreed that it will, at the instruction of Phlx, select members of the Back-up Exchange that are willing to be deputized by Phlx as temporary Phlx members authorized to trade Phlx exclusively listed options on Phlx's facility at the Back-up Exchange for such period of time following a Disabling Event as Phlx determines to be appropriate, and Phlx may deputize such members of the Back-up Exchange as temporary Phlx members for that purpose.

(ii) Phlx Singly Listed Options.

(A) For purposes of this Rule 99, the term "singly listed option" means an option that is not an "exclusively listed option" but that is listed by an exchange and not by any other national securities exchange.

(B) The Exchange may enter into arrangements with a Backup Exchange under which the Backup Exchange will agree, in the event of a Disabling Event, to list for trading singly listed options that are then singly listed only by the Phlx and not by the Backup Exchange. Any such options listed by the Backup Exchange shall trade on the Backup Exchange and in accordance with the rules of the Backup Exchange. Such options shall be traded by members of the Backup Exchange and by Phlx members selected by the Phlx to the extent the Backup Exchange can accommodate Phlx members in the capacity of temporary members of the Back-up Exchange. If the Back-up Exchange is unable to accommodate all Phlx members that desire to trade at the Back-up Exchange pursuant to paragraph (a)(i)(A), Phlx may determine which members shall be eligible to trade at the Back-up Exchange. Factors to be considered in making such determinations may include, but are not limited to, any one or more of the following: Whether the member is a specialist in the applicable product(s), the number of contracts traded by the member or specialist unit in the applicable product(s), market performance, and other factors relating to a member's contribution to the market in the applicable product(s).

Any Phlx member who is granted temporary access to the Backup Exchange pursuant to this paragraph shall only be permitted (i) to act in those Backup Exchange capacities that are authorized by the Backup Exchange and that are comparable to capacities in which the temporary member has been authorized to act on the Phlx and (ii) to trade in those options in which the temporary member is authorized to trade on the Phlx.

[6] *See infra* note 10. The Commission notes that the text of the back-up trading agreement that appears on the Commission's Web site was filed as part of Amendment No. 2.

(C) Any options listed by the Backup Exchange pursuant to paragraph (a)(ii)(B) that does not satisfy the standard listing and maintenance criteria of the Backup Exchange will be subject, upon listing by the Backup Exchange, to delisting (and, thus, restrictions on opening new series, and engaging in opening transactions in those series with open interest, as may be provided in the rules of the Backup Exchange).

(b) Phlx is Backup Exchange.

(i) Disabled Exchange Exclusively Listed Options.

(A) The Exchange may enter into arrangements with one or more other exchanges (each a "Disabled Exchange") to permit the Disabled Exchange and its members to use a portion of the Phlx's facilities to conduct the trading of some or all of the Disabled Exchange's Exclusively Listed Securities in the event of a Disabling Event. The facility of the Phlx used by the Disabled Exchange for this purpose will be deemed to be a facility of the Disabled Exchange.

(B) Trading of the Disabled Exchange's exclusively listed options on the Disabled Exchange's facility at Phlx shall be conducted in accordance with Phlx rules, except that (1) such trading shall be subject to the Disabled Exchange's rules with respect to doing business with the public, margin requirements, net capital requirements, listing requirements, and position limits, and (2) members of the Disabled Exchange that are trading on the Disabled Exchange's facility at Phlx (not including Phlx members who become temporary members of the Disabled Exchange pursuant to paragraph (b)(i)(D)) will be subject to the rules of the Disabled Exchange governing or applying to the maintenance of a person's or a firm's status as a member of the Disabled Exchange. In addition, the Disabled Exchange and Phlx may agree that other Disabled Exchange rules will apply to such trading. The Disabled Exchange and Phlx have agreed to communicate to their respective members which rules apply in advance of trading.

(C) Phlx will perform the related regulatory functions with respect to trading of the Disabled Exchange's exclusively listed options on the Disabled Exchange's facility at Phlx, in each case except as the Disabled Exchange and Phlx may specifically agree otherwise. Phlx and the Disabled Exchange have agreed to coordinate with each other regarding surveillance and enforcement respecting trading of the Disabled Exchange's exclusively listed options on the Disabled Exchange's facility at Phlx. The Disabled Exchange has agreed that it shall retain the ultimate legal responsibility for the performance of its self-regulatory obligations with respect to the Disabled Exchange's facility at Phlx.

(D) Phlx members shall not be authorized to trade in any exclusively listed options of the Disabled Exchange, except that: (1) the Disabled Exchange may deputize willing Phlx floor brokers as temporary members of the Disabled Exchange to permit them to execute orders as brokers in exclusively listed options of the Disabled Exchange traded on the facility of the Disabled Exchange at Phlx; and (2) at the instruction of the Disabled Exchange, the Phlx shall select Phlx members that are willing to be deputized by the Disabled Exchange as temporary members of the Disabled Exchange authorized to trade the Disabled Exchange's exclusively listed options on the facility of the Disabled Exchange at the Phlx for such period of time following a Disabling Event as the Disabled Exchange determines to be appropriate, and the Disabled Exchange may deputize such Phlx members as temporary members of the Disabled Exchange for that purpose.

(ii) Disabled Exchange Singly Listed Options.

(A) The Phlx may enter into arrangements with a Disabled Exchange under which the Phlx will agree, in the event of a Disabling Event, to list for trading options that are then singly listed only by the Disabled Exchange and not by the Phlx. Any such options listed by the Phlx shall trade on the Phlx and in accordance with Phlx rules. Such options shall be traded by Phlx members and by members of the Disabled Exchange selected by the Disabled Exchange to the extent the Phlx can accommodate members of the Disabled Exchange in the capacity of temporary members of Phlx. Any member of a Disabled Exchange granted temporary access to conduct business on the Phlx under this paragraph shall only be permitted (i) to act in those Phlx capacities that are authorized by the Phlx and that are comparable to capacities in which the temporary member has been authorized to act on the Disabled Exchange and (ii) to trade in those options in which the temporary member is authorized to trade on the Disabled Exchange. The Phlx may allocate such options to a Phlx specialist in advance of a Disabling Event, without utilizing the allocation process under Phlx Rule 506, to enable the Phlx to quickly list such options upon the occurrence of a Disabling Event.

(B) Any class of options listed by the Phlx pursuant to paragraph (b)(ii)(A) that does not satisfy the listing and maintenance criteria under Phlx Rules 1009 and 1010 will be subject, upon listing by the Phlx, to delisting (and, thus, restrictions on opening new series, and engaging in opening transactions in those series with open interest, as may be provided in Phlx rules).

(c) Member Obligations.

(i) Temporary Members of a Disabled Exchange

(A) A Phlx member acting as a temporary member of the Disabled Exchange pursuant to paragraph (b)(i)(D) shall be subject to, and obligated to comply with, the rules that govern the operation of the facility of the Disabled Exchange at Phlx to the extent applicable during the period of such trading. Additionally, (1) such Phlx member shall be deemed to have satisfied, and the Disabled Exchange has agreed to waive specific compliance with, rules governing or applying to the maintenance of a person's or a firm's status as a member of the Disabled Exchange, including all dues, fees and charges imposed generally upon members of the Disabled Exchange based on their status as such; (2) such Phlx member shall have none of the rights of a member of the Disabled Exchange except the right to conduct business on the facility of the Disabled Exchange at Phlx to the extent described in this Rule; (3) the member organization associated with such Phlx member, if any, shall be responsible for all obligations arising out of that Phlx member's activities on or relating to the Disabled Exchange; and (4) the clearing member of such Phlx member shall guarantee and clear the transactions of such Phlx member on the Disabled Exchange.

(B) A member of a Back-up Exchange acting in the capacity of a temporary member of Phlx pursuant to paragraph (a)(i)(F) shall be subject to, and obligated to comply with, the rules that govern the operation of the facility of Phlx at the Back-up Exchange, including Phlx rules to the extent applicable during the period of such trading. Additionally, (1) such temporary member shall be deemed to have satisfied, and Phlx will waive specific compliance with, rules governing or applying to the maintenance of a person's or a firm's status as a member of Phlx, including all dues, fees and charges imposed generally upon Phlx members based on their status as such; (2) such temporary member shall have none of the rights of a Phlx member except the right to conduct business on the facility of Phlx

at the Back-up Exchange to the extent described in this Rule; (3) the member organization associated with such temporary member, if any, shall be responsible for all obligations arising out of that temporary member's activities on or relating to Phlx; and (4) the clearing member of such temporary member shall guarantee and clear the transactions on Phlx of such temporary member.

(ii) Temporary Members of the Backup Exchange

(A) A Phlx member acting in the capacity of a temporary member of the Back-up Exchange pursuant to paragraph (a)(ii)(B) shall be subject to, and obligated to comply with, the rules of the Back-up Exchange that are applicable to the Back-up Exchange's own members. Additionally, (1) such Phlx member shall be deemed to have satisfied, and the Back-up Exchange has agreed to waive specific compliance with, rules governing or applying to the maintenance of a person's or a firm's status as a member of the Back-up Exchange, including all dues, fees and charges imposed generally upon members of the Back-up Exchange based on their status as such, (2) such Phlx member shall have none of the rights of a member of the Back-up Exchange except the right to conduct business on the Back-up Exchange to the extent described in this Rule; (3) the member organization associated with such Phlx member, if any, shall be responsible for all obligations arising out of that Phlx member's activities on or relating to the Back-up Exchange; (4) the clearing member of such Phlx member shall guarantee and clear the transactions of such Phlx member on the Back-up Exchange; and (5) such Phlx member shall only be permitted (x) to act in those capacities on the Back-up Exchange that are authorized by the Back-up Exchange and that are comparable to capacities in which the Phlx member has been authorized to act on Phlx, and (y) to trade in those options in which the Phlx member is authorized to trade on Phlx.

(B) A member of a Disabled Exchange acting in the capacity of a temporary member of Phlx pursuant to paragraph (b)(ii)(A) shall be subject to, and obligated to comply with, Phlx rules that are applicable to Phlx's own members. Additionally, (1) such temporary member shall be deemed to have satisfied, and Phlx will waive specific compliance with, rules governing or applying to the maintenance of a person's or a firm's status as a member of Phlx, including all dues, fees and charges imposed generally upon Phlx members based on their status as such; (2) such temporary member shall have none of the rights of a Phlx member except the right to conduct business on Phlx to the extent described in this Rule; (3) the member organization associated with such temporary member, if any, shall be responsible for all obligations arising out of that temporary member's activities on or relating to Phlx; (4) the clearing member of such temporary member shall guarantee and clear the transactions of such temporary member on the Phlx; and (5) such temporary member shall only be permitted (x) to act in those Phlx capacities that are authorized by Phlx and that are comparable to capacities in which the temporary member has been authorized to act on the Disabled Exchange, and (y) to trade in those option classes in which the temporary member is authorized to trade on the Disabled Exchange.

(d) Member Proceedings.

(i) If the Phlx initiates an enforcement proceeding with respect to the trading during a back-up period of the singly or multiply listed options of the Disabled Exchange by a temporary member of the Phlx or the exclusively listed options of the Disabled Exchange by a member of the Disabled Exchange (other than a Phlx member who is a temporary member of the Disabled Exchange), and such proceeding is in process upon the conclusion of the backup period, the Phlx may transfer responsibility for such proceeding to the Disabled Exchange following the conclusion of the backup period. Arbitration of any disputes with respect to any trading during a backup period of singly or multiply listed options of the Disabled Exchange or of exclusively listed options of the Disabled Exchange on the Disabled Exchange's facility at the Phlx will be conducted in accordance with Phlx rules, unless the parties to an arbitration agree that it shall be conducted in accordance with Phlx rules.

(ii) If the Backup Exchange initiates an enforcement proceeding with respect to the trading during a backup period of Phlx singly or multiply listed options by a temporary member of the Backup Exchange or Phlx exclusively listed options by a Phlx member (other than a member of the Backup Exchange who is a temporary member of the Phlx), and such proceeding is in process upon the conclusion of the backup period, the Backup Exchange may transfer responsibility for such proceeding to the Phlx following the conclusion of the backup period. Arbitration of any disputes with respect to any trading during a backup period of Phlx singly or multiply listed options on the Backup Exchange or of Phlx exclusively listed options on the facility of the Phlx at the Backup Exchange will be conducted in accordance with the rules of the Backup Exchange, unless the parties to an arbitration agree that it shall be conducted in accordance with Phlx rules.

(e) Member Preparations.

Phlx members are required to take appropriate actions as instructed by the Exchange to accommodate Phlx's backup trading arrangements.

* * * * *

SUMMARY OF EQUITY OPTION CHARGES (p. 1/6)

OPTION COMPARISON CHARGE (Applicable to All Trades—Except Specialist Trades) Ψ

Remainder unchanged.

OPTION TRANSACTION CHARGE Ψ

Remainder unchanged.

* * * * *

SUMMARY OF EQUITY OPTION CHARGES (p. 3/6)

REAL-TIME RISK MANAGEMENT FEE Ψ

Remainder unchanged.

EQUITY OPTION PAYMENT FOR ORDER FLOW FEES* Ψ

Remainder unchanged.

See Appendix A for additional fees.

*Assessed on transactions resulting from customer orders, subject to a 500-contract cap, per individual cleared side of transaction

* * * * *

Ψ If Phlx exclusively listed options are traded at Phlx's facility on a Back-up Exchange pursuant to Phlx Rule 99, the Back-up Exchange has agreed to apply the per contract fees in this fee schedule to such transactions. If any other Phlx listed options are traded on the Back-up Exchange (such as Phlx singly listed options) pursuant to Phlx Rule 99, the fee schedule of the Back-up Exchange shall apply to such trades.

If the exclusively listed options of a Disabled Exchange are traded on the Disabled Exchange's facility at Phlx pursuant to Phlx Rule 99, Phlx will apply the per contract fees in the fee schedule of the Disabled Exchange to such transactions. If any other options classes of the Disabled Exchange are traded on Phlx (such as singly listed options of the Disabled Exchange) pursuant to Phlx Rule 99, the fees set forth in the Phlx fee schedule shall apply to such trades.

Remainder of Summary of Equity Options Charges: Unchanged

* * * * *

SUMMARY OF INDEX OPTION AND FXI OPTIONS CHARGES (p. 1/1)

OPTION COMPARISON CHARGE (Applicable to All Trades—Except Specialist Trades) Ψ

Remainder unchanged.

OPTION TRANSACTION CHARGE Ψ

Remainder unchanged.

OPTION FLOOR BROKERAGE ASSESSMENT

Remainder unchanged.

REAL-TIME RISK MANAGEMENT FEE Ψ

Remainder unchanged.

See Appendix A for additional fees.

* * * * *

Ψ *If Phlx exclusively listed options are traded at Phlx's facility on a Back-up Exchange pursuant to Phlx Rule 99, the Back-up Exchange has agreed to apply the per contract fees in this fee schedule to such transactions. If any other Phlx listed options are traded on the Back-up Exchange (such as Phlx singly listed options) pursuant to Phlx Rule 99, the fee schedule of the Back-up Exchange shall apply to such trades.*

If the exclusively listed options of a Disabled Exchange are traded on the Disabled Exchange's facility at Phlx pursuant to Phlx Rule 99, Phlx will apply the per contract fees in the fee schedule of the Disabled Exchange to such transactions. If any other options classes of the Disabled Exchange are traded on Phlx (such as singly listed options of the Disabled Exchange) pursuant to Phlx Rule 99, the fees set forth in the Phlx fee schedule shall apply to such trades.

Remainder of Fee Schedule: Unchanged

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

B. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. Introduction

The Exchange proposes to adopt new Rule 99, *Backup Trading Arrangements*, which would govern the arrangements with one or more other exchanges (each a "Back-up Exchange") to permit Phlx and its members to use a portion of a Back-up Exchange's facilities to conduct the trading of Phlx exclusively listed options[7] in the event of a Disabling Event, and similarly will permit Phlx to provide trading facilities at Phlx for another exchange's exclusively listed options if that exchange (a "Disabled Exchange") is prevented from trading due to a Disabling Event. Proposed Rule 99 would also permit Phlx to enter into arrangements with a Back-up Exchange to provide for the listing and trading of Phlx singly listed options[8] by the Back-up Exchange if Phlx's facility becomes disabled, and conversely provide for the listing and trading by Phlx of the singly listed options of a Disabled Exchange.

To accord with the provisions of its new Rule 99 and negotiated back-up trading arrangements, Phlx also proposes changes to its fee schedule relative to the fees that shall apply to transactions in the options of a Disabled Exchange executed on a Back-up Exchange.

b. Background

The back-up trading arrangements contemplated by proposed Rule 99 represent Phlx's immediate plan to ensure that Phlx's exclusively listed and singly listed options will have a trading venue if a catastrophe renders its primary facility inaccessible or inoperable. The Commission has suggested measures that Phlx should undertake to expedite reopening of Phlx's exclusively listed securities if a catastrophic event prevents trading at Phlx for an extended period of time.[9] Proposed Rule 99 would permit Phlx to enter into back-up trading arrangements with other exchanges that would address the measures suggested by the Commission.

In September 2003, Phlx entered into separate Memoranda of Understanding with the American Stock Exchange LLC ("Amex") and CBOE to memorialize their mutual understanding to work together to develop bilateral back-up trading arrangements in the event that trading is prevented at one of the exchanges due to a Disabling Event. Since then, Phlx has been working with each of these exchanges to put in place written agreements outlining essential commercial terms with respect to the arrangements as well as operational plans that describe the operational and logistical aspects of the arrangements.

Phlx and CBOE have signed an agreement relative to back-up trading arrangements and are in the process of completing the operational plan and systems testing for those arrangements. The Exchange submitted a copy of this agreement as Exhibit 3.A to its Form 19b–4 for the rule change proposal, together with a copy of a first amendment to the agreement as Exhibit 3.B.[10]

c. Proposed Rule 99

The Exchange proposes to adopt Rule 99 to make effective its back-up trading arrangements with other exchanges.

If Phlx Is the Disabled Exchange

Section (a) of proposed Rule 99 describes the back-up trading arrangements that would apply if Phlx were the Disabled Exchange. Under proposed paragraph (a)(i)(B), the facility of the Back-up Exchange used by Phlx to trade some or all of Phlx's exclusively listed options will be deemed to be a facility of Phlx, and such option classes shall trade as listings of Phlx. This approach of deeming a portion of the Back-up Exchange's facilities to be a facility of the Disabled Exchange is an approach approved by the Commission in previous emergency situations.[11]

Since the trading of Phlx exclusively listed options will be conducted using the systems of the Back-up Exchange,

[7] Paragraph (a)(i)(A) of proposed Rule 99 would define the term "exclusively listed option" as an option that is listed exclusively by an exchange (because the exchange has an exclusive license to use, or has proprietary rights in, the interest underlying the option).

[8] For purposes of proposed Phlx Rule 99, the term "singly listed option" means an option that is not an "exclusively listed option" but that is listed by an exchange and not by any other national securities exchange.

[9] *See* letter from Annette L. Nazareth, Director, Division of Market Regulation, Commission, to Meyer S. Frucher, Chairman and Chief Executive Officer, Phlx, dated April 17, 2003. Comparable letters were also sent to other exchanges.

[10] These exhibits are available for viewing on the Commission's Web site, *www.sec.gov/rules/sro.shtml*, and at the Exchange and the Commission.

[11] The Commission approved a similar approach when options listed on the Pacific Stock Exchange were physically moved to other exchanges in October 1989 due to an earthquake (*See* Exchange Act Release No. 27365 (October 19, 1989), 54 FR 43511 (October 25, 1989) (SR–Amex–89–26; SR–CBOE–89–21; SR–PSE–89–28; SR–Phlx–89–52)), and when Dell options were relocated from Phlx to Amex on a temporary basis in June 1998 (*See* Exchange Act Release No. 40088 (June 12, 1998), 63 FR 33426 (June 18, 1998) (SR–Phlx–98–25)).

proposed paragraph (a)(i)(C) provides that the trading of Phlx exclusively listed options on Phlx's facility at the Back-up Exchange would be conducted in accordance with the rules of the Back-up Exchange, except that (i) such trading would be subject to Phlx rules with respect to doing business with the public, margin requirements, net capital requirements, listing requirements and position limits. In addition, Phlx and the Back-up Exchange may agree that other Phlx rules will apply to such trading.[12] The Back-up Exchange rules that govern trading on Phlx's facility at the Back-up Exchange would be deemed to be Phlx rules for purposes of such trading.

Proposed paragraph (a)(i)(D) reflects that the Back-up Exchange has agreed to perform the related regulatory functions with respect to trading of Phlx exclusively listed options on Phlx's facility at the Back-up Exchange, in each case except as Phlx and the Back-up Exchange may specifically agree otherwise. The Back-up Exchange and Phlx will coordinate with each other regarding surveillance and enforcement respecting such trading. Phlx would retain the ultimate legal responsibility for the performance of its self-regulatory obligations with respect to Phlx's facility at the Back-up Exchange.

Under proposed paragraph (a)(i)(E), if the Back-up Exchange is unable to accommodate all Phlx members that desire to trade on Phlx's facility at the Back-up Exchange, Phlx would have the right to determine which members would be eligible to trade at that facility by considering factors such as whether the member is the specialist in the applicable product(s), the number of contracts traded by the member in the applicable product(s), market performance, and other factors relating to a member's contribution to the market in the applicable product(s).

Under proposed paragraph (a)(1)(F), members of the Back-up Exchange would not be authorized to trade in any Phlx exclusively listed options, except that (i) Phlx may deputize willing floor brokers of the Back-up Exchange as temporary Phlx members to permit them to execute orders as brokers in Phlx exclusively listed options traded on Phlx's facility at the Back-up Exchange,[13] and (ii) the Back-up Exchange has agreed that it will, at the instruction of Phlx, select members of the Back-up Exchange that are willing to be deputized by Phlx as temporary Phlx members authorized to trade Phlx exclusively listed options on Phlx's facility at the Back-up Exchange for such period of time following a Disabling Event as Phlx determines to be appropriate, and Phlx may deputize such members of the Back-up Exchange as temporary Phlx members for that purpose. The second of the foregoing exceptions would permit members of the Back-up Exchange to trade Phlx exclusively listed options on the Phlx facility on the Back-up Exchange if, for example, circumstances surrounding a Disabling Event result in Phlx members being delayed in arriving at the Back-up Exchange in time for prompt resumption of trading.

Section (a)(ii) of the proposed rule provides for the continued trading of Phlx singly listed options at a Back-up Exchange in the event of a Disabling Event at Phlx. Proposed paragraph (a)(ii)(B) provides that Phlx may enter into arrangements with a Back-up Exchange under which the Back-up Exchange will agree, in the event of a Disabling Event, to list for trading options that are then singly listed only by Phlx. Such options would trade on the Back-up Exchange as listings of the Back-up Exchange and in accordance with the rules of the Back-up Exchange.

Phlx singly listed options would be traded by members of the Back-up Exchange and by Phlx members selected by Phlx to the extent the Back-up Exchange can accommodate Phlx members in the capacity of temporary members of the Back-up Exchange. If the Back-up Exchange is unable to accommodate all Phlx members that desire to trade Phlx singly listed options at the Back-up Exchange, Phlx may determine which members woud be eligible to trade such options at the Back-up Exchange by considering the same factors used to determine which Phlx members are eligible to trade Phlx exclusively listed options at the Phlx facility at the Back-up Exchange.

Under proposed paragraph (a)(ii)(C), any such option listed by the Back-up Exchange that does not satisfy the standard listing and maintenance criteria of the Back-up Exchange would be subject, upon listing by the Back-up Exchange, to delisting (and, thus, restrictions on opening new series, and engaging in opening transactions in those series with open interest, as may be provided in the rules of the Back-up Exchange).

If Phlx Is the Back-up Exchange

Section (b) of proposed Rule 99 describes the back-up trading arrangements that would apply if Phlx were the Back-up Exchange. In general, the provisions in Section (b) are the converse of the provisions in Section (a). With respect to the exclusively listed options of the Disabled Exchange, the facility of Phlx used by the Disabled Exchange to trade some or all of the Disabled Exchange's exclusively listed options would be deemed to be a facility of the Disabled Exchange, and such options would trade as listings of the Disabled Exchange. Trading of the Disabled Exchange's exclusively listed options on the Disabled Exchange's facility at Phlx would be conducted in accordance with Phlx rules, except that (i) such trading would be subject to the Disabled Exchange's rules with respect to doing business with the public, margin requirements, net capital requirements, listing requirements, and position limits, and (ii) members of the Disabled Exchange that are trading on the Disabled Exchange's facility at Phlx (not including Phlx members who become temporary members of the Disabled Exchange pursuant to paragraph (b)(i)(D)) would be subject to the rules of the Disabled Exchange governing or applying to the maintenance of a person's or a firm's status as a member of the Disabled Exchange. In addition, the Disabled Exchange and Phlx may agree that other Disabled Exchange rules will apply to such trading.

Section (b)(ii) describes the arrangements applicable to trading of the Disabled Exchange's singly listed options at Phlx, and is the converse of Section (a)(ii). One difference is the last sentence in paragraph (b)(ii)(A), which provides that Phlx may allocate singly listed option classes of the Disabled Exchange to a Phlx Specialist in advance of a Disabling Event, without utilizing the allocation process under Phlx Rule 506, to enable Phlx to quickly list such option classes upon the occurrence of a Disabling Event.

Member Obligations

Section (c) describes the obligations of members and member organizations with respect to the trading by

[12] As stated above, Phlx's back-up trading arrangements with CBOE contemplate that the operation of the Disabled Exchange's facility at the Back-up Exchange will be conducted in accordance with the rules of the Back-up Exchange except that (i) the rules of the Disabled Exchange will apply with respect to doing business with the public, margin requirements, net capital requirements and listing requirements, and (ii) the members of the Disabled Exchange that are trading on the facility of the Disabled Exchange at the Back-up Exchange (not including members of the Back-up Exchange who become temporary members of the Disabled Exchange) will be subject to the rules of the Disabled Exchange governing or applying to the maintenance of a person's or a firm's status as a member of the Disabled Exchange.

[13] The exchanges that acted as Back-up Exchanges in the emergency situations noted above also deputized floor brokers in this manner. *See supra* note 11.

"temporary members" on the facilities of another exchange pursuant to Rule 99. Section (c)(i) sets forth the obligations applicable to Phlx members who act in the capacity of temporary members of the Disabled Exchange on the facility of the Disabled Exchange at the Back-up Exchange.

Section (c)(i) provides that a Phlx member acting as a temporary member of the Disabled Exchange would be subject to, and obligated to comply with, the rules that govern the operation of the facility of the Disabled Exchange at Phlx. This would include the rules of the Disabled Exchange to the extent applicable during the period of such trading, including the rules of the Disabled Exchange limiting its liability for the use of its facilities that apply to members of the Disabled Exchange. Additionally, (1) such Phlx member acting as a temporary member of the Disabled Exchange would be deemed to have satisfied, and the Disabled Exchange has agreed to waive specific compliance with, rules governing or applying to the maintenance of a person's or a firm's status as a member of the Disabled Exchange, including all dues, fees and charges imposed generally upon members of the Disabled Exchange based on their status as such; (2) such Phlx member acting as a temporary member of the Disabled Exchange would have none of the rights of a member of the Disabled Exchange except the right to conduct business on the facility of the Disabled Exchange at the Back-up Exchange to the extent described in the Rule; (3) the member organization associated with such Phlx member acting as a temporary member of the Disabled Exchange, if any, would be responsible for all obligations arising out of that Phlx member's activities on or relating to the Disabled Exchange, and (4) the clearing member of such Phlx member would guarantee and clear the transactions of such temporary member on the Disabled Exchange.

Section (c)(ii) sets forth the obligations applicable to Phlx members who act in the capacity of temporary members of the Back-up Exchange for the purpose of trading singly and multiply listed options of the Disabled Exchange. Such Phlx members would be subject to, and obligated to comply with, the rules of the Back-up Exchange that are applicable to the Back-up Exchange's own members, including the rules of the Back-up Exchange limiting its liability for the use of its facilities that apply to members of the Back-up Exchange. Phlx members who act in the capacity of temporary members of the Back-up Exchange have the same obligations as those set forth in Section (c)(i) that apply to temporary members of the Disabled Exchange, except that, in addition, Phlx members who act in the capacity of temporary members of the Back-up Exchange would only be permitted (1) to act in those capacities on the Back-up Exchange that are authorized by the Back-up Exchange and that are comparable to capacities in which the temporary member has been authorized to act on the Disabled Exchange, and (2) to trade in those options in which the temporary member is authorized to trade on the Disabled Exchange.

Member Proceedings

As noted above, proposed Rule 99 provides that the rules of the Back-up Exchange shall apply to the trading of the singly and multiply listed options of the Disabled Exchange traded on the Back-up Exchange's facilities, and (with certain limited exceptions) the trading of exclusively listed options of the Disabled Exchange traded on the facility of the Disabled Exchange at the Back-up Exchange. The Back-up Exchange will perform the related regulatory functions with respect to such trading (except as the Back-up Exchange and the Disabled Exchange may specifically agree otherwise).

Section (d) of proposed Rule 99 provides that if a Backup Exchange initiates an enforcement proceeding with respect to the trading during a backup period of singly or multiply listed securities of the Disabled Exchange by a temporary member of the Backup Exchange or exclusively listed securities of the Disabled Exchange by a member of the Disabled Exchange (other than a member of the Backup Exchange who is a temporary member of the Disabled Exchange), and such proceeding is in process upon the conclusion of the backup period, the Backup Exchange may transfer responsibility for such proceeding to the Disabled Exchange following the conclusion of the backup period, This approach to the exercise of enforcement jurisdiction is also consistent with past precedent.[14]

With respect to arbitration jurisdiction, proposed Section (d) provides that arbitration of any disputes with respect to any trading during a backup period of singly or multiply listed securities of the Disabled Exchange or of exclusively listed securities of the Disabled Exchange on the Disabled Exchange's facility at the Backup Exchange will be conducted in accordance with the rules of the Backup Exchange, unless the parties to an arbitration agree that it shall be conducted in accordance with the rules of the Disabled Exchange.

The purpose of these provisions is to permit a Backup Exchange to confer its temporary enforcement jurisdiction over a member or member organization of the Disabled Exchange back to the Disabled Exchange once the backup period has expired.

Member Preparations

To ensure that members are prepared to implement Phlx's back-up trading arrangements, proposed Section (e) of Proposed Rule 99 requires Phlx members to take appropriate actions as instructed by Phlx to accommodate Phlx's back-up trading arrangements.

d. Fee Schedule

The Exchange proposes to add a footnote to its Fee Schedule to inform its members regarding what fees will apply to transactions in the listed options of a Disabled Exchange effected on a Backup Exchange under Rule 99. The footnote provides that if Phlx is the Disabled Exchange, the Backup Exchange will apply the per contract and per contract side fees in the Phlx fee schedule to transactions in Phlx exclusively listed options traded on the Phlx facility on the Backup Exchange.[15] If any other Phlx listed options are traded on the Backup Exchange (such as Phlx singly listed options) pursuant to Phlx Rule 99, the fee schedule of the Backup Exchange shall apply to such trades. The footnote contains a second paragraph stating the converse if Phlx is the Backup Exchange under Rule 99.

2. Statutory Basis

The Exchange states that the proposed rule change is intended to ensure that Phlx's exclusively listed and singly listed products will have a trading venue in the event that trading at Phlx is prevented due to a Disabling Event, thus minimizing potential disruptions for the markets and investors under those circumstances. The Exchange thus believes that the proposed rule change is consistent with Section 6(b) of the Act[16] in general, and furthers the objectives of Section 6(b)(5) of the Act[17] in particular, in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

[14] *See supra* note 11.

[15] When Phlx Dell options relocated to Amex in June 1998, Phlx fees applied to transactions in Dell options on the Amex. *See supra* note 11.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2004–65 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Phlx–2004–65. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2004–65 and should be submitted on or before June 15, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–2637 Filed 5–24–05; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 5087]

30-Day Notice of Proposed Information Collection: DS–3091, Thomas R. Pickering Foreign Affairs Fellowship Program, OMB Control No. 1405–0143

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

Title of Information Collection: Thomas R. Pickering Foreign Affairs Fellowship Program.

OMB Control Number: 1405–0143.

Type of Request: Extension of a Currently Approved Collection.

Originating Office: HR/REE/REC.

Form Number: DS–3091.

Respondents: College Students.

Estimated Number of Respondents: 500.

Estimated Number of Responses: 500.

Average Hours Per Response: 10.

Total Estimated Burden: 5,000 hours.

Frequency: On Occasion.

Obligation to Respond: Required to Obtain or Retain a Benefit.

[18] 17 CFR 200.30–3(a)(12).

A pilot program is gathering costs and reviewing security requirement necessary to stand up an electronic option.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from May 25, 2005.

ADDRESSES: Direct comments and questions to Katherine Astrich, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at 202–395–4718. You may submit comments by any of the following methods:

- E-mail: *Katherine_T._Astrich@omb.eop.gov*. You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- Mail (paper, disk, or CD–ROM submissions): Office of Foreign Missions, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520
- Fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Norris Bethea, Department of State, 2401 E. Street, NW., Washington, DC 20522, who may be reached at: 202–261–8896 or *betheand@state.gov*.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection: This collection is necessary for the process of identifying highly motivated students with an interest in international affairs. Our goal is to identify and select these students from a nation-wide pool of very talented applicants. Through our application process, the Thomas R. Pickering Foreign Affairs Fellowship has managed to attract many students from diverse backgrounds to consider a career in the Foreign Service.

Methodology: This information collection is posted on both the

Department of State and Woodrow Wilson National Fellowship Foundation Web sites, where an applicant can download and print an application. Because the complete application requires extensive supporting documentation, it is now paper-based. However, the Department is currently piloting an upgrade in the Department's Student Programs that may enable future applicants to apply for the Pickering Fellowship online.

Additional Information: None.

Dated: May 9, 2005.

Raphael A. Mirabal,

Deputy Director, Bureau of Human Resources, Department of State.

[FR Doc. 05–10453 Filed 5–24–05; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF STATE

[Public Notice 5088]

60-Day Notice of Proposed Information Collection: DS 1843 and 1622, Medical History and Examination for Foreign Service, OMB 1405–0068

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

Title of Information Collection: Medical History and Examination for Foreign Service.

OMB Control Number: 1405–0068.

Type of Request: Extension of Currently Approved Collection.

Originating Office: Office of Medical Services, M/MED/EX.

Form Number: DS 1843 and 1622.

Respondents: Family members of Foreign Service Officers and Federal employees stationed abroad. (**Note:** For purposes of the Paperwork Reduction Act, employees of the U.S. Government are not counted as respondents.)

Estimated Number of Respondents: 9,800.

Estimated Number of Responses: 9,800.

Average Hours Per Response: 1.

Total Estimated Burden: 9,800 hours.

Frequency: On occasion.

Obligation to Respond: Required to obtain a benefit.

DATES: The Department will accept comments from the public up to 60 days from May 25, 2005.

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

- E-mail: *willigsp@state.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- Mail (paper, disk, or CD–ROM submissions): Department of State, Office of Medical Services, SA–1 Room L–101, 2401 E St., NW., Washington DC 20052–0101.
- Fax: 202–663–1661.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Susan Willig, Department of State, Office of Medical Services, SA–1 Room L101, 2401 E St., NW., Washington DC 20052–0101, who may be reached on 202–663–1754 or at *willigsp@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: Form DS–1843 and 1622 are designed to collect medical information to provide medical providers with current and adequate information to base decisions on whether a federal employee and family members will have sufficient medical resources at a diplomatic mission abroad to maintain the health and fitness of the individual and family members.

Methodology: The information collected will be collected through the use of an electronic forms engine or by hand written submission using a pre-printed form.

Dated: May 10, 2005.

Maria C. Melchiorre,

Administrative Officer, Office of Medical Services, Department of State.

[FR Doc. 05–10454 Filed 5–24–05; 8:45 am]

BILLING CODE 4710–36–P

DEPARTMENT OF STATE

[Public Notice 5089]

Foreign Terrorists and Terrorist Organizations; Designation: Islamic Jihad Group

Determination pursuant to section 1(b) of Executive Order 13224 relating to the designation of Islamic Jihad Group, also known as Jama'at al-Jihad, also known as the Libyan Society, also known as the Kazakh Jama'at, also known as the Jamaat Mojahedin, also known as the Jamiyat, also known as Jamiat al-Jihad al-Islami, also known as Dzhamaat Modzhakhedov, also known as Islamic Jihad Group of Uzbekistan, also known as al-Djihad al-Islami.

Acting under the authority of section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13286 of July 2, 2002, and Executive Order 13284 of January 23, 2003, and Executive Order 13372 of February 16, 2005 in consultation with the Secretary of the Treasury, the Attorney General, and the Secretary of Homeland Security, I hereby determine that the Islamic Jihad Group aka Jama'at al-Jihad, aka the Libyan Society, aka the Kazakh Jama'at, aka the Jamaat Mojahedin, aka the Jamiyat, aka Jamiat al-Jihad al-Islami, aka Dzhamaat Modzhakhedov, aka Islamic Jihad Group of Uzbekistan, aka al-Djihad al-Islami has committed and poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals and the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that "prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectural the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously," I determine that no prior notice need be provided to any person subject to this determination who might have a constitutional presence in the United States because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register.**

Dated: May 12, 2005.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. 05–10450 Filed 5–24–05; 5:00 pm]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Delegation of Authority No. 280]

Delegation by the Secretary of State to the Under Secretary for Political Affairs of Authorities Regarding Congressional Reporting Functions

By virtue of the authority vested in me as Secretary of State by the laws of the United States, including Section 1 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2651a), I hereby assign to the Under Secretary of State for Political Affairs, to the extent authorized by law, the function of approving submission of reports to the Congress.

This delegation covers the decision to submit to the Congress both one-time reports and recurring reports, including but not limited to those recurring reports identified in Section 1 of Executive Order 13313 (Delegation of Certain Congressional Reporting Functions) of July 31, 2003. However, this delegation shall not be construed to authorize the Under Secretary to make waivers, certifications, determinations, findings, or other such statutorily required substantive actions that may be called for in connection with the submission of a report. The Under Secretary shall be responsible for referring to the Secretary or the Deputy Secretary any matter on which action would appropriately be taken by such official.

Any authority covered by this delegation may also be exercised by the Deputy Secretary of State, to the extent authorized by law, or by the Secretary of State.

This delegation incorporates and supersedes prior delegations in this calendar year to the Under Secretary by me or the Deputy Secretary with respect to specific reports to Congress. This delegation does not repeal delegations to other Department officials.

This delegation of authority shall be published in the **Federal Register.**

Dated: May 2, 2005.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. 05–10452 Filed 5–24–05; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Delegation of Authority No. 134–1]

Delegation by the Secretary of State to the Under Secretary of State for Political Affairs of Authorities Regarding the Extradition of Fugitives

By virtue of the authority vested in me as Secretary of State by the laws of the United States, including Section 1 of the State Department Basic Authorities Act of 1956, as amended (22 U.S.C. 2651a), I hereby delegate to the Under Secretary of State for Political Affairs the functions vested in the Secretary of State by 18 U.S.C. 3186, which relates to ordering delivery of persons committed under 18 U.S.C. 3184 and 3185 to authorized agents of foreign countries.

Any authority covered by this delegation may also be exercised by the Deputy Secretary of State or by the Secretary of State.

This delegation of authority supersedes Delegation of Authority No. 134.

This delegation of authority shall be published in the **Federal Register.**

Dated: May 2, 2005.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. 05–10455 Filed 5–24–05; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Request Renewal From the Office of Management and Budget (OMB) of Three Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on three currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before July 25, 2005.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, 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. Therefore, the FAA solicits comments on the following current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for submission to renew the clearances of the following information collections.

1. 2120–0015, FAA Airport Master Record. 49 USC 329(b) directs the Secretary of Transportation to collection information about civil aeronautics. The information is required to carry out FAA missions related to the aviation industry, flight planning, and airport engineering. The database is the basic source of data for private, State, and Federal Government aeronautical charts and publications. The current estimated annual reporting burden is 8,770 hours.

2. 2120–0060, General Aviation and Air Taxi Activity and Avionics Survey. Respondents to this survey are owners of general aviation aircraft. This information issued by FAA, NTSB, and other government agencies, the aviation industry, and others for safety assessment, planning, forecasting, cost/benefit analysis, and to target areas for research. The current estimated annual reporting burden is 5,500 hours.

3. 2120–0680, Part 60—Flight Simulation Device Initial and Continuing Qualification and Use (NPRM). The collection of this information is necessary to ensure safety of flight by ensuring complete and adequate training, testing, checking, and experience is obtained and maintained by those who operate under Parts 61, 63, 91, 121, 135, 141, and 142 of the regulation and who use flight simulation in lieu of aircraft for these functions. The current estimated annual reporting burden is 201,653 hours.

Issued in Washington, DC, on May 17, 2005.

Judith D. Street,

FAA Information Systems and Technology Services Staff, ABA–20.

[FR Doc. 05–10417 Filed 5–24–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for Wednesday, June 15, 2005, starting at 8:30 a.m. Arrange for oral presentations by June 13, 2005.

ADDRESSES: The Boeing Company, 1200 Wilson Boulevard, Room 234, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer, Office of Rulemaking, ARM–207, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–5174, FAX (202) 267–5075, or e-mail at *john.linsenmeyer@faa.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held June 15, 2005 at The Boeing Company in Arlington, Virginia.

The agenda will include:

- Opening Remarks
- FAA Report
- European Aviation Safety Agency Report
- Ice Protection Harmonization Working Group (HWG) Report
- Airworthiness Assurance HWG Report
- Avionics HWG Report
- § 25.1309 Summary of Recent Activity on Specific Risk
- Review of Action Items

Attendance is open to the public, but will be limited to the availability of meeting room space. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than June 13, 2005. Please provide the following information: Full legal name, country of citizenship, and name of your industry association, or applicable affiliation. If you are attending as a public citizen, please indicate so.

For persons participating domestically by telephone, the call-in number is (425) 717–7000; the Passcode is "23439#." Details are also available on the ARAC calendar at *http://www.faa.gov/avr/arm/arac/calendarxml.cfm*. To insure that sufficient telephone lines are available, please notify the person listed in the **FOR FURTHER INFORMATION CONTACT** section of your intent by June 13. Anyone participating by telephone will be responsible for paying long-distance charges.

The public must make arrangements by June 13 to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the person listed in the **FOR FURTHER INFORMATION CONTACT** section or by providing copies at the meeting. Copies of the document to be presented to ARAC for decision by the FAA may be made available by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

If you are in need of assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on May 18, 2005.

Tony F. Fazio,

Director, Office of Rulemaking.

[FR Doc. 05–10423 Filed 5–24–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 147: Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 147 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 147: Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems Airborne Equipment.

DATES: The meeting will be held June 21–23, 2005 starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1120, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1140 Connecticut Avenue, NW., Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. Appendix 2), notice is hereby given for a Special Committee 147 meeting. The agenda will include:

- June 21–22:
- Operations, Requirements and Surveillance Working Group Meetings.
- June 23:
- Opening Session (Welcome and Introductory Remarks, Review/Approve Summary of Previous Meeting, Review of Open Action Items).
- SC–147 Activity Reports (Operations Working Group, Requirements Working Group, Surveillance Working Group).
- RWGSA01/CP112E Evaluation Criteria and Decision Metrics Paper.
- Closing Session (Future Actions/Activities, Date and Place of Next Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 17, 2005.

Natalie Ogletree,

FAA General Engineer, RTCA Advisory Committee.

[FR Doc. 05–10415 Filed 5–24–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 204: 406 MHz Emergency Locator Transmitters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 204 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 204: 406 MHz Emergency Locator Transmitters

DATES: The meeting will be held on June 9–10, 2005, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036–5133.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW.,

Suite 805, Washington, DC 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 202 meeting. *RTCA is establishing Special Committee (SC) 204 at the request of the Federal Aviation Administration and the U.S. Coast Guard National Search & Rescue Committee. The SC–204 task is to revise DO–204—Minimum Operational Performance Standards for 406 MHz Emergency Locator Transmitters (ELTs) issued in September 1989. This committee will address design performance, installation and operational issues for 406 MHz emergency beacons.* The agenda will include:

- Opening Session (Welcome, Introductory and Administrative Remarks, Review Federal Advisory Committee Act and RTCA procedures, Review Agenda, Review Terms of Reference).
- June 9–10:
- Previous 406 MHz ELT Committee History.
- Current Committee Scope, Terms of Reference Overview.
- Presentation, Discussion, Recommendations.
- Organization of Work, Assign Tasks and Workgroups.
- Presentation, Discussion, Recommendations.
- Assignment of Responsibilities.
- Closing Session (Other Business, Date and Place of Next Meeting, Closing Remarks, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 10, 2005.

Natalie Ogletree,

FAA General Engineer, RTCA Advisory Committee.

[FR Doc. 05–10416 Filed 5–24–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–21263]

Notice of Receipt of Petition for Decision That Nonconforming 1991 Mercedes Benz 560 SEL Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1991 Mercedes Benz 560 SEL passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is June 24, 2004.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.). Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

American Auto Dream of Costa Mesa, California ("AAD") (Registered Importer 02–224) has petitioned NHTSA to decide whether nonconforming 1991 Mercedes Benz 560 SEL passenger cars are eligible for importation into the United States. The vehicles which AAD believes are substantially similar are 1991 Mercedes Benz 560 SEL passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1991 Mercedes Benz 560 SEL passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

AAD submitted information with its petition intended to demonstrate that non-U.S. certified 1991 Mercedes Benz 560 SEL passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1991 Mercedes Benz 560 SEL passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 107

Reflecting Surfaces, 109 *New Pneumatic Tires,* 113 *Hood Latch System,* 114 *Theft Protection,* 116 *Motor Vehicle Brake Fluids,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 211 *Wheel Nuts, Wheel Discs and Hub Caps,* 212 *Windshield Mounting,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

In addition, the petitioner claims that the vehicles comply with the Bumper Standard found in 49 CFR part 581.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) installation of an indicator lamp lens cover inscribed with the word "brake" in the instrument cluster in place of one inscribed with the international ECE warning symbol, and (b) replacement or conversion of the speedometer/odometer assembly to read in miles per hours and miles driven, respectively.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Replacement of the following with U.S.-model components: (a) Headlamp assemblies that incorporate front side marker lamps and side reflex reflectors; (b) taillamp assemblies that incorporate rear side marker lamps and side reflex reflectors; and (c) center high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Installation of a U.S.-model passenger side rearview mirror, or inscription of the required warning statement on the face of that mirror.

Standard No. 115 *Vehicle Identification:* Installation of a vehicle identification plate near the left windshield post to meet the requirements of this standard.

Standard No. 118 *Power-Operated Window, Partition, and Roof Panel Systems:* Rewiring the power-operated window system to meet the requirements of the standard.

Standard No. 208 *Occupant Crash Protection:* Installation of a supplemental warning buzzer which is wired to the seat belt latch to ensure that the seat belt warning system activates in the proper manner.

The petitioner also states that the vehicles are equipped with a driver's air bag, and combination lap and shoulder belts at the front seating positions. These seat belts are self-tensioning and capable of being released by means of a single red push button.

Standard No. 214 *Side Impact Protection:* Installation of door bars identical to those in the U.S. certified models.

The petitioner states that all vehicles will be inspected prior to importation to assure compliance with the Theft Prevention Standard at 49 CFR part 541, and that vehicles will be modified, if necessary, to comply with that standard.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. (Docket hours are from 9 a.m. to 5 p.m.). It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 05–10365 Filed 5–24–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34435]

Ameren Energy Generating Company—Construction and Operation Exemption—Coffeen and Walshville, IL

AGENCY: Surface Transportation Board, Transportation.

ACTION: Notice of availability of environmental assessment and request for comments.

SUMMARY: The Surface Transportation Board's (Board) Section of Environmental Analysis (SEA) has prepared an Environmental Assessment (EA) in response to a petition filed by the Ameren Energy Generating Company. The petition seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 for authority to construct and operate one of two rail lines: An approximately 13.5-mile line in Montgomery County, Illinois, or an approximately 4.6-mile line in Montgomery and Bond Counties, Illinois. The EA identifies the natural and man-made resources in the area of the proposed rail lines and analyzes the potential impacts of the proposal and alternatives to the proposal on these resources. Based on the information provided from all sources to date and its independent analysis, SEA preliminarily concludes that construction and operation of either of the proposed rail lines would have no significant environmental impacts if the Board imposes and the Ameren Electric Generating Company implements the recommended measures set forth in the EA. Copies of the EA have been served on all interested parties and will be made available to additional parties upon request. The entire EA is also available on the Board's Web site (*http://www.stb.dot.gov*) by clicking on the "Decisions & Notices" button that appears in the drop down menu for "E-LIBRARY," and searching by Service Date (May 25, 2005) or Docket Number (FD 34435). SEA will consider all comments received when making its final environmental recommendations to the Board. The Board will then consider SEA's final recommendations and the complete environmental record in making its final decision in this proceeding.

DATES: The EA is available for public review and comment. Comments must be postmarked by June 30, 2005.

ADDRESSES: Comments (an original and one copy) should be sent in writing to: Surface Transportation Board, Case Control Unit, 1925 K Street, NW., Suite 500, Washington, DC 20423. The lower left hand corner of the envelope should be marked: Attention: Mr. David Navecky, Environmental Comments. Comments on the EA may also be filed electronically on the Board's Web site, *http://www.stb.dot.gov,* by clicking on the "E-FILING" link.

FOR FURTHER INFORMATION CONTACT: David Navecky by mail at the address above, by telephone at 202–565–1593 [FIRS for the hearing impaired (1–800–877–8339)], or by e-mail at *naveckyd@stb.dot.gov.*

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon Williams,

Secretary.

[FR Doc. 05–10448 Filed 5–24–05; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34681]

Kiski Junction Railroad—Acquisition Exemption—Berkman Rail Services

Kiski Junction Railroad (Kiski), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Berkman Rail Services 5.2 miles of the Schenley Industrial Track as follows: (1) Line Code 2229, from milepost 30.0 at Railroad Station 59 + 24 in Aladdin, to milepost 28.91; and (2) Line Code 2242, from milepost 0.0 at the connection of Line Code 2229, to milepost 4.0 at Railroad Station 52 + 80, in Armstrong County, PA.

The earliest the transaction could be consummated was May 2, 2005 (7 days after filing the notice).

Kiski certifies that its projected revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34681, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Dean Falavolito, Burns, White & Hickton LLC, 4 Northshore Center, 106 Isabella St., Pittsburgh, PA 15212.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 19, 2005.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–10460 Filed 5–24–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted in Boston, Massachusetts. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, June 17 and Saturday, June 18, 2005.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 (toll-free), or 718–488–3557 (non toll-free).

SUPPLEMENTARY INFORMATION: An open meeting of the Area 1 Taxpayer Advocacy Panel will be held Friday, June 17, 2005 from 9 a.m. EDT to 5 p.m. EDT and Saturday, June 18, 2005 from 8 a.m. EDT to 12 p.m. EDT in Boston, Massachusetts at the IRS Training Center in the Copley Plaza Executive Offices located at 4 Copley Place, 2nd floor, Boston, MA 02216. Individual comments are welcomed and will be limited to 5 minutes per person. For more information or to confirm attendance, notification of intent to attend must be made with Marisa Knispel. Mrs. Knispel may be reached at 1–888–912–1227 or 718–488–3557. If you would like to have the TAP consider a written statement, please write to Marisa Knispel, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or, you may post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: May 20, 2005.

Maryclare Whitehead,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–2650 Filed 5–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel will be conducted in Philadelphia, Pennsylvania. The TAP will be discussing issues pertaining to increasing compliance and lessening the burden for Small Business/Self Employed individuals.

DATES: The meeting will be held Friday, June 10 and Saturday, June, 11, 2005.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Committee of the Taxpayer Advocacy Panel will be held Friday, June 10, 2005 from 9 a.m. EDT to 5 p.m. EDT and Saturday, June 11, 2005 from 8 a.m. EDT to 12 p.m. EDT at the Embassy Suites Hotel located at 1776 Benjamin Franklin Parkway, Philadelphia, PA 19103. Individual comments are welcomed and limited to 5 minutes per person. For more information and to confirm attendance, notification of intent to attend the meeting must be made with Marisa Knispel. Mrs. Knispel may be reached at 1–888–912–1227 or 718–488–3557. If you would like to have the TAP consider a written statement, please write to Marisa Knispel, TAP Office, 10 Metro Tech Center, 625 Fulton Street, Brooklyn, NY 11201, or you may post your comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: May 20, 2005.

Maryclare Whitehead,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–2651 Filed 5–24–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veteran's Disability Benefits Commission; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Pub. L. 92–463 (Federal Advisory Committee Act) that the Veterans' Disability Benefits Commission has scheduled a meeting on June 9, 2005, at the Shriners Almas Temple (adjacent to the Hamilton Crowne Plaza Hotel), 1315 K Street, NW., Washington, DC 20005. The meeting will convene at 8:30 a.m. and conclude at 3 p.m. and is open to the public.

The purpose of the Commission is to carry out a study of the benefits under the laws of the United States that are provided to compensate and assist veterans and their survivors for disabilities and deaths attributable to military service.

The agenda for June 9 includes descriptions of veteran, military, and survivor populations receiving benefits, studies undertaken by the VA Office of Inspector General, and a briefing on the issue of concurrent receipt of benefits.

Interested persons may attend and present oral statements to the Commission. Interested parties may provide written comments for review by the Commission at any time to Mr. Ray Wilburn, Executive Director, Program Evaluation Service (008B2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or by e-mail at *vetscommission@va.gov*.

Dated: May 20, 2005.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–10463 Filed 5–24–05; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Wednesday,
May 25, 2005

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 412

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for FY 2006; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1290–P]

RIN 0938–AN43

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for FY 2006

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would update the prospective payment rates for inpatient rehabilitation facilities for Federal fiscal year 2006 as required under section 1886(j)(3)(C) of the Social Security Act (the Act). Section 1886(j)(5) of the Act requires the Secretary to publish in the **Federal Register** on or before August 1 before each fiscal year, the classification and weighting factors for the inpatient rehabilitation facilities case-mix groups and a description of the methodology and data used in computing the prospective payment rates for that fiscal year.

In addition, we are proposing new policies and are proposing to change existing policies regarding the prospective payment system within the authority granted under section 1886(j) of the Act.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on July 18, 2005.

ADDRESSES: In commenting, please refer to file code CMS–1290–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.cms.hhs.gov/regulations/ecomments.* (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By mail.* You may mail written comments (one original and two copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1290–P, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Pete Diaz, (410) 786–1235. Susanne Seagrave, (410) 786–0044. Mollie Knight, (410) 786–7984 for information regarding the market basket and labor-related share. August Nemec, (410) 786–0612 for information regarding the tier comorbidities. Zinnia Ng, (410) 786–4587 for information regarding the wage index and Core-Based Statistical Areas (CBSAs).

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on all issues set forth in this rule to assist us in fully considering issues and developing policies. You can assist us by referencing the file code CMS–1290–P and the specific "issue identifier" that precedes the section on which you choose to comment.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. CMS posts all electronic comments received before the close of the comment period on its public Web site as soon as possible after they have been received. Hard copy comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

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Acronyms

Because of the many terms to which we refer by acronym in this propose rule, we are listing the acronyms used and their corresponding terms in alphabetical order below.

ADC—Average Daily Census
AHA—American Hospital Association
AMI—Acute Myocardial Infarction
BBA—Balanced Budget Act of 1997 (BBA), Pub. L. 105–33
BBRA—Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999, Pub. L. 106–113
BIPA—Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Benefits Improvement and Protection Act of 2000, Pub. L. 106–554
BLS—Bureau of Labor Statistics
CART—Classification and Regression Trees
CBSA—Core-Based Statistical Areas
CCR—Cost-to-charge ratio
CMGs—Case-Mix Groups
CMI—Case Mix Index
CMSA—Consolidated Metropolitan Statistical Area
CPI—Consumer Price Index
DSH—Disproportionate Share Hospital
ECI—Employment Cost Index
FI—Fiscal Intermediary
FIM—Functional Independence Measure
FIM–FRGs—Functional Independence Measures—Function Related Groups
FRG—Function Related Group
FTE—Full-time equivalent
FY—Federal Fiscal Year
GME—Graduate Medical Education
HCRIS—Healthcare Cost Report Information System
HIPAA—Health Insurance Portability and Accountability Act
HHA—Home Health Agency
IME—Indirect Medical Education
IFMC—Iowa Foundation for Medical Care
IPF—Inpatient Psychiatric Facility
IPPS—Inpatient Prospective Payment System
IRF—Inpatient Rehabilitation Facility
IRF–PAI—Inpatient Rehabilitation Facility—Patient Assessment Instrument
IRF–PPS—Inpatient Rehabilitation Facility—Prospective Payment System
IRVEN—Inpatient Rehabilitation Validation and Entry
LIP—Low-income percentage
MEDPAR—Medicare Provider Analysis and Review
MSA—Metropolitan Statistical Area
NECMA—New England County Metropolitan Area
NOS—Not Otherwise Specified
NTIS—National Technical Information Service
OMB—Office of Management and Budget
OSCAR—Online Survey, Certification, and Reporting
PAI—Patient Assessment Instrument
PLI—Professional Liability Insurance
PMSA—Primary Metropolitan Statistical Area
PPI—Producer Price Index
PPS—Prospective Payment System
RIC—Rehabilitation Impairment Category
RPL—Rehabilitation Hospital, Psychiatric Hospital, and Long-Term Care Hospital Market Basket
TEFRA—Tax Equity and Fiscal Responsibility Act
TEP—Technical Expert Panel

I. Background

[If you choose to comment on issues in this section, please include the caption "Background" at the beginning of your comments.]

A. General Overview of the Current Inpatient Rehabilitation Facility Prospective Payment System (IRF PPS)

Section 4421 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33), as amended by section 125 of the Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113), and by section 305 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554), provides for the implementation of a per discharge prospective payment system (PPS), through section 1886(j) of the Social Security Act (the Act), for inpatient rehabilitation hospitals and inpatient rehabilitation units of a hospital (hereinafter referred to as IRFs).

Payments under the IRF PPS encompass inpatient operating and capital costs of furnishing covered rehabilitation services (that is, routine, ancillary, and capital costs) but not costs of approved educational activities, bad debts, and other services or items outside the scope of the IRF PPS. Although a complete discussion of the IRF PPS provisions appears in the August 7, 2001 final rule, we are providing below a general description of the IRF PPS.

The IRF PPS, as described in the August 7, 2001 final rule, uses Federal prospective payment rates across 100 distinct case-mix groups (CMGs). Ninety-five CMGs were constructed using rehabilitation impairment categories, functional status (both motor and cognitive), and age (in some cases, cognitive status and age may not be a factor in defining a CMG). Five special CMGs were constructed to account for very short stays and for patients who expire in the IRF.

For each of the CMGs, we developed relative weighting factors to account for a patient's clinical characteristics and expected resource needs. Thus, the weighting factors account for the relative difference in resource use across all CMGs. Within each CMG, the weighting factors were "tiered" based on the estimated effects that certain comorbidities have on resource use.

The Federal PPS rates were established using a standardized payment amount (previously referred to as the budget-neutral conversion factor). The standardized payment amount was previously called the budget neutral conversion factor because it reflected a budget neutrality adjustment for FYs 2001 and 2002, as described in § 412.624(d)(2). However, the statute requires a budget neutrality adjustment only for FYs 2001 and 2002. Accordingly, for subsequent years we believe it is more consistent with the statute to refer to the standardized payment as the standardized payment conversion factor, rather than refer to it as a budget neutral conversion factor (see 68 FR 45674, 45684 and 45685). Therefore, we will refer to the standardized payment amount in this proposed rule as the standard payment conversion factor.

For each of the tiers within a CMG, the relative weighting factors were

applied to the standard payment conversion factor to compute the unadjusted Federal prospective payment rates. Under the current system, adjustments that accounted for geographic variations in wages (wage index), the percentage of low-income patients, and location in a rural area were applied to the IRF's unadjusted Federal prospective payment rates. In addition, adjustments were made to account for the early transfer of a patient, interrupted stays, and high cost outliers.

Lastly, the IRF's final prospective payment amount was determined under the transition methodology prescribed in section 1886(j) of the Act. Specifically, for cost reporting periods that began on or after January 1, 2002 and before October 1, 2002, section 1886(j)(1) of the Act and as specified in § 412.626 provides that IRFs transitioning into the PPS would receive a "blended payment." For cost reporting periods that began on or after January 1, 2002 and before October 1, 2002, these blended payments consisted of 66⅔ percent of the Federal IRF PPS rate and 33⅓ percent of the payment that the IRF would have been paid had the IRF PPS not been implemented. However, during the transition period, an IRF with a cost reporting period beginning on or after January 1, 2002 and before October 1, 2002 could have elected to bypass this blended payment and be paid 100 percent of the Federal IRF PPS rate. For cost reporting periods beginning on or after October 1, 2002 (FY 2003), the transition methodology expired, and payments for all IRFs consist of 100 percent of the Federal IRF PPS rate.

We established a CMS Web site that contains useful information regarding the IRF PPS. The Web site URL is *www.cms.hhs.gov/providers/irfpps/default.asp* and may be accessed to download or view publications, software, and other information pertinent to the IRF PPS.

B. Requirements for Updating the Prospective Payment Rates for IRFs

On August 7, 2001, we published a final rule entitled "Medicare Program; Prospective Payment System for Inpatient Rehabilitation Facilities" in the **Federal Register** (66 FR at 41316), that established a PPS for IRFs as authorized under section 1886(j) of the Act and codified at subpart P of part 412 of the Medicare regulations. In the August 7, 2001 final rule, we set forth the per discharge Federal prospective payment rates for fiscal year (FY) 2002 that provided payment for inpatient operating and capital costs of furnishing covered rehabilitation services (that is, routine, ancillary, and capital costs) but not costs of approved educational activities, bad debts, and other services or items that are outside the scope of the IRF PPS. The provisions of the August 7, 2001 final rule were effective for cost reporting periods beginning on or after January 1, 2002. On July 1, 2002, we published a correcting amendment to the August 7, 2001 final rule in the **Federal Register** (67 FR at 44073). Any references to the August 7, 2001 final rule in this proposed rule include the provisions effective in the correcting amendment.

Section 1886(j)(5) of the Act and § 412.628 of the regulations require the Secretary to publish in the **Federal Register**, on or before August 1 of the preceding FY, the classifications and weighting factors for the IRF CMGs and a description of the methodology and data used in computing the prospective payment rates for the upcoming FY. On August 1, 2002, we published a notice in the **Federal Register** (67 FR at 49928) to update the IRF Federal prospective payment rates from FY 2002 to FY 2003 using the methodology as described in § 412.624. As stated in the August 1, 2002 notice, we used the same classifications and weighting factors for the IRF CMGs that were set forth in the August 7, 2001 final rule to update the IRF Federal prospective payment rates from FY 2002 to FY 2003. We have continued to update the prospective payment rates each year in accordance with the methodology set forth in the August 7, 2001 final rule.

In this proposed rule, we are proposing to update the IRF Federal prospective payment rates from FY 2005 to FY 2006, and we are proposing revisions to the methodology described in § 412.624. The proposed changes to the methodology are described in more detail in this proposed rule. For example, we are proposing to add a new teaching status adjustment, and we are proposing to implement other changes to existing policies in a budget neutral manner, which requires applying additional budget neutrality factors to the standard payment amount to calculate the standard payment conversion factor for FY 2006. See section III of this proposed rule for further discussion of the proposed FY 2006 Federal prospective payment rates. The proposed FY 2006 Federal prospective payment rates would be effective for discharges on or after October 1, 2005 and before October 1, 2006.

C. Operational Overview of the Current IRF PPS

As described in the August 7, 2001 final rule, upon the admission and discharge of a Medicare Part A fee-for-service patient, the IRF is required to complete the appropriate sections of a patient assessment instrument, the Inpatient Rehabilitation Facility-Patient Assessment Instrument (IRF–PAI). All required data must be electronically encoded into the IRF–PAI software product. Generally, the software product includes patient grouping programming called the GROUPER software. The GROUPER software uses specific Patient Assessment Instrument (PAI) data elements to classify (or group) the patient into a distinct CMG and account for the existence of any relevant comorbidities.

The GROUPER software produces a 5-digit CMG number. The first digit is an alpha-character that indicates the comorbidity tier. The last 4 digits represent the distinct CMG number. (Free downloads of the Inpatient Rehabilitation Validation and Entry (IRVEN) software product, including the GROUPER software, are available at the CMS Web site at *www.cms.hhs.gov/providers/irfpps/default.asp*).

Once the patient is discharged, the IRF completes the Medicare claim (UB–92 or its equivalent) using the 5-digit CMG number and sends it to the appropriate Medicare fiscal intermediary (FI). (Claims submitted to Medicare must comply with both the Administrative Simplification Compliance Act (ASCA), Pub. L. 107–105, and the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104–191. Section 3 of ASCA requires the Medicare Program, subject to subsection (H), to deny payment under Part A or Part B for any expenses for items or services "for which a claim is submitted other than in an electronic form specified by the Secretary." Subsection (h) provides that the Secretary shall waive such denial in two types of cases and may also waive such denial "in such unusual cases as the Secretary finds appropriate." See also, 68 FR at 48805 (August 15, 2003). Section 3 of ASCA operates in the context of the Administrative Simplification provisions of HIPAA, which include, among others, the transactions and code sets standards requirements codified as 45 CFR part 160 and 162, subparts A and I through R (generally known as the Transactions Rule). The Transactions Rule requires covered entities, including covered providers, to conduct covered electronic transactions according to the applicable

transaction standards. See the program claim memoranda issued and published by CMS at *www.cms.hhs.gov/providers/edi/default.asp, http://www.cms.hhs.gov/provider/edi/default.asp* and listed in the addenda to the Medicare Intermediary Manual, Part 3, section 3600. Instructions for the limited number of claims submitted to Medicare on paper are located in section 3604 of Part 3 of the Medicare Intermediary Manual.)

The Medicare Fiscal Intermediary (FI) processes the claim through its software system. This software system includes pricing programming called the PRICER software. The PRICER software uses the CMG number, along with other specific claim data elements and provider-specific data, to adjust the IRF's prospective payment for interrupted stays, transfers, short stays, and deaths and then applies the applicable adjustments to account for the IRF's wage index, percentage of low-income patients, rural location, and outlier payments.

D. Quality of Care in IRFs

The IRF–PAI is the patient data collection instrument for IRFs. Currently, the IRF–PAI contains a blend of the functional independence measures items and quality and medical needs questions. The quality and medical needs questions (which are currently collected on a voluntary basis) may need to be modified to encapsulate those data necessary for calculation of quality indicators in the future.

We awarded a contract to the Research Triangle Institute (RTI) with the primary tasks of identifying quality indicators pertinent to the inpatient rehabilitation setting and determining what information is necessary to calculate those quality indicators. These tasks included reviewing literature and other sources for existing rehabilitation quality indicators. It also involved identifying organizations involved in measuring or monitoring quality of care in the inpatient rehabilitation setting. In addition, RTI was tasked with performing independent testing of the quality indicators identified in their research.

Once RTI has issued a final report, we will determine which quality-related items should be listed on the IRF–PAI. The revised IRF–PAI will need to be approved by OMB before it is used in IRFs.

We would like to take this opportunity to discuss our thinking related to broader initiatives in this area related to quality of care. We have supported the development of valid quality measures and have been engaged in a variety of quality improvement efforts focused in other post-acute care settings such as nursing homes. However, as mentioned above, any new quality-related data collected from the IRF–PAI would have to be analyzed to determine the feasibility of developing a payment method that accounts for the performance of the IRF in providing the necessary rehabilitative care.

Medicare beneficiaries are the primary users of IRF services. Any quality measures must be carefully constructed to address the unique characteristics of this population. Similarly, we need to consider how to design effective incentives; that is, superior performance measured against pre-established benchmarks and/or performance improvements.

In addition, while our efforts to develop the various post-acute care PPSs, including the IRF PPS, have generated substantial improvements over the preexisting cost-based systems, each of these individual systems was developed independently. As a result, we have focused on phases of a patient's illness as defined by a specific site of service, rather than on the entire post-acute episode. As the differentiation among provider types (such as SNFs and IRFs) becomes less pronounced, we need to investigate a more coordinated approach to payment and delivery of post-acute services that focuses on the overall post-acute episode.

This could entail a strategy of developing payment policy that is as neutral as possible regarding provider and patient decisions about the use of particular post-acute services. That is, Medicare should provide payments sufficient to ensure that beneficiaries receive high quality care in the most appropriate setting, so that admissions and any transfers between settings occur only when consistent with good care, rather than to generate additional revenues. In order to accomplish this objective, we need to collect and compare clinical data across different sites of service.

In fact, in the long run, our ability to compare clinical data across care settings is one of the benefits that will be realized as a basic component of the Department's interest in the use of a standardized electronic health record (EHR) across all settings including IRFs. It is also important to recognize the complexity of the effort, not only in developing an integrated assessment tool that is designed using health information standards, but in examining the various provider-centric prospective payment methodologies and considering payment approaches that are based on patient characteristics and outcomes. MedPAC has recently taken a preliminary look at the challenges in improving the coordination of our post-acute care payment methods, and suggested that it may be appropriate to explore additional options for paying for post-acute services. We agree that CMS, in conjunction with MedPAC and other stakeholders, should consider a full range of options in analyzing our post-acute care payment methods, including the IRF PPS.

We also want to encourage incremental changes that will help us build towards these longer term objectives. For example, medical records tools are now available that could allow better coordinated discharge planning procedures. These tools can be used to ensure communication of a standardized data set that then can be used to establish a comprehensive IRF care plan. Improved communications may reduce the incidence of potentially avoidable rehospitalizations and other negative impacts on quality of care that occur when patients are transferred to IRFs without a full explanation of their care needs. We are looking at ways that Medicare providers can use these tools to generate timely data across settings.

At this time, we do not offer specific proposals related to the preceding discussion. Finally, some of the ideas discussed here may exceed our current statutory authority. However, we believe that it is useful to encourage discussion of a broad range of ideas for debate of the relative advantages and disadvantages of the various policies affecting this important component of the health care sector. We welcome comments on these and other approaches.

E. Research To Support Refinements of the Current IRF PPS

As described in the August 7, 2001 final rule, we contracted with the RAND Corporation (RAND) to analyze IRF data to support our efforts in developing the CMG patient classification system and the IRF PPS. Since then, we have continued our contract with RAND to support us in developing potential refinements to the classification system and the PPS. RAND has also developed a system to monitor the effects of the IRF PPS on patients' access to IRF care and other post-acute care services.

In 1995, RAND began extensive research, sponsored by us, on the development of a per-discharge based PPS using a patient classification system known as Functional Independence Measures-Function Related Groups (FIM–FRGs) for IRFs. The results of RAND's earliest research, using 1994

data, were released in September 1997 and are contained in two reports available through the National Technical Information Service (NTIS). The reports are: Classification System for Inpatient Rehabilitation Patients—A Review and Proposed Revisions to the Function Independence Measure-Function Related Groups, NTIS order number PB98–105992INZ, and Prospective Payment System for Inpatient Rehabilitation, NTIS order number PB98–106024INZ.

In July 1999, we contracted with RAND to update its earlier research. The update included an analysis of Functional Independence Measure (FIM) data, the Function Related Groups (FRGs), and the model rehabilitation PPS using 1996 and 1997 data. The purpose of updating the earlier research was to develop the underlying data necessary to support the Medicare IRF PPS based on CMGs for the November 3, 2000 proposed rule (65 FR at 66313). RAND expanded the scope of its earlier research to include the examination of several payment elements, such as comorbidities, facility-level adjustments, and implementation issues, including evaluation and monitoring. Then, to develop the provisions of the August 7, 2001 final rule (66 FR 41316, 41323), RAND did similar analysis on calendar year 1998 and 1999 Medicare Provider Analysis and Review (MedPAR) files and patient assessment data.

We have continued to contract with RAND to help us identify potential refinements to the IRF PPS. RAND conducted updated analyses of the patient classification system, case mix and coding changes, and facility-level adjustments for the IRF PPS using data from calendar year 2002 and FY 2003. This is the first time CMS or RAND has had data generated by IRFs after the implementation of the IRF PPS that are available for data analysis. The refinements we are proposing to make to the IRF PPS are based on the analyses and recommendations from RAND. In addition, RAND sought advice from a technical expert panel (TEP), which reviewed their methodology and findings.

F. Proposed Refinements to the IRF PPS for Fiscal Year 2006

Based on analyses by RAND using calendar year 2002 and FY 2003 data, we are proposing refinements to the IRF PPS case-mix classification system (the CMGs and the corresponding relative weights) and the case-level and facility-level adjustments. Several new developments warrant these proposed refinements, including—(1) the availability of more recent 2002 and 2003 data; (2) better coding of comorbidities and patient severity; (3) more complete data; (4) new data sources for imputing missing values; and (5) improved statistical approaches.

In this proposed rule, we are proposing to make the following revisions:

- Reduce the standard payment amount by 1.9 percent.

In the August 7, 2001 final rule, we used cost report data from FYs 1998, 1997, and/or 1996 and calendar year 1999 Medicare bill data in calculating the initial PPS payment rates. As discussed in detail in section III.A of this proposed rule, analysis of calendar year 2002 data indicates that the standard payment conversion factor is now at least 1.9 percent higher than it should be to reflect the actual costs of caring for Medicare patients in IRFs. The data demonstrate that this is largely because the implementation of the IRF PPS caused important changes in IRFs' coding practices, including increased accuracy and consistency in coding.

- Make revisions to the comorbidity tiers and the CMGs.

In the August 7, 2001 final rule, we used FIM and Medicare data from 1998 and 1999 to construct the CMGs and to assign the comorbidity tiers. As discussed in detail in section II of this proposed rule, analysis of calendar year 2002 and FY 2003 data indicates the need to refine the comorbidity tiers and the CMGs to better reflect the costs of Medicare cases in IRFs.

- Adopt the new geographic labor market area definitions based on the definitions created by the Office of Management and Budget (OMB), known as Core-Based Statistical Areas (CBSAs), for purposes of computing the proposed wage index adjustment to IRF payments.

Historically, Medicare PPSs have used market area definitions developed by OMB. We are proposing to adopt new market area definitions which are based on OMB definitions. As discussed in detail in section III.B.2 of this proposed rule, we believe that these designations more accurately reflect the local economies and wage levels of the areas in which hospitals are located. These are the same labor market area definitions implemented for acute care inpatient hospitals under the hospital inpatient prospective payment system (IPPS) as specified in § 412.64(b)(1)(ii)(A) through (C), which were effective for those hospitals beginning October 1, 2004 as discussed in the August 11, 2004 IPPS final rule (69 FR at 49026 through 49032).

- Implement a teaching status adjustment to payments for services provided in IRFs that are, or are part of, teaching hospitals.

In previous rules, including the August 7, 2001 final rule, we noted that analyses of the data did not support a teaching adjustment. However, analysis of the more recent calendar year 2002 and fiscal year 2003 data supports a teaching status adjustment. For the first time, as discussed in detail in section III.B.3 of this proposed rule, the data analysis has demonstrated a statistically significant relationship between an IRF's teaching status and the costs of caring for patients in that IRF. We believe this may suggest the need to account for the higher costs associated with major teaching programs. For reasons discussed in detail in section III.B.3 of this proposed rule, we are proposing to implement the new teaching status adjustment in a budget neutral manner. However, we have some concerns about proposing a teaching status adjustment for IRFs at this time (as discussed in detail in section III.B.3 of this proposed rule). Because of these concerns, we are specifically soliciting comments on our consideration of an IRF teaching status adjustment.

- Update the formulas used to compute the rural and the low-income patient (LIP) adjustments to IRF payments.

In the August 7, 2001 final rule, we implemented an adjustment to account for the higher costs in rural IRFs by multiplying their payments by 1.1914. As discussed in detail in section III.B.4 of this proposed rule, the regression analysis RAND performed on fiscal year 2003 data suggests that this rural adjustment should be updated to 1.241 to account for the differences in costs between rural and urban IRFs.

Similarly, in the August 7, 2001 final rule, we implemented an adjustment to payments to reflect facilities' low-income patient percentage calculated as (1+ the disproportionate share hospital (DSH) patient percentage) raised to the power of 0.4838. As discussed in detail in section III.B.5 of this proposed rule, the regression analysis RAND performed on fiscal year 2003 data indicates that the LIP adjustment should now be calculated as (1 + DSH patient percentage) raised to the power of 0.636. For reasons discussed in detail in section III.B.5 of this proposed rule, we are proposing to implement the changes to these adjustments in a budget neutral manner.

- Update the outlier threshold amount from $11,211 (FY 2005) to $4,911 (FY 2006) to maintain total estimated outlier payments at 3 percent of total estimated payments.

In the August 7, 2001 final rule, we describe the process by which we calculate the outlier threshold, which involves simulating payments and then determining a threshold that would result in outlier payments being equal to 3 percent of total payments under the simulation. As discussed in detail in section III.B.6 of this proposed rule, we believe based on RAND's regression analysis that all of the other proposed updates to the IRF PPS, including the structure of the CMGs and the tiers, the relative weights, and the facility-level adjustments (such as the rural adjustment, the LIP adjustment, and the proposed teaching status adjustment) make it necessary to propose to adjust the outlier threshold amount.

II. Proposed Refinements to the Patient Classification System

[If you choose to comment on issues in this section, please include the caption "Proposed Refinements to the Patient Classification System" at the beginning of your comments.]

A. Proposed Changes to the IRF Classification System

1. Development of the IRF Classification System

Section 1886(j)(2)(A)(i) of the Act, as amended by section 125 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 requires the Secretary to establish "classes of patient discharges of rehabilitation facilities by functional-related groups (each referred to as a case-mix group or CMG), based on impairment, age, comorbidities, and functional capability of the patients, and such other factors as the Secretary deems appropriate to improve the explanatory power of functional independence measure-function related groups." In addition, the Secretary is required to establish a method of classifying specific patients in IRFs within these groups as specified in § 412.620.

In the August 7, 2001 final rule (66 FR at 41342), we implemented a methodology to establish a patient classification system using CMGs. The CMGs are based on the FIM–FRG methodology and reflect refinements to that methodology.

In general, a patient is first placed in a major group called a rehabilitation impairment category (RIC) based on the patient's primary reason for inpatient rehabilitation, (for example, a stroke). The patient is then placed into a CMG within the RIC, based on the patient's ability to perform specific activities of daily living, and sometimes the patient's cognitive ability and/or age. Other special circumstances, such as the occurrence of very short stays, or cases where the patient expired, are also considered in determining the appropriate CMG.

We explained in the August 7, 2001 final rule that further analysis of FIM and Medicare data may result in refinements to CMGs. In the August 7, 2001 final rule, we used the most recent FIM and Medicare data available at that time (that is 1998 and 1999 data). Developing the CMGs with the 1998 and 1999 data resulted in 95 CMGs based on the FIM–FRG methodology. The data also supported the establishment of five additional special CMGs that improved the explanatory power of the FIM–FRGs. We established one additional special CMG to account for very short stays and four additional special CMGs to account for cases where the patient expired. In addition, we established a payment of an additional amount for patients with at least one relevant comorbidity in certain CMGs.

2. Description and Methodology Used to Develop the IRF Classification System in the August 7, 2001 Final Rule

a. Rehabilitation Impairment Categories

In the first step to develop the CMGs, the FIM data from 1998 and 1999 were used to group patients into RICs. Specifically, the impairment code from the assessment instrument used by clients of UDSmr and Healthsouth indicates the primary reason for the inpatient rehabilitation admission. This impairment code is used to group the patient into a RIC. Currently, we use 21 RICs for the IRF PPS.

b. Functional Status Measures and Age

After using the RIC to define the first division among the inpatient rehabilitation groups, we used functional status measures and age to partition the cases further. In the August 7, 2001 final rule, we used 1998 and 1999 Medicare bills with corresponding FIM data to create the CMGs and more thoroughly examine each item of the motor and cognitive measures. Based on the data used for the August 7, 2001 final rule, we found that we could improve upon the CMGs by making a slight modification to the motor measure. We modified the motor measure by removing the transfer to tub/shower item because we found that an increase in a patient's ability to perform functional tasks with less assistance for this item was associated with an increase in cost, whereas an increase in other functional items decreased costs. We describe below the statistical methodology (Classification and Regression Trees (CART)) that we used to incorporate a patient's functional status measures (modified motor score and cognitive score) and age into the construction of the CMGs in the August 7, 2001 final rule.

We used the CART methodology to divide the rehabilitation cases further within each RIC. (Further information regarding the CART methodology can be found in the seminal literature on CART (Classification and Regression Trees, Leo Breiman, Jerome Friedman, Richard Olshen, Charles Stone, Wadsworth Inc., Belmont CA, 1984: pp. 78–80).) We chose to use the CART method because it is useful in identifying statistical relationships among data and, using these relationships, constructing a predictive model for organizing and separating a large set of data into smaller, similar groups. Further, in constructing the CMGs, we analyzed the extent to which the independent variables (motor score, cognitive score, and age) helped predict the value of the dependent variable (the log of the cost per case). The CART methodology creates the CMGs that classify patients with clinically distinct resource needs into groups. CART is an iterative process that creates initial groups of patients and then searches for ways to divide the initial groups to decrease the clinical and cost variances further and to increase the explanatory power of the CMGs. Our current CMGs are based on historical data. In order to develop a separate CMG, we need to have data on a sufficient number of cases to develop coherent groups. Currently, we use 95 CMGs as well as 5 special CMGs for scenarios involving short stays or the expiration of the patient.

c. Comorbidities

Under the statutory authority of section 1886(j)(2)(C)(i) of the Act, we are proposing to make several changes to the comorbidity tiers associated with the CMGs for comorbidities that are not positively related to treatment costs, or their excessive use is questionable, or their condition could not be differentiated from another condition. Specifically, section 1886(j)(2)(C)(i) of the Act provides the following: The Secretary shall from time to time adjust the classifications and weighting factors established under this paragraph as appropriate to reflect changes in treatment patterns, technology, case mix, number of payment units for which payment is made under this title and other factors that may affect the relative use of resources. The adjustments shall be made in a manner so that changes in aggregate payments under the

classification system are a result of real changes and are not a result of changes in coding that are unrelated to real changes in case mix.

A comorbidity is a specific patient condition that is secondary to the patient's principal diagnosis or impairment that is used to place a patient into a RIC. A patient could have one or more comorbidities present during the inpatient rehabilitation stay. Our analysis for the August 7, 2001 final rule found that the presence of a comorbidity could have a major effect on the cost of furnishing inpatient rehabilitation care. We also stated that the effect of comorbidities varied across RICs, significantly increasing the costs of patients in some RICs, while having no effect in others. Therefore, for the August 7, 2001 final rule, we linked frequently occurring comorbidities to impairment categories in order to ensure that all of the chosen comorbidities were not an inherent part of the diagnosis that assigns the patient to the RIC.

Furthermore, in the August 7, 2001 final rule, we indicated that comorbidities can affect cost per case for some of the CMGs, but not all. When comorbidities substantially increased the average cost of the CMG and were determined to be clinically relevant (not inherent in the diagnosis in the RIC), we developed CMG relative weights adjusted for comorbidities (§ 412.620(b)).

d. Development of CMG Relative Weights

Section 1886(j)(2)(B) of the Act requires that an appropriate relative weight be assigned to each CMG. Relative weights account for the variance in cost per discharge and resource utilization among the payment groups and are a primary element of a case-mix adjusted PPS. The establishment of relative weights helps ensure that beneficiaries have access to care and receive the appropriate services that are commensurate to other beneficiaries that are classified in the same CMG. In addition, prospective payments that are based on relative weights encourage provider efficiency and, hence, help ensure a fair distribution of Medicare payments. Accordingly, as specified in § 412.620(b)(1), we calculate a relative weight for each CMG that is proportional to the resources needed by an average inpatient rehabilitation case in that CMG. For example, cases in a CMG with a relative weight of 2, on average, will cost twice as much as cases in a CMG with a relative weight of 1. We discuss the details of developing the relative weights below.

As indicated in the August 7, 2001 final rule, we believe that the RAND analysis has shown that CMGs based on function-related groups (adjusted for comorbidities) are effective predictors of resource use as measured by proxies such as length of stay and costs. The use of these proxies is necessary in developing the relative weights because data that measure actual nursing and therapy time spent on patient care, and other resource use data, are not available.

e. Overview of Development of the CMG Relative Weights

As indicated in the August 7, 2001 final rule, to calculate the relative weights, we estimate operating (routine and ancillary services) and capital costs of IRFs. For this proposed rule, we use the same method for calculating the cost of a case that we outlined in the August 7, 2001 final (66 FR at 41351 through 43153). We obtained cost-to-charge ratios for ancillary services and per diem costs for routine services from the most recent available cost report data. We then obtain charges from Medicare bill data and derived corresponding functional measures from the FIM data. We omit data from rehabilitation facilities that are classified as all-inclusive providers from the calculation of the relative weights, as well as from the parameters that we use to define transfer cases, because these facilities are paid a single, negotiated rate per discharge and therefore do not maintain a charge structure. For ancillary services, we calculate both operating and capital costs by converting charges from Medicare claims into costs using facility-specific, cost-center specific cost-to-charge ratios obtained from cost reports. Our data analysis for the August 7, 2001 final rule showed that some departmental cost-to-charge ratios were missing or found to be outside a range of statistically valid values. For anesthesiology, a value greater than 10, or less than 0.01, is found not to be statistically valid. For all other cost centers, values greater than 10 or less than 0.5 are found not to be statistically valid. In the August 7, 2001 final rule, we replaced individual cost-to-charge ratios outside of these thresholds. The replacement value that we used for these aberrant cost-to-charge ratios was the mean value of the cost-to-charge ratio for the cost-center within the same type of hospital (either freestanding or unit). For routine services, per diem operating and capital costs are used to develop the relative weights. In addition, per diem operating and capital costs for special care services are used to develop the relative weights. (Special care services are furnished in intensive care units. We note that fewer than 1 percent of rehabilitation days are spent in intensive care units.) Per diem costs are obtained from each facility's Medicare cost report data. We use per diem costs for routine and special care services because, unlike for ancillary services, we could not obtain cost-to-charge ratios for these services from the cost report data. To estimate the costs for routine and special care services included in developing the relative weights, we sum the product of routine cost per diem and Medicare inpatient days and the product of the special care per diem and the number of Medicare special care days.

In the August 7, 2001 final rule, we used a hospital specific relative value method to calculate relative weights. We used the following basic steps to calculate the relative weights as indicated in the August 7, 2001 final rule (at 66 FR 41316, 41351 through 41352).

The first step in calculating the CMG weights is to estimate the effect that comorbidities have on costs. The second step required us to adjust the cost of each Medicare discharge (case) to reflect the effects found in the first step. In the third step, the adjusted costs from the second step were used to calculate "relative adjusted weights" in each CMG using the hospital-specific relative value method. The final steps are to calculate the CMG relative weights by modifying the "relative adjusted weight" with the effects of the existence of the comorbidity tiers (explained below) and normalizing the weights to 1.

B. Proposed Changes to the Existing List of Tier Comorbidities

1. Proposed Changes to Remove Codes That Are Not Positively Related to Treatment Costs

While our methodology for this proposed rule for determining the tiers remains unchanged from the August 7, 2001 final rule, RAND's analysis indicates that 1.6 percent of FY 2003 cases received a tier payment (often in tier one) that was not justified by any higher cost for the case. Therefore, under statutory authority section 1886(j)(2)(C)(i) of the Act, we are proposing several technical changes to the comorbidity tiers associated with the CMGs. Specifically, the RAND analysis found that the first 17 diagnoses shown in Table 1 below are no longer positively related to treatment cost after controlling for CMG. The

additional two codes were also problematic. According to RAND, code 410.91 (AMI, NOS, Initial) was too unspecific to be differentiated from other related codes and code 260, Kwashiorkor, was found to be unrealistically represented in the data according to a RAND technical expert panel.

With respect to the eighteenth code in Table One, (410.X1) Specific AMI, initial), we note that RAND found there is not clinical reason to believe that this code differs in a rehabilitation environment from all of the specific codes for initial AMI of the form 410.X, where X is an numeric digit. In other words, this code is indistinguishable from the seventeenth code in Table One (410.91 AMI, NOS, initial). Following this observation, RAND tested the other initial AMI codes as a single group and found that they have no positive effect on case cost. Since we are proposing to remove "AMI, NOS, initial" from the tier list because it is not positively related to treatment cost after controlling for the CMG, we believe that "Specific AMI, initial" similarly should be removed from the tier list since it is indistinguishable from "AMI, NOS, initial."

With respect to the last code in Table One (Kwashiorkor), we are proposing to remove this code from the tier list as well. This comorbidity is positively related to cost in our data. However, RAND's technical expert panel (TEP) found the large number of cases coded with this rare disease to be unrealistic and recommended that it be removed from the tier list.

Table 1 contains two malnutrition codes, and removing these two malnutrition codes where use is concentrated in specific hospitals is particularly important because these hospitals are likely receiving unwarrantedly high payments due to the tier one assignment of these cases. Thus, because we believe the excess use of these two comorbid conditions is inappropriate based on the findings of RAND's TEP, we are proposing their removal.

The data indicate large variation in the rate of increase from the 1999 data to the 2003 data across the conditions that make up the tiers. The greatest increases were for miscellaneous throat conditions and malnutrition, each of which were more than 10 times as frequent in 2003 as in 1999. The growth in these two conditions was far larger than for any other condition. Many conditions, however, more than doubled in frequency, including dialysis, cachexia, obesity, and the non-renal complications of diabetes. The condition with the least growth, renal complications of diabetes, may have been affected by improved coding of dialysis.

The remaining proposed changes to our initial list of diagnoses in Table 1 deal with tracheostomy cases. These rare cases were excluded from the pulmonary RIC 15 in the August 7, 2001 final rule. The new data indicate that they are more expensive than other cases in the same CMG in RIC 15, as well as in other RICs. Therefore, we believe the data demonstrate that tracheostomy cases should be added to the tier list for RIC 15. Finally, DX V55.0, "attention to tracheostomy" should initially have been part of this condition as these cases were and are as expensive as other tracheostomy cases. Thus, since "attention to tracheostomy" is as expensive as other tracheostomy cases, it is logical to group such similar cases together.

We believe that the data provided by RAND support the removal of the codes in Table 1 below because they either have no impact on cost after controlling for their CMG or are indistinguishable from other codes or are unrealistically overrepresented. Therefore, we are proposing to remove these codes from the tier list.

TABLE 1.—PROPOSED LIST OF CODES TO BE REMOVED FROM THE TIER LIST

ICD–9–CM code	Abbreviated code title	Condition
235.1	Unc behav neo oral/phar	Miscellaneous throat conditions.
933.1	Foreign body in larynx	Miscellaneous throat conditions.
934.1	Foreign body bronchus	Miscellaneous throat conditions.
530.0	Achalasia & cardiospasm	Esophegeal conditions.
530.3	Esophageal stricture	Esophegeal conditions.
530.6	Acquired esophag diverticulum	Esophegeal conditions.
V46.1	Dependence on respirator	Ventilator status.
799.4	Cachexia	Cachexia.
V49.75	Status amputation below knee	Amputation of LE.
V49.76	Status amputation above knee	Amputation of LE.
V497.7	Status amputation hip	Amputation of LE.
356.4	Idiopathic progressive polyneuropathy	Meningitis and encephalitis.
250.90	Diabetes II, w unspecified complications, not stated as uncontrolled	Non-renal Complications of Diabetes.
250.93	Diabetes I, w unspecified complications, uncontrolled	Non-renal Complications of Diabetes.
261	Nutritional Marasmus	Malnutrition.
262	Other severe protein calorie deficiency	Malnutrition.
410.91	AMI, NOS, initial	Major comorbidities.
410.X1	Specific AMI, initial	Major comorbidities.
260	Kwashiorkor	Malnutrition.

2. Proposed Changes To Move Dialysis To Tier One

We are proposing the movement of dialysis to tier one, which is the tier associated with the highest payment. The data from the RAND analysis show that patients on dialysis cost substantially more than current payments for these patients and should be moved into the highest paid tier because this tier would more closely align payment with the cost of a case. Based on RAND's analysis using 2003 data, a patient with dialysis costs 31 percent more than a non-dialysis patient in the same CMG and with the same other accompanying comorbidities.

Overall, the largest increase in the cost of a condition occurs among patients on dialysis, where the coefficient in the cost regression increases by 93 percent, from 0.1400 to 0.2697. Part of the explanation for the increased coefficient could be that some IRFs had not borne all dialysis costs for their patients in the pre-PPS period

(because providers were previously permitted to bill for dialysis separately). Dialysis is currently in tier two. However, it is likely that, in the 1999 data, some IRFs had not borne all dialysis costs for their patients. Because the fraction of cases coded with dialysis increased by 170 percent, it is also likely that improved coding was part of the explanation for the increased coefficient. We believe a 170 percent increase is such a dramatic increase that it would be highly unlikely that in one short time, 170 percent more patients need dialysis than they did before the implementation of the IRF PPS. We also believe that the improved coding is likely due to the fact that higher costs are associated with dialysis patients and therefore IRFs, in an effort to ensure that their payments cover these higher expenses will better and more carefully code comorbidities whose presence will result in higher PPS payments.

Moving dialysis patients to tier one will more adequately compensate hospitals for the extra cost of those patients and thereby maintain or increase access to these services.

3. Proposed Changes To Move Comorbidity Codes Based on Their Marginal Cost

Under statutory authority section 1886(j)(2)(C)(i) of the Act, we are proposing to move comorbidity codes based on their marginal cost. Another limitation with the existing tiers is that costs for several conditions would be more accurately predicted if their tier assignments were changed. After examining RAND's data, we believe that a full 4 percent of FY 2003 cases should be moved down to tiers with lower payment.

We propose that tier assignments be based on the results of statistical analyses RAND has performed under contract with CMS, using as independent variables only the proposed CMGs and conditions that we are proposing for tiers (for example, the CMGs and conditions that remain after the proposed changes have been made). We are proposing that the tier assignments of each of these conditions be decided based on the magnitude of their coefficients in RAND's statistical analysis.

We believe the IRF PPS led to substantial changes in coding of comorbidities between 1999 (pre-implementation of the IRF PPS) and 2003 (post-implementation of the IRF PPS). The percentage of cases with one or more comorbidities increased from 16.79 percent in the data in which tiers were defined (1998 through 1999) to 25.51 percent in FY 2003. This is an increase of 52 percent in tier incidence ($52 = 100 \times (25.51 - 16.79)/16.79$). The presence of a tier one comorbidity, the highest paid of the tiers, almost quadrupled during this same time period. Although, coding likely improved, the presence of upcoding for a higher payment may play a factor as well.

The 2003 data provide a more accurate explanation of the costs that are associated with each of the comorbidities, largely due to having 100 percent of the Medicare-covered IRF cases in the later data versus slightly more than half of the cases in 1999 data. Therefore, using the 2003 data to propose to assign each diagnosis or condition will considerably improve the matching of payments to their relative costs.

C. Proposed Changes to the CMGs

Section 1886(j)(2)(C)(i) of the Act requires the Secretary from time to time to adjust the classifications and weighting factors of patients under the IRF PPS to reflect changes in treatment patterns, technology, case mix, number of payment units for which payment is made, and other factors that may affect the relative use of resources. These adjustments shall be made in a manner so that changes in aggregate payments under the classification system are the result of real changes and not the result of changes in coding that are unrelated to real changes in case mix.

In accordance with section 1886(j)(2)(C)(i) of the Act and as specified in § 412.620(c) and based on the research conducted by RAND, we are proposing to update the CMGs used to classify IRF patients for purposes of establishing payment amounts. We are also proposing to update the relative weights associated with the payment groups based on FY 2003 Medicare bill and patient assessment data. We are proposing to replace the current unweighted motor score index used to assign patients to CMGs with a weighted motor score index that would improve our ability to accurately predict the costs of caring for IRF patients, as described in detail below. However, we are not proposing to change the methodology for computing the cognitive score index.

As described in the August 7, 2001 final rule, we contracted with RAND to analyze IRF data to support our efforts in developing our patient classification system and the IRF PPS. We have continued our contract with RAND to support us in developing potential refinements to the classification system and the PPS. As part of this research, we asked RAND to examine possible refinements to the CMGs to identify potential improvements in the alignment between Medicare payments and actual IRF costs. In conducting its research, RAND used a technical expert panel (TEP) made up of experts from industry groups, other government entities, academia, and other interested parties. The technical expert panel reviewed RAND's methodologies and advised RAND on many technical issues.

Several recent developments make significant improvements in the alignment between Medicare payments and actual IRF costs possible. First, when the IRF PPS was implemented in 2002, a new recording instrument was used to collect patient data, the IRF Patient Assessment Instrument (or the IRF PAI). The new instrument contained questions that improved the quality of the patient-level information available to researchers.

Second, more recent data are available on a larger patient population. Until now, the design of the IRF PPS was based entirely on 1999 data on Medicare rehabilitation patients from just a sample of hospitals. Now, we have post-PPS data from 2002 and 2003 that describe the entire universe of Medicare-covered rehabilitation patients.

Finally, we believe that proposed improvements in the algorithms that produced the initial CMGs, as described below, should lead to new CMGs that better predict treatment costs in the IRF PPS.

Using FIM (the inpatient rehabilitation facility assessment instrument before the PPS) and Medicare data from 1998 and 1999, RAND helped us develop the original structure of the IRF PPS. IRFs became subject to the PPS beginning with cost reporting periods on or after January 1, 2002. The PPS is based on assigning patients to particular CMGs that are designed to predict the costs of treating particular Medicare patients according to how well they function in four general categories: transfers, sphincter control, self-care (for example, grooming, eating), and locomotion. Patient functioning is measured according to 18 categories of activity: 13 motor tasks, such as climbing stairs, and 5 cognitive tasks, such as recall. The PPS is intended to align payments to IRFs as closely as possible with the actual costs of treating patients. If the PPS "underpays" for some kinds of care, IRFs have incentives to limit access for patients requiring that kind of care because payments would be less than the costs of providing care for a particular case so an IRF may try to

limit its financial "losses"; conversely, if the PPS overpays, resources are wasted because IRFs' payments exceed the costs of providing care for a particular case.

The fiscal year 2003 data file currently available for refining the CMGs is better than the 1999 data RAND originally used to construct the IRF PPS because it contains many more IRF cases and represents the universe of Medicare-covered IRF cases, rather than a sample. The best available data that CMS and RAND had for analysis in 1999 contained 390,048 IRF cases, representing 64 percent of all Medicare-covered patients in participating IRF hospitals. The more recent data contain 523,338 IRF cases (fiscal year 2003), representing all Medicare-covered patients in participating IRF hospitals. The larger file enables RAND to obtain greater precision in the analysis and ensures a more balanced and complete picture of patients under the IRF PPS.

Also, the fiscal year 2003 data are better than the 1999 data used to design the IRF PPS because they include more detailed information about patients' level of functioning. For example, new variables are included in the more recent data that provide further details on patient functioning. Standard bowel and bladder scores on the FIM instrument (used to assess patients before the IRF PPS), for example, measured some combination of the level of assistance required and the frequency of accidents (that is, soiling of clothes and surroundings). New variables on the IRF–PAI instrument measure the level and the frequency separately. Since measures of the level of assistance required and the frequency of accidents contain slightly different information about the expected costliness of an IRF patient, having measures for these two variables separately provides additional information to researchers.

Furthermore, additional optional information is recorded on the health status of patients in the more recent data (for example, shortness of breath, presence of ulcers, inability to balance).

1. Proposed Changes for Updating the CMGs

As described in the August 7, 2001 final rule, RAND developed the original list of CMGs using FIM data from 1998 and 1999 to group patients into RICs. Table 2 below shows the final set of 95 CMGs based on the FIM–FRG methodology, the 5 special CMGs, and their descriptions. Impairment codes from the assessment instrument used by UDSmr and Healthsouth indicated the primary reasons for inpatient rehabilitation admissions. The impairment codes were used to group patients into RICs. Table 3 below shows each RIC and its associated impairment code.

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Table 2--Definition of Case Mix Groups (CMGs) From the August 7, 2001 Final Rule

CMG Number	CMG Description
101	Stroke with motor score from 69-84 and cognitive score from 23-35
102	Stroke with motor score from 59-68 and cognitive score from 23-35
103	Stroke with motor score from 59-84 and cognitive score from 5-22
104	Stroke with motor score from 53-58
105	Stroke with motor score from 47-52
106	Stroke with motor score from 42-46
107	Stroke with motor score from 39-41
108	Stroke with motor score from 34-38 and patient is 83 years old or older
109	Stroke with motor score from 34-38 and patient is 82 years old or younger
110	Stroke with motor score from 12-33 and patient is 89 years old or older
111	Stroke with motor score from 27-33 and patient is between 82 and 88 years old
112	Stroke with motor score from 12-26 and patient is between 82 and 88 years old
113	Stroke with motor score from 27-33 and patient is 81 years old or younger
114	Stroke with motor score from 12-26 and patient is 81 years old or younger
201	Traumatic brain injury with motor score from 52-84 and cognitive score from 24-35
202	Traumatic brain injury with motor score from 40-51 and cognitive score from 24-35
203	Traumatic brain injury with motor score from 40-84 and cognitive score from 5-23

CMG Number	CMG Description
204	Traumatic brain injury with motor score from 30-39
205	Traumatic brain injury with motor score from 12-29
301	Non-traumatic brain injury with motor score from 51-84
302	Non-traumatic brain injury with motor score from 41-50
303	Non-traumatic brain injury with motor score from 25-40
304	Non-traumatic brain injury with motor score from 12-24
401	Traumatic spinal cord injury with motor score from 50-84
402	Traumatic spinal cord injury with motor score from 36-49
403	Traumatic spinal cord injury with motor score from 19-35
404	Traumatic spinal cord injury with motor score from 12-18
501	Non-traumatic spinal cord injury with motor score from 51-84 and cognitive score from 30-35
502	Non-traumatic spinal cord injury with motor score from 51-84 and cognitive score from 5-29
503	Non-traumatic spinal cord injury with motor score from 41-50
504	Non-traumatic spinal cord injury with motor score from 34-40
505	Non-traumatic spinal cord injury with motor score from 12-33
601	Neurological with motor score from 56-84
602	Neurological with motor score from 47-55
603	Neurological with motor score from 36-46
604	Neurological with motor score from 12-35
701	Fracture of lower extremity with motor score from 52-84
702	Fracture of lower extremity with motor score from 46-51

CMG Number	CMG Description
703	Fracture of lower extremity with motor score from 42-45
704	Fracture of lower extremity with motor score from 38-41
705	Fracture of lower extremity with motor score from 12-37
801	Replacement of lower extremity joint with motor score from 58-84
802	Replacement of lower extremity joint with motor score from 55-57
803	Replacement of lower extremity joint with motor score from 47-54
804	Replacement of lower extremity joint with motor score from 12-46 and cognitive score from 32-35
805	Replacement of lower extremity joint with motor score from 40-46 and cognitive score from 5-31
806	Replacement of lower extremity joint with motor score from 12-39 and cognitive score from 5-31
901	Other orthopedic with motor score from 54-84
902	Other orthopedic with motor score from 47-53
903	Other orthopedic with motor score from 38-46
904	Other orthopedic with motor score from 12-37
1001	Amputation, lower extremity with motor score from 61-84
1002	Amputation, lower extremity with motor score from 52-60
1003	Amputation, lower extremity with motor score from 46-51
1004	Amputation, lower extremity with motor score from 39-45
1005	Amputation, lower extremity with motor score from 12-38
1101	Amputation, non-lower extremity with motor score from 52-84

CMG Number	CMG Description
1102	Amputation, non-lower extremity with motor score from 38-51
1103	Amputation, non-lower extremity with motor score from 12-37
1201	Osteoarthritis with motor score from 55-84 and cognitive score from 34-35
1202	Osteoarthritis with motor score from 55-84 and cognitive score from 5-33
1203	Osteoarthritis with motor score from 48-54
1204	Osteoarthritis with motor score from 39-47
1205	Osteoarthritis with motor score from 12-38
1301	Rheumatoid, other arthritis with motor score from 54-84
1302	Rheumatoid, other arthritis with motor score from 47-53
1303	Rheumatoid, other arthritis with motor score from 36-46
1304	Rheumatoid, other arthritis with motor score from 12-35
1401	Cardiac with motor score from 56-84
1402	Cardiac with motor score from 48-55
1403	Cardiac with motor score from 38-47
1404	Cardiac with motor score from 12-37
1501	Pulmonary with motor score from 61-84
1502	Pulmonary with motor score from 48-60
1503	Pulmonary with motor score from 36-47
1504	Pulmonary with motor score from 12-35
1601	Pain syndrome with motor score from 45-84
1602	Pain syndrome with motor score from 12-44
1701	Major multiple trauma without brain or spinal cord injury with motor score from 46-84
1702	Major multiple trauma without brain or spinal cord injury with motor score from 33-45
1703	Major multiple trauma without brain or spinal cord injury with motor score from 12-32
1801	Major multiple trauma with brain or spinal cord injury with motor score from 45-84 and cognitive score from 33-35

CMG Number	CMG Description
1802	Major multiple trauma with brain or spinal cord injury with motor score from 45-84 and cognitive score from 5-32
1803	Major multiple trauma with brain or spinal cord injury with motor score from 26-44
1804	Major multiple trauma with brain or spinal cord injury with motor score from 12-25
1901	Guillian Barre with motor score from 47-84
1902	Guillian Barre with motor score from 31-46
1903	Guillian Barre with motor score from 12-30
2001	Miscellaneous with motor score from 54-84
2002	Miscellaneous with motor score from 45-53
2003	Miscellaneous with motor score from 33-44
2004	Miscellaneous with motor score from 12-32 and patient is 82 years old or older
2005	Miscellaneous with motor score from 12-32 and patient is 81 years old or younger
2101	Burns with motor score from 46-84
2102	Burns with motor score from 12-45
5001	Short-stay cases, length of stay is 3 days or fewer
5101	Expired, orthopedic, length of stay is 13 days or fewer
5102	Expired, orthopedic, length of stay is 14 days or more
5103	Expired, not orthopedic, length of stay is 15 days or fewer
5104	Expired, not orthopedic, length of stay is 16 days or more

Table 3—Rehabilitation Impairment Categories (RICs) and Associated Impairment Group Codes From the August 7, 2001 Final Rule

Rehabilitation Impairment Category (RIC)	Associated Impairment Group Codes
01 Stroke (Stroke)	01.1 Left body involvement (right brain) 01.2 Right body involvement (left brain) 01.3 Bilateral Involvement 01.4 No Paresis 01.9 Other Stroke
02 Traumatic brain injury (TBI)	02.21 Open Injury 02.22 Closed Injury
03 Nontraumatic brain injury (NTBI)	02.1 Non-traumatic 02.9 Other Brain
04 Traumatic spinal cord injury (TSCI)	04.210 Paraplegia, Unspecified 04.211 Paraplegia, Incomplete 04.212 Paraplegia, Complete 04.220 Quadriplegia, Unspecified 04.2211 Quadriplegia, Incomplete C1-4 04.2212 Quadriplegia, Incomplete C5-8 04.2221 Quadriplegia, Complete C1-4 04.2222 Quadriplegia, Complete C5-8 04.230 Other traumatic spinal cord dysfunction
05 Nontraumatic spinal cord injury (NTSCI)	04.110 Paraplegia, unspecified 04.111 Paraplegia, incomplete 04.112 Paraplegia, complete 04.120 Quadriplegia, unspecified 04.1211 Quadriplegia, Incomplete C1-4 04.1212 Quadriplegia, Incomplete C5-8 04.1221 Quadriplegia, Complete C1-4 04.1222 Quadriplegia, Complete C5-8 04.130 Other non-traumatic spinal cord dysfunction

Rehabilitation Impairment Category (RIC)	Associated Impairment Group Codes
06 Neurological (Neuro)	03.1 Multiple Sclerosis 03.2 Parkinsonism 03.3 Polyneuropathy 03.5 Cerebral Palsy 03.8 Neuromuscular Disorders 03.9 Other Neurologic
07 Fracture of LE (FracLE)	08.11 Status post unilateral hip fracture 08.12 Status post bilateral hip fractures 08.2 Status post femur (shaft) fracture 08.3 Status post pelvic fracture
08 Replacement of LE joint (Repl LE)	08.51 Status post unilateral hip replacement 08.52 Status post bilateral hip replacements 08.61 Status post unilateral knee replacement 08.62 Status post bilateral knee replacements 08.71 Status post knee and hip replacements (same side) 08.72 Status post knee and hip replacements (different sides)
09 Other orthopedic (Ortho)	08.9 Other orthopedic
10 Amputation, lower extremity (AMPLE)	05.3 Unilateral lower extremity above the knee (AK) 05.4 Unilateral lower extremity below the knee (BK) 05.5 Bilateral lower extremity above the knee (AK/AK) 05.6 Bilateral lower extremity above/below the knee (AK/BK) 05.7 Bilateral lower extremity below the knee (BK/BK)
11 Amputation, other (AMP-NLE)	05.1 Unilateral upper extremity above the elbow (AE) 05.2 Unilateral upper extremity below the elbow (BE) 05.9 Other amputation
12 Osteoarthritis (OsteoA)	06.2 Osteoarthritis

Rehabilitation Impairment Category (RIC)	Associated Impairment Group Codes
13 Rheumatoid, other arthritis (RheumA)	06.1 Rheumatoid Arthritis 06.9 Other arthritis
14 Cardiac (Cardiac)	09 Cardiac
15 Pulmonary (Pulmonary)	10.1 Chronic Obstructive Pulmonary Disease 10.9 Other pulmonary
16 Pain Syndrome (Pain)	07.1 Neck pain 07.2 Back pain 07.3 Extremity pain 07.9 Other pain
17 Major multiple trauma, no brain injury or spinal cord injury (MMT-NBSCI)	08.4 Status post major multiple fractures 14.9 Other multiple trauma
18 Major multiple trauma, with brain or spinal cord injury (MMT-BSCI)	14.1 Brain and spinal cord injury 14.2 Brain and multiple fractures/amputation 14.3 Spinal cord and multiple fractures/amputation
19 Guillian Barre (GB)	03.4
20 Miscellaneous (Misc)	12.1 Spina Bifida 12.9 Other congenital 13 Other disabling impairments 15 Developmental disability 16 Debility 17.1 Infection 17.2 Neoplasms 17.31 Nutrition (endocrine/metabolic) with intubation/parenteral nutrition 17.32 Nutrition (endocrine/metabolic) without intubation/parenteral nutrition 17.4 Circulatory disorders 17.51 Respiratory disorders-Ventilator Dependent 17.52 Respiratory disorders-Non-ventilator Dependent 17.6 Terminal care 17.7 Skin disorders 17.8 Medical/Surgical complications 17.9 Other medically complex conditions
21 Burns (Burns)	11 Burns

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Given the availability of more recent, post-PPS data, we asked RAND to examine possible refinements to the CMGs to identify potential

improvements in the alignment between Medicare payments and actual IRF costs. In addition to analyzing fiscal year 2003 data, RAND also convened a TEP, made up of researchers from industry, provider organizations, government, and academia, to provide support and guidance through the process of developing possible refinements to the PPS. Members of the TEP reviewed drafts of RAND's reports, offered suggestions for additional analyses, and provided clinicians' views of the importance and significance of various findings.

RAND's analysis of the FY 2003 data, along with the support and guidance of the TEP, strongly suggest the need to update the CMGs to better align payments with costs under the IRF PPS. The other option we considered before deciding to propose to update the CMGs with the fiscal year 2003 data was to maintain the same CMG structure but recalculate the relative weights for the current CMGs using the 2003 data. After carefully reviewing the results of RAND's regression analysis, which compared the predictive ability of the CMGs under 3 scenarios (not updating the CMGs or the relative weights, updating only the relative weights and not the CMGs, and updating both the relative weights and the CMGs), we believe (based on RAND's analysis) that updating both the relative weights and the CMGs will allow the classification system to do a much better job of reflecting changes in treatment patterns, technology, case mix, and other factors which may affect the relative use of resources.

We believe it is appropriate to update the CMGs and the relative weights at this time because the 2003 data we now have represent a substantial improvement over the 1999 data. The more recent data include all Medicare-covered IRF cases rather than a subset, allowing us to base the proposed CMG changes on a complete picture of the types of patients in IRFs. In designing the IRF PPS, we used the best available data, but those data did not allow us to have a complete picture of the types of patients in IRFs. Also, the clinical coding of patient conditions in IRFs is vastly improved in the more recent data than it was in the best available data we had to design the IRF PPS. In addition, changes in treatment patterns, technology, case mix, and other factors affecting the relative use of resources in IRFs since the IRF PPS was implemented likely require an update to the classification system.

We are currently paying IRFs based on 95 CMGs and 5 special CMGs developed using the CART algorithm applied to 1999 data. The CART algorithm that was used in designing the IRF PPS assigned patients to RICs according to their age and their motor and cognitive FIM scores. CART produced the partitions so that the reported wage-adjusted rehabilitation cost of the patients was relatively constant within partitions. Then, a subjective decision-making process was used to decrease the number of CMGs (to ensure that the payment system did not become unduly complicated), to enforce certain constraints on the CMGs (to ensure that, for instance, IRFs were not paid more for patients who had fewer comorbidities than for patients with more comorbidities), and to fit the comorbidity tiers. Although the use of a subjective decision-making process (rather than a computer algorithm) was very useful, there were limitations. For example, it made it difficult to explore the implications of variations to the CART models because a computer program can examine many more variations of a model in a much shorter time than an individual person. Furthermore, the computer is more efficient at accounting for all of the possible combinations and interactions between important variables that affect patient costs.

In analyzing potential refinements to the IRF PPS, RAND created a new algorithm that would be very useful in constructing the proposed CMGs (the new algorithm would be based on the CART methodology described in detail earlier in this section of the proposed rule). RAND applied the new algorithm to the fiscal year 2003 IRF data. We are proposing to use RAND's new algorithm for refinements to the CMGs. The proposed algorithm would be based entirely on an iterative computerized process to decrease the number of CMGs, enforce constraints on the CMGs, and assign the comorbidity tiers. At each step in the process, the proposed new CART algorithm would produce all of the possible combinations of CMGs using all available variables. It would then select the variables and the CMG constructions that offer the best predictive ability, as measured by the greatest decrease in the mean-squared error. We propose that the following constraints be placed on the algorithm, based on RAND's analysis: (1) Neighboring CMGs would have to differ by at least $1,500, unless eliminating the CMG would change the estimated costs of patients in that CMG by more than $1,000; (2) estimated costs for patients with lower motor or cognitive index scores (more functionally dependent) would always have to be higher than estimated costs for patients with higher motor or cognitive index scores (less functionally dependent). We believe that the PPS should not pay more for a patient who is less functionally dependent than for one who is more functionally dependent; and (3) each CMG must contain at least 50 observations (for statistical validity).

RAND's technical expert panel, which included representatives from industry groups, other government entities, academia, and other researchers, reviewed and commented on these constraints and the rest of RAND's proposed methodology (developed based on RAND's analysis of the data) for updating the CMGs as RAND developed the improvements to the CART methodology.

The following would be the most substantial differences between the existing CMGs and the proposed new CMGs:

- Fewer CMGs than before (87 compared with 95 in the current system).
- The number of CMGs under the RIC for stroke patients (RIC 1) would decrease from 14 to 10.
- The cognitive index score would affect patient classification in two of the RICs (RICs 1 and 2), whereas it currently affects RICs 1, 2, 5, 8, 12, and 18.
- A patient's age would now affect assignment for CMGs in RICs 1, 4 and 8, whereas it currently affects assignment for CMGs in RICs 1 and 4.

In Table 2 above, we provided the CMGs that are currently being used to pay IRFs. Table 4 below shows the proposed new CMGs.

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Table 4—Proposed New Case Mix Groups (CMGs), With the Associated Rehabilitation Impairment Categories (RICs)

RIC	CMG Number	CMG Description
01 Stroke (Stroke)	0101	Motor >51.05
	0102	Motor >44.45 & Motor <51.05 & Cognitive >18.5
	0103	Motor >44.45 & Motor <51.05 & Cognitive <18.5
	0104	Motor >38.85 & Motor <44.45
	0105	Motor >34.25 & Motor <38.85
	0106	Motor >30.05 & Motor <34.25
	0107	Motor >26.15 & Motor <30.05
	0108	Motor <26.15 & Age >84.5
	0109	Motor >22.35 & Motor <26.15 & Age <84.5
	0110	Motor <22.35 & Age <84.5
02 Traumatic brain injury (TBI)	0201	Motor >53.35 & Cognitive >23.5
	0202	Motor >44.25 & Motor <53.35 & Cognitive >23.5
	0203	Motor >44.25 & Cognitive <23.5
	0204	Motor >40.65 & Motor <44.25
	0205	Motor >28.75 & Motor <40.65
	0206	Motor >22.05 & Motor <28.75
	0207	Motor <22.05
03 Nontraumatic brain injury (NTBI)	0301	Motor >41.05
	0302	Motor >35.05 & Motor <41.05

RIC	CMG Number	CMG Description
03 Nontraumatic brain injury (NTBI)	0303	Motor >26.15 & Motor <35.05
	0304	Motor <26.15
04 Traumatic spinal cord injury (TSCI)	0401	Motor >48.45
	0402	Motor >30.35 & Motor <48.45
	0403	Motor >16.05 & Motor <30.35
	0404	Motor <16.05 & Age >63.5
	0405	Motor <16.05 & Age <63.5
05 Nontraumatic spinal cord injury (NTSCI)	0501	Motor >51.35
	0502	Motor >40.15 & Motor <51.35
	0503	Motor >31.25 & Motor <40.15
	0504	Motor >29.25 & Motor <31.25
	0505	Motor >23.75 & Motor <29.25
	0506	Motor <23.75
06 Neurological (Neuro)	0601	Motor >47.75
	0602	Motor >37.35 & Motor <47.75
	0603	Motor >25.85 & Motor <37.35
	0604	Motor <25.85
07 Fracture of LE (FracLE)	0701	Motor >42.15
	0702	Motor >34.15 & Motor <42.15
	0703	Motor >28.15 & Motor <34.15
	0704	Motor <28.15
08 Replacement of LE joint (RepLE)	0801	Motor >49.55
	0802	Motor >37.05 & Motor <49.55
	0803	Motor >28.65 & Motor <37.05 & Age >83.5
08 Replacement of LE joint (RepLE)	0804	Motor >28.65 & Motor <37.05 & Age <83.5

RIC	CMG Number	CMG Description
	0805	Motor >22.05 & Motor <28.65
	0806	Motor <22.05
09 Other orthopedic (Ortho)	0901	Motor >44.75
	0902	Motor >34.35 & Motor <44.75
	0903	Motor >24.15 & Motor <34.35
	0904	Motor <24.15
10 Amputation, lower extremity (AMPLE)	1001	Motor >47.65
	1002	Motor >36.25 & Motor <47.65
	1003	Motor <36.25
11 Amputation, other (AMP-NLE)	1101	Motor >36.35
	1102	Motor <36.35
12 Osteoarthritis (OsteoA)	1201	Motor >37.65
	1202	Motor >30.75 & Motor <37.65
	1203	Motor <30.75
13 Rheumatoid, other arthritis (RheumA)	1301	Motor >36.35
	1302	Motor >26.15 & Motor <36.35
	1303	Motor <26.15
14 Cardiac (Cardiac)	1401	Motor >48.85
	1402	Motor >38.55 & Motor <48.85
	1403	Motor >31.15 & Motor <38.55
	1404	Motor <31.15
15 Pulmonary (Pulmonary)	1501	Motor >49.25
	1502	Motor >39.05 & Motor <49.25
	1503	Motor >29.15 & Motor <39.05
	1504	Motor <29.15
16 Pain Syndrome (Pain)	1601	Motor >37.15
16 Pain Syndrome (Pain)	1602	Motor >26.75 & Motor <37.15
	1603	Motor <26.75

RIC	CMG Number	CMG Description
17 Major multiple trauma, no brain injury or spinal cord injury (MMT-NBSCI)	1701	Motor >39.25
	1702	Motor >31.05 & Motor <39.25
	1703	Motor >25.55 & Motor <31.05
	1704	Motor <25.55
18 Major multiple trauma, with brain or spinal cord injury (MMT-BSCI)	1801	Motor >40.85
	1802	Motor >23.05 & Motor <40.85
	1803	Motor <23.05
19 Guillian Barre (GB)	1901	Motor >35.95
	1902	Motor >18.05 & Motor <35.95
	1903	Motor <18.05
20 Miscellaneous (Misc)	2001	Motor >49.15
	2002	Motor >38.75 & Motor <49.15
	2003	Motor >27.85 & Motor <38.75
	2004	Motor <27.85
21 Burns (Burns)	2101	Motor >0

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Note: CMG definitions use proposed weighted motor scores, as defined below.

The primary objective in updating the CMGs is to better align IRF payments with the costs of caring for IRF patients, given better, more recent information. This requires that we improve the ability of the system to predict patient costs. RAND's analysis suggests that the proposed new CMGs clearly improve the ability of the payment system to predict patient costs. The proposed new CMGs would greatly improve the explanation of the variance in the system.

2. Proposed Use of a Weighted Motor Score Index and Correction to the Treatment of Unobserved Transfer to Toilet Values

As described in detail below, we are proposing to use a weighted motor score index in assigning patients to CMGs, instead of the current motor score index that treats all components equally. We are also proposing to change the motor score value for the transfer to toilet variable to 2 rather than 1 when it is unobserved. However, we are not proposing changes to the cognitive score index. As described in detail below, we believe that a weighted motor score index, with the correction to the treatment of unobserved transfer to toilet values would improve the classification of patients into CMGs, which in turn would improve the accuracy of payments to IRFs.

In order to classify a patient into a CMG, IRFs use the admission assessment data from the IRF–PAI to score a patient's functional independence measures. The functional independence measures consist of what are termed "motor" items and "cognitive" items. In addition to the functional independence measures, the patient's age may also influence the patient's CMG classification. The motor items are generally indications of the patient's physical functioning level. The cognitive items are generally indications of the patient's mental functioning level, and are related to the patient's ability to process and respond to empirical factual information, use judgment, and accurately perceive what is happening. The motor items are eating, grooming, bathing, dressing upper body, dressing lower body, toileting, bladder management, bowel management, transfer to bed/chair/wheelchair, transfer to toilet, walking or wheelchair use, and stair climbing. The cognitive items are comprehension, expression, social interaction, problem solving, and memory. (The CMS IRF–PAI manual includes more information on these items.) Each item is generally recorded on a patient assessment instrument and scored on a scale of 1 to 7, with a 7 indicating complete independence in this area of functioning, and a 1 indicating that a patient is very impaired in this area of functioning.

As explained in the August 7, 2001 final rule (66 FR at 41349), the

instructions for the IRF–PAI require that providers record an 8 for an item to indicate that the activity did not occur (or was not observed), as opposed to a 1 through 7 indicating that the activity occurred and the estimated level of function connected with that activity.

Please note that when the IRF–PAI form went through the approval process, the code 8 was removed and replaced with the code 0. Therefore, a 0 is now the code facilities use to record when an activity does not occur (or is not observed).

In order to determine the appropriate payment for patients for whom an activity is coded as 0 (that is, either not performed or not observed), we needed to decide an appropriate way of changing the 0 to another code for which payment could be assigned. As discussed in the August 7, 2001 final rule (66 FR at 41349), we decided to assign a code of 1 (indicating that the patient needed "maximal assistance") whenever a code of 0 appeared for one of the items on the IRF–PAI used to determine payment. This was the most conservative approach we could have taken based on the best available data at the time because a value of 1 indicates that the patient needed maximal assistance performing the task. Thus, providers would receive the highest payment available for that item (although it might not be the highest payment overall, depending on the patient's CMG, other functional abilities, and/or comorbidities).

We are proposing to change the way we treat a code of 0 on the IRF–PAI for the transfer to toilet item. This is the only item for which we are proposing this change at this time because RAND's regression analysis demonstrated that of all the motor score values, the evidence supporting a change in the motor score values was the strongest with respect to this item. We propose to assign a code of 2, instead of a code of 1, to patients for whom a 0 is recorded on the IRF–PAI for the transfer to toilet item (as discussed below) because RAND's analysis of calendar year 2002 and FY 2003 data indicates that patients for whom a 0 is recorded are more similar in terms of their characteristics and costliness to patients with a recorded score of 2 than to patients with a recorded score of 1. We are proposing to make this change in order to provide the most accurate payment for each patient.

Using regression analysis on the calendar year 2002 and FY 2003 data, which is more complete and provides more detailed information on patients' functional abilities than the FY 1999 data used to construct the IRF PPS (even though the 1999 data were the best available data at the time), RAND analyzed whether the assignment of 1 to items for which a 0 is recorded on the IRF–PAI continues to correctly assign payments based on patients' expected costliness. RAND examined all of the items in the motor score index, focusing on how often a code of 0 appears for the item, how similar patients with a code of 0 are to other patients with the same characteristics that have a score of 1 though 7, and how much a change in the item's score affects the prediction of a patient's expected costliness. Based on RAND's regression analysis, we believe it is appropriate to change the assignment of 0 on the transfer to toilet item from a 1 to a 2 for the purposes of determining IRF payments.

Until now, the IRF PPS has used standard motor and cognitive scores, the sum of either 12 or 13 motor items and the sum of 5 cognitive items, to assign patients to CMGs. This summing equally weights the components of the indices. These indices have been accepted and used for many years. Although the weighted motor score is an option that has been considered before, most experts believed that the data were not complete and accurate enough before the IRF PPS (although they were the most complete and accurate data available at the time). Now, it is believed that the data are complete and accurate enough to support proposing to use a weighted motor score index.

In developing candidate indices that would weight the items in the score, RAND had competing goals: to develop indices that would increase the predictive power of the system while at the same time maintaining simplicity and transparency in the payment system. For example, they found that an "optimal" weighting methodology from the standpoint of predictive power would require computing 378 different weights (18 different weights for the motor and cognitive indices that could all differ across 21 RICs). Rather than introduce this level of complexity to the system, RAND decided to explore simpler weighting methodologies that would still increase the predictive power of the system.

RAND used regression analysis to explore the relationship of the FIM motor and cognitive scores to cost. The idea of these models was to determine the impact of each of the FIM items on cost and then weight each item in the index according to its relative impact on cost. Based on the regression analysis, RAND was able to design a weighting methodology for the motor score that could potentially be applied uniformly across all RICs.

RAND assessed different weighting methodologies for both the motor score index and the cognitive score index. They discovered that weighting the motor score index improved the predictive ability of the system, whereas weighting the cognitive score index did not. Furthermore, the cognitive score index has never had much of an effect (in some RICs, it has no effect) on the assignment of patients to CMGs because the motor score tends to be much stronger at predicting a patient's expected costs in an IRF than the cognitive score.

For these reasons, we are proposing a weighting methodology for the motor score index at this time. We propose to continue using the same methodology we have been using since the IRF PPS was first implemented to compute the cognitive score index (that is, summing the components of the index) because, among other things, a change in methodology for calculating this component of the system failed to improve the accuracy of the IRF PPS payments. Therefore, it would be futile to expend resources on changing this method when it would not benefit the program.

Table 5 below shows the proposed optimal weights for the components of the motor score, averaged across all RICs and normalized to sum to 100.0, obtained through the regression analysis. The weights relate to the FIM items' relative ability to predict treatment costs. Table 5 indicates that dressing lower, toilet, bathing, and eating are the most effective self-care items for predicting costs; bowel and bladder control may not be effective at predicting costs; and that the items grouped in the transfer and locomotion categories might be somewhat more effective at predicting costs than the other categories.

TABLE 5.—PROPOSED OPTIMAL WEIGHTS, AVERAGED ACROSS REHABILITATION IMPAIRMENT CATEGORIES (RICs): MOTOR ITEMS

Item type	Functional independence item	Average optimal weight
Self	Dressing lower	1.4
Self	Toilet	1.2
Self	Bathing	0.9
Self	Eating	0.6
Self	Dressing upper	0.2
Self	Grooming	0.2
Sphincter	Bladder	0.5
Sphincter	Bowel	0.2
Transfer	Transfer to bed	2.2
Transfer	Transfer to toilet	1.4
Transfer	Transfer to tub	Not included

TABLE 5.—PROPOSED OPTIMAL WEIGHTS, AVERAGED ACROSS REHABILITATION IMPAIRMENT CATEGORIES (RICs): MOTOR ITEMS—Continued

Item type	Functional independence item	Average optimal weight
Locomotion ..	Walking	1.6
Locomotion ..	Stairs	1.6

Based on RAND's analysis, we considered a number of different candidate indices before proposing a weighted index. We considered proposing to define some simple combinations of the four item types that make up the motor score index and assigning weights to the groups of items instead of to the individual items. For example, we considered proposing to sum the three transfer items together to form a group with a weight of two, since they contributed about twice as much in the cost regression as the self-care items. We also considered proposing to assign the self-care items a weight of one and the bladder and bowel items as a group a weight close to zero, since they contributed little to predicting cost in the regression analysis. We tried a number of variations and combinations of this, but RAND's TEP generally rejected these weighting schemes. They believed that introducing elements of subjectivity into the development of the weighting scheme may invite controversy, and that it is better to use an objective algorithm to derive the appropriate weights. We agree that an objective weighting scheme is best because it is based on regression analysis of the amount that various components of the motor score index contribute to predicting patient costs, using the best available data we have. Therefore, we are proposing a weighting scheme that applies the average optimal weights. To develop the proposed weighting scheme, RAND used regression analysis to estimate the relative contribution of each item to the prediction of costs. Based on this analysis, we are proposing to use the weighting scheme indicated in Table 5 above and in the following simple equation:

Motor score index=1.4*dressing lower + 1.2*toilet + 0.9*bathing + 0.6*eating + 0.2*dressing upper + 0.2*grooming + 0.5*bladder + 0.2*bowel + 2.2*transfer to bed + 1.4*transfer to toilet + 1.6*walking + 1.6*stairs.

Another reason we are proposing to use a weighted motor score index to assign patients to CMGs is that RAND's regression analysis showed that it predicts costs better than the current unweighted motor score index. Across all 21 RICs, the proposed weighted motor score index improves the explanation of variance within each RIC by 9.5 percent, on average.

3. Proposed Changes for Updating the Relative Weights

Section 1886(j)(2)(B) of the Act requires that an appropriate relative weight be assigned to each CMG. Relative weights that account for the variance in cost per discharge and resource utilization among payment groups are a primary element of a case-mix adjusted prospective payment system. The accuracy of the relative weights helps to ensure that payments reflect as much as possible the relative costs of IRF patients and, therefore, that beneficiaries have access to care and receive the appropriate services.

Section 1886(j)(2)(C)(i) of the Act requires the Secretary from time to time to adjust the classifications and weighting factors to reflect changes in treatment patterns, technology, case mix, number of payment units for which payment to IRFs is made, and other factors which may affect the relative use of resources. In accordance with this section of the Act, we are proposing to recalculate a relative weight for each CMG that is proportional to the resources needed by an average inpatient rehabilitation case in that CMG. For example, cases in a CMG with a relative weight of 2, on average, would cost twice as much as cases in a CMG with a relative weight of 1. We are not proposing any changes to the methodology we are using for calculating the relative weights, as described in the August 7, 2001 final rule (66 FR 41316, 41351 through 41353); we are only proposing to update the relative weights themselves.

As previously stated, we believe that improved coding of data, the availability of more complete data, proposed changes to the tier comorbidities and CMGs, and changes in IRF cost structures make it very unlikely that the relative weights assigned to the CMGs when the IRF PPS was first implemented still accurately represent the differences in costs across CMGs and across tiers. Therefore, we are proposing to recalculate the relative weights. However, we are not proposing any changes to the methodology for calculating the relative weights. Instead, we are proposing to update the relative weights (the relative weights that are multiplied by the standard payment conversion factor to assign relative payments for each CMG and tier) using the same methodology as described in the August 7, 2001 final rule (66 FR 41316, 41351 through 41353) and as described in detail at the beginning of this section of this proposed rule, applied to FY 2003 Medicare billing data. To summarize, we are proposing to use the following basic steps to update the relative weights: The first step in calculating the CMG weights is to estimate the effects that comorbidities have on costs. The second step is to adjust the cost of each Medicare discharge (case) to reflect the effects found in the first step. In the third step, the adjusted costs from the second step are used to calculate "relative adjusted weights" in each CMG using the hospital-specific relative value method. The final steps are to calculate the CMG relative weights by modifying the "relative adjusted weight" with the effects of the existence of the comorbidity tiers (explained below) and normalize the weights to 1. Table 6 below shows the proposed relative weights, based on the 2003 data.

Table 6 – Proposed Relative Weights for Case-Mix Groups (CMGs)

CMG	CMG Description (M=motor, C=cognitive, A=age)	Proposed Relative Weights				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
0101	Stroke M>51.05	0.7691	0.7299	0.6484	0.6350	8	11	9	8
0102	Stroke M>44.45 and M<51.05 and C>18.5	0.9471	0.8989	0.7985	0.7820	11	14	11	10
0103	Stroke M>44.45 and M<51.05 and C<18.5	1.1162	1.0594	0.9411	0.9217	13	20	11	12
0104	Stroke M>38.85 and M<44.45	1.1859	1.1255	0.9999	0.9792	12	13	13	13
0105	Stroke M>34.25 and M<38.85	1.4233	1.3509	1.2001	1.1753	15	16	15	15
0106	Stroke M>30.05 and M<34.25	1.6567	1.5724	1.3969	1.3680	16	20	17	17
0107	Stroke M>26.15 and M<30.05	1.9121	1.8148	1.6122	1.5790	18	22	19	19
0108	Stroke M<26.15 and A>84.5	2.2106	2.0981	1.8639	1.8254	22	23	19	19
0109	Stroke M>22.35 and M<26.15 and A<84.5	2.1976	2.0858	1.8529	1.8147	20	23	21	21
0110	Stroke M<22.35 and A<84.5	2.6262	2.4926	2.2143	2.1686	23	28	22	23
0201	Traumatic brain injury M>53.35 and C>23.5	0.8140	0.6826	0.6021	0.5648	10	9	9	8
0202	Traumatic brain injury M>44.25 and M<53.35 and C>23.5	1.0437	0.8753	0.7720	0.7241	17	10	11	9
0203	Traumatic brain injury M>44.25 and C<23.5	1.2487	1.0472	0.9236	0.8664	13	14	11	12
0204	Traumatic brain injury M>40.65 and M<44.25	1.3356	1.1201	0.9879	0.9267	14	14	12	12
0205	Traumatic brain injury M>28.75 and M<40.65	1.6381	1.3738	1.2116	1.1365	16	17	15	14

CMG	CMG Description (M=motor, C=cognitive, A=age)	Proposed Relative Weights				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
0206	Traumatic brain injury M>22.05 and M<28.75	2.1379	1.7930	1.5814	1.4833	19	19	18	17
0207	Traumatic brain injury M<22.05	2.7657	2.3194	2.0457	1.9188	28	23	21	20
0301	Non-traumatic brain injury M>41.05	1.1293	0.9536	0.8440	0.7764	12	11	10	10
0302	Non-traumatic brain injury M>35.05 and M<41.05	1.4729	1.2438	1.1008	1.0126	14	15	13	13
0303	Non-traumatic brain injury M>26.15 and M<35.05	1.7575	1.4841	1.3136	1.2083	18	17	15	15
0304	Non-traumatic brain injury M<26.15	2.4221	2.0453	1.8103	1.6651	24	21	19	18
0401	Traumatic spinal cord injury M>48.45	0.9891	0.8517	0.7656	0.6837	7	12	10	10
0402	Traumatic spinal cord injury M>30.35 and M<48.45	1.3640	1.1746	1.0558	0.9428	17	16	14	12
0403	Traumatic spinal cord injury M>16.05 and M<30.35	2.3743	2.0446	1.8379	1.6412	21	22	20	20
0404	Traumatic spinal cord injury M<16.05 and A>63.5	4.2567	3.6656	3.2950	2.9424	37	36	28	28
0405	Traumatic spinal cord injury M<16.05 and A<63.5	3.2477	2.7967	2.5139	2.2449	25	34	27	24
0501	Non-traumatic spinal cord injury M>51.35	0.7705	0.6449	0.5641	0.5059	14	7	8	7
0502	Non-traumatic spinal cord injury M>40.15 and M<51.35	1.0316	0.8634	0.7553	0.6774	13	12	10	9

CMG	CMG Description (M=motor, C=cognitive, A=age)	Proposed Relative Weights				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
0503	Non-traumatic spinal cord injury M>31.25 and M<40.15	1.3676	1.1446	1.0013	0.8979	14	15	13	12
0504	Non-traumatic spinal cord injury M>29.25 and M<31.25	1.7120	1.4328	1.2534	1.1240	20	18	15	14
0505	Non-traumatic spinal cord injury M>23.75 and M<29.25	2.0289	1.6981	1.4855	1.3321	20	20	17	16
0506	Non-traumatic spinal cord injury M<23.75	2.7607	2.3106	2.0212	1.8126	21	24	21	20
0601	Neurological M>47.75	0.8965	0.7331	0.6966	0.6493	10	10	9	9
0602	Neurological M>37.35 and M<47.75	1.1925	0.9752	0.9267	0.8636	13	13	12	12
0603	Neurological M>25.85 and M<37.35	1.5266	1.2484	1.1863	1.1056	15	16	14	14
0604	Neurological M<25.85	1.9539	1.5979	1.5183	1.4151	17	18	18	17
0701	Fracture of lower extremity M>42.15	0.9055	0.7736	0.7265	0.6585	11	11	9	9
0702	Fracture of lower extremity M>34.15 and M<42.15	1.1757	1.0044	0.9432	0.8549	13	13	12	11
0703	Fracture of lower extremity M>28.15 and M<34.15	1.4636	1.2504	1.1742	1.0643	15	16	15	14
0704	Fracture of lower extremity M<28.15	1.7962	1.5345	1.4410	1.3062	16	18	17	16
0801	Replacement of lower extremity joint M>49.55	0.6561	0.5511	0.5109	0.4596	7	7	7	6
0802	Replacement of lower extremity joint M>37.05 and M<49.55	0.8570	0.7198	0.6673	0.6004	9	10	9	8

CMG	CMG Description (M=motor, C=cognitive, A=age)	Proposed Relative Weights				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
0803	Replacement of lower extremity joint M>28.65 and M<37.05 and A>83.5	1.2707	1.0672	0.9894	0.8901	17	15	12	11
0804	Replacement of lower extremity joint M>28.65 and M<37.05 and A<83.5	1.1069	0.9296	0.8618	0.7754	13	12	11	10
0805	Replacement of lower extremity joint M>22.05 and M<28.65	1.3937	1.1705	1.0852	0.9763	16	15	13	12
0806	Replacement of lower extremity joint M<22.05	1.6726	1.4047	1.3023	1.1716	15	17	15	14
0901	Other orthopedic M>44.75	0.8412	0.7658	0.6805	0.6090	10	11	10	8
0902	Other orthopedic M>34.35 and M<44.75	1.1054	1.0063	0.8942	0.8002	13	13	12	11
0903	Other orthopedic M>24.15 and M<34.35	1.4583	1.3276	1.1797	1.0557	16	17	15	14
0904	Other orthopedic M<24.15	1.8281	1.6643	1.4788	1.3234	19	20	17	17
1001	Amputation, lower extremity M>47.65	0.9638	0.8888	0.7931	0.7312	11	10	10	10
1002	Amputation, lower extremity M>36.25 and M<47.65	1.2709	1.1719	1.0457	0.9641	14	14	13	12
1003	Amputation, lower extremity M<36.25	1.7876	1.6483	1.4709	1.3561	16	19	17	16
1101	Amputation, non-lower extremity M>36.35	1.2544	1.0496	0.9189	0.8462	13	14	11	11

CMG	CMG Description (M=motor, C=cognitive, A=age)	Proposed Relative Weights				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
1102	Amputation, non-lower extremity M<36.35	1.8780	1.5713	1.3756	1.2668	16	16	16	15
1201	Osteoarthritis M>37.65	1.0184	0.8794	0.8106	0.7317	11	12	11	10
1202	Osteoarthritis M>30.75 and M<37.65	1.3181	1.1383	1.0492	0.9470	13	15	13	13
1203	Osteoarthritis M<30.75	1.6238	1.4022	1.2925	1.1666	17	16	16	15
1301	Rheumatoid, other arthritis M>36.35	1.0338	0.9617	0.8325	0.7358	11	12	11	10
1302	Rheumatoid, other arthritis M>26.15 and M<36.35	1.4324	1.3325	1.1534	1.0195	15	17	14	13
1303	Rheumatoid, other arthritis M<26.15	1.8308	1.7032	1.4743	1.3032	18	19	17	16
1401	Cardiac M>48.85	0.8172	0.7352	0.6396	0.5806	9	9	9	8
1402	Cardiac M>38.55 and M<48.85	1.1034	0.9926	0.8636	0.7839	11	13	11	10
1403	Cardiac M>31.15 and M<38.55	1.3735	1.2356	1.0750	0.9759	14	15	13	12
1404	Cardiac M<31.15	1.7419	1.5671	1.3633	1.2376	17	18	15	14
1501	Pulmonary M>49.25	0.9222	0.8995	0.7687	0.7397	8	12	10	10
1502	Pulmonary M>39.05 and M<49.25	1.1659	1.1371	0.9718	0.9352	11	14	12	12
1503	Pulmonary M>29.15 and M<39.05	1.4269	1.3917	1.1894	1.1445	11	15	14	14
1504	Pulmonary M<29.15	1.8812	1.8348	1.5681	1.5089	18	18	16	14
1601	Pain syndrome M>37.15	1.0065	0.8544	0.7731	0.6904	12	10	10	9
1602	Pain syndrome M>26.75 and M<37.15	1.3810	1.1724	1.0607	0.9473	12	16	13	12
1603	Pain syndrome M<26.75	1.6988	1.4421	1.3048	1.1653	18	17	15	14

CMG	CMG Description (M=motor, C=cognitive, A=age)	Proposed Relative Weights				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
1701	Major multiple trauma without brain or spinal cord injury M>39.25	1.0102	0.9634	0.8323	0.7321	12	11	11	10
1702	Major multiple trauma without brain or spinal cord injury M>31.05 and M<39.25	1.3305	1.2688	1.0962	0.9643	14	16	14	13
1703	Major multiple trauma without brain or spinal cord injury M>25.55 and M<31.05	1.5832	1.5098	1.3043	1.1474	16	19	16	15
1704	Major multiple trauma without brain or spinal cord injury M<25.55	1.9808	1.8889	1.6319	1.4355	23	22	19	17
1801	Major multiple trauma with brain or spinal cord injury M>40.85	1.2118	0.9832	0.8245	0.7282	20	16	12	9
1802	Major multiple trauma with brain or spinal cord injury M>23.05 and M<40.85	1.9385	1.5728	1.3190	1.1649	20	21	17	15
1803	Major multiple trauma with brain or spinal cord injury M<23.05	3.4784	2.8222	2.3668	2.0903	30	25	25	22
1901	Guillian Barre M>35.95	1.2362	1.0981	1.0677	0.9349	12	14	13	12
1902	Guillian Barre M>18.05 and M<35.95	2.3162	2.0574	2.0004	1.7515	28	24	22	22
1903	Guillian Barre M<18.05	3.3439	2.9703	2.8881	2.5287	27	29	25	27
2001	Miscellaneous M>49.15	0.8743	0.7387	0.6623	0.6047	9	10	9	8

CMG	CMG Description (M=motor, C=cognitive, A=age)	Proposed Relative Weights				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
2002	Miscellaneous M>38.75 and M<49.15	1.1448	0.9672	0.8671	0.7917	12	12	11	10
2003	Miscellaneous M>27.85 and M<38.75	1.4789	1.2495	1.1202	1.0227	15	15	14	13
2004	Miscellaneous M<27.85	1.9756	1.6692	1.4964	1.3663	19	18	17	15
2101	Burns M>0	2.1858	2.1858	1.5910	1.4762	26	20	17	16
5001	Short-stay cases, length of stay is 3 days or fewer				0.2201				2
5101	Expired, orthopedic, length of stay is 13 days or fewer				0.6351				8
5102	Expired, orthopedic, length of stay is 14 days or more				1.6002				22
5103	Expired, not orthopedic, length of stay is 15 days or fewer				0.7204				8
5104	Expired, not orthopedic, length of stay is 16 days or more				1.8771				24

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We are proposing to make the tier and the CMG changes in such a way that total estimated aggregate payments to IRFs for FY 2006 are the same with and without the proposed changes (that is, in a budget neutral manner) for the following reasons. First, we believe that the results of RAND's analysis of 2002 and 2003 IRF cost data suggest that additional money does not need to be added to the IRF PPS. RAND's analysis found, for example, that if all IRFs had been paid based on 100 percent of the IRF PPS payment rates throughout all of 2002 (some IRFs were still transitioning to PPS payments during 2002), PPS payments during 2002 would have been 17 percent higher than IRFs' costs. Furthermore, RAND did not find evidence that the overall costliness of patients (average case mix) in IRFs increased substantially in 2002 compared with 1999. As discussed in detail in section III.A of this proposed rule, RAND found that real case mix increased by at most 1.5 percent, and may have decreased by as much as 2.4 percent. The available evidence, therefore, suggests that resources in the IRF PPS are likely adequate to care for the types of patients IRFs treat. We are open to examining other evidence regarding the amount of aggregate payments in the system and the types of patients IRFs are currently treating.

The purpose of the CMG and tier changes is to ensure that the existing resources already in the IRF PPS are distributed better among IRFs according to the relative costliness of the types of patient they treat. Section 1886(j)(2)(C)(i) of the Act confers broad statutory authority upon the Secretary to adjust the classification and weighting factors in order to account for relative resource use. Consistent with that broad statutory authority, we are proposing to redistribute aggregate payments to more accurately reflect the IRF case mix.

To ensure that total estimated aggregate payments to IRFs do not change, we propose to apply a factor to the standard payment amount to ensure that estimated aggregate payments under this subsection in the FY are not greater or less than those that would

have been made in the year without such adjustment. In section III.B.7 and section III.B.8 of this proposed rule, we discuss the methodology and factor we are proposing to apply to the standard payment amount.

III. Proposed FY 2006 Federal Prospective Payment Rates

(If you choose to comment on issues in this section, please include the caption "Proposed FY 2006 Federal Prospective Payment Rates" at the beginning of your comments.)

A. Proposed Reduction of the Standard Payment Amount to Account for Coding Changes

Section 1886(j)(2)(C)(ii) of the Act requires the Secretary to adjust the per payment unit payment rate for IRF services to eliminate the effect of coding or classification changes that do not reflect real changes in case mix if the Secretary determines that changes in coding or classification of patients have resulted or will result in changes in aggregate payments under the classification system. As described below, in accordance with this section of the Act and based on research conducted by RAND under contract with us, we are proposing to reduce the standard payment amount for patients treated in IRFs by 1.9 percent. However, as discussed below, RAND found a range of possible estimates that likely accounts for the amount of case mix change that was due to coding. In light of the range of estimates that may be appropriate, we are continuing to work with RAND to further analyze the data and are considering adoption of an alternative percentage reduction. Accordingly, we solicit comments on whether the proposed 1.9 percent is the percentage reduction that ought to be made, or if another percentage reduction (for example, the 3.4 percent observed case mix change or the 5.8 percent that RAND found in its study, detailed below, to be the maximum amount of change due to coding) should be applied.

We are proposing to reduce the standard payment amount by 1.9 percent because RAND's regression analysis of calendar year 2002 data found that payments to IRFs were about $140 million more than expected during 2002 because of changes in the classification of patients in IRFs, and that a portion of this increase in payments was due to coding changes that do not reflect real changes in case mix. If IRF patients have more costly impairments, lower functional status, or more comorbidities, and thus require more resources in the IRF in 2002 than in 1999, we would consider this a real change in case mix. Conversely, if IRF patients have the same impairments, functional status, and comorbidities in 2002 as they did in 1999 but are coded differently resulting in higher payment, we consider this a case mix increase due to coding. We believe that changes in payment amounts should accurately reflect changes in IRFs' patient case mix (that is, the true cost of treating patients), and should not be influenced by changes in coding practices.

Under the IRF PPS, payments for each Medicare rehabilitation patient are determined using a multi-step process. First, a patient is assigned to a particular CMG and a tier based on four patient characteristics at admission: impairment, functional independence, comorbidities, and age. The amount of the payment for each patient is then calculated by taking the standard payment conversion factor ($12,958 in FY 2005) and adjusting it by multiplying by a relative weight, which depends on each patient's CMG and tier assignment.

For example, an 80-year old hip replacement patient with a motor score between 47 and 54 and no comorbidities would be assigned to a particular CMG and tier based on these characteristics. The CMG and tier to which he is assigned would have an associated relative weight, in this case 0.5511 in FY 2005 (69 FR at 45725). This relative weight would be multiplied by the standard payment conversion factor of $12,958 to equal the payment of $7,141 in FY 2005 (0.5511 × $12,958 = $7,141). Based on the following discussion, we are proposing lowering the standard payment amount by 1.9 percent to account for coding changes that have increased payments to IRFs. However, we solicit comments regarding other possible percentage reductions within the range RAND identified, as discussed below.

As described in the August 7, 2001 final rule, we contracted with RAND to analyze IRF data to support our efforts in developing the classification system and the IRF PPS. We have continued our contract with RAND to support us in developing potential refinements to the classification system and the PPS for this proposed rule. As part of this research, we asked RAND to examine changes in case mix and coding since the IRF PPS. To examine these changes, RAND compared 2002 data from the first year of implementation of the PPS with the 1999 (pre-PPS) data used to construct the IRF PPS.

RAND's analysis of the 2002 data, as described in more detail below, demonstrates that changes in the types of patients going to IRFs and changes in coding both caused increases in payments to IRFs between 1999 and 2002. The 2002 data are more complete than the 1999 data that were first used to design the IRF PPS because they include all Medicare-covered IRF cases. Although the 1999 data we used in designing the original standard payment rate for the IRF PPS were the best available data we had at the time, they were based on a sample (64 percent) of IRF cases.

In addition, such review was necessary because, as explained below, we believe that the implementation of the IRF PPS caused important changes in coding. The IRF PPS likely improved the accuracy and consistency of coding across IRFs, because of the educational programs that were implemented in 2001 and 2002 and because items that previously did not affect payments (such as comorbidities) became important factors for determining the PPS payments. Since these items now affect payments, there is greater incentive to code for them. There were also changes to the IRF–PAI instructions given for coding some of the items on the patient assessment instrument, so that the same patient may have been correctly coded differently in 2002 than in 1999.

Furthermore, implementation of the IRF PPS may have caused changes in case mix because it increased incentives for IRFs to take patients with greater impairment, lower function, or comorbidities. Under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248), IRFs were paid on the basis of Medicare reasonable costs limited by a facility-specific target amount per discharge. IRFs were paid on a per discharge basis without per discharge adjustments being made for the impairments, functional status, or comorbidities of patients. Thus, IRFs had a strong incentive to admit less costly patients to ensure that the costs of treating patients did not exceed their TEFRA payments. Under the IRF PPS, however, IRFs' PPS payments are tied directly to the principle diagnosis and accompanying comorbidities of the patient. Thus, based on the characteristics of the patients (that is, impairments, functional status, and comorbidities), the more costly the patient is expected to be, the higher the PPS payment. Therefore, IRFs may have greater incentives than they had under TEFRA to admit more costly patients.

Thus, in light of these concerns, RAND performed an analysis using IRF Medicare claims data matched with FIM and IRF–PAI data and comparing 2002 data (post-PPS) with 1999 data (pre-

PPS), RAND found that the observed case mix—the expected costliness of patients—in IRFs increased by 3.4 percent between the two time periods. Thus, we paid 3.4 percent, or about $140 million, more than expected during 2002 because of changes in the classification of cases in IRFs. However, RAND found little evidence that the patients admitted to IRFs in 2002 had higher resource needs (that is, more impairments, lower functioning, or more comorbidities) than the patients admitted in 1999. In fact, most of the changes in case mix that RAND documented from the acute care hospital records implied that IRF patients should have been less costly to treat in 2002 than in 1999. For example, RAND found a 16 percent decrease in the proportion of patients treated in IRFs following acute hospitalizations for stroke, when it compared the results of the 2002 data with the 1999 data. Stroke patients tend to be relatively more costly than other types of patients for IRFs because they tend to require more intensive services than other types of patients. A decrease in the proportion of stroke patients relative to other types of patients, therefore, would likely contribute to a decrease in the overall expected costliness of IRF patients. RAND also found a 22 percent increase in the proportion of cases treated in IRFs following a lower extremity joint replacement. Lower extremity joint replacement patients tend to be relatively less costly for IRFs than other types of patients because their care needs tend to be less intensive than other types of patients. For this reason, the increase in the proportion of these patients treated in IRFs would suggest a decrease in the overall expected costliness of IRF patients.

We asked RAND to quantify the amount of the case mix change that was due to real case mix change (that is, the extent to which IRF patients had more impairments, lower functioning, or more comorbidities) and the amount that was due to coding. However, while the data permit RAND to observe the total change in expected costliness of patients over time with some precision, estimating the amount of this total change that is real and the amount that is due to coding generally cannot be done with the same level of precision. Therefore, in order to quantify the amounts that were due to real case mix change and the amounts that were due to coding, RAND used two approaches to give a range of estimates within which the correct estimates would logically fall—(1) one that potentially underestimates the amount of real case mix change and overestimates the amount of case mix change due to coding; and (2) one that potentially overestimates real change and underestimates change due to coding. These two approaches give us a range of estimates, which we are confident should logically border the actual amount of real case mix and coding change. The first approach uses the following assumptions:

- Changes over time in characteristics recorded during the acute hospitalizations preceding the inpatient rehabilitation facility stay were real case mix changes (as acute care hospitals had little incentive to change their coding of patients in response to the IRF PPS); and
- Changes over time in IRF coding that did not correspond with changes in the characteristics recorded during the acute hospitalizations were attributable to changes in IRF coding practices.

To illustrate this point, suppose, for example, that the IRF records showed that there were a greater number of patients with a pulmonary condition in IRFs in 2002 than in 1999. Patients with a pulmonary condition tend to be relatively more costly for IRFs to treat than other types of patients, so an increase in the number of these patients would indicate an increase in the costliness of IRF patients (that is, an increase in IRFs' case mix). However, in 2002 IRFs had a much greater incentive to record if patients had a pulmonary condition than they did in 1999 because they got paid more for this condition in 2002, whereas they did not in 1999. Therefore, it is reasonable to expect that some of the increase in the number of patients with a pulmonary condition was due to the fact that IRFs were recording that condition for patients more frequently, not that there were really more patients of that type (although there may also have been some more patients of that type). To determine the extent to which IRFs may have just been coding that condition more often versus the extent to which there actually may have been more patients with a pulmonary condition going to IRFs than before, RAND looked at the one source of information that we believe was least likely to be influenced by the incentive to code patients with this condition more frequently in the IRF: the acute care hospital record from the stay preceding the IRF stay. We believe that the acute care hospitals are not likely to be influenced by IRF PPS policies that only affect IRF payments (that is, changes in IRF payment policies would not likely result in monetary benefits to the acute care hospitals). Thus, if RAND found a substantial increase in the number of IRF patients with a pulmonary condition in the acute care hospital before going to the IRF, it would be reasonable to assume that more patients with a pulmonary condition were going to IRFs (a real increase in case mix). However, if there was little change in the number of IRF patients with a pulmonary condition in the acute care hospital before going to the IRF, then we believe it is reasonable to assume that a portion of the increase in patients with a pulmonary condition in IRFs was due to the incentives to code more of these patients in the IRFs.

We believe that this first approach shows that both factors, real case mix change and coding change, contributed to the amount of observed change in 2002, the first IRF PPS rate year. However, these estimates (based on the best available data) do not fully address all of the variables that may have contributed to the change in case mix. For example, the model does not account for the possibility that patients could develop impairments, functional problems, or comorbidities after they leave the acute care hospital (prior to the IRF admission) that would make them more costly when they are in the IRF. We note that the introduction of a new payment system may have interrelated effects on providers as they adapt to new (or perceived) program incentives. Thus, an analysis of first year experience may not be fully representative of providers' behavior under a fully implemented system. In addition, hospital coding practices may change at a different rate in facilities where the IRF is a unit of an acute care hospital compared with freestanding IRF hospitals. Although we attempted to identify all of the factors that cause the variation in costs among the IRFs' patient population, this may not have been possible given that the data are from the transitional year of the new PPS. Finally, we want to ensure that the rate reduction will not have an adverse effect on beneficiaries' access to IRF care.

For the reasons described above, we believe we should provide some flexibility to account for the possibility that some of the observed changes may be attributable to other than coding changes. Thus, in determining the amount of the proposed reduction in the standard payment amount, we examined RAND's second approach that recognizes the difficulty of precise measurement of real case mix and coding changes. Using this second approach, RAND developed an analytical procedure that allowed them to distinguish more fully between real case mix change and coding change

based on patient characteristics. In part, this second approach involves analyzing some specific examples of coding that we know have changed over time, such as direct indications of improvements in impairment coding, changes in coding instruction for bladder and bowel functioning, and dramatic increases in coding of certain conditions that affect patients' placement into tiers (resulting in higher payments).

Using the two approaches, RAND found that real case mix changes in IRFs over this period ranged from a decrease of 2.4 percent (using the first approach) to an increase of 1.5 percent (using the second approach). This suggests that coding changes accounted for between 1.9 percent (if real case mix increased by 1.5 percent (that is, 3.4 percent minus 1.5 percent)) and 5.8 percent (if real case mix decreased by 2.4 percent (that is, 3.4 percent plus 2.4 percent)) of the increase in aggregate payments for 2002 compared with 1999. Thus, RAND recommended decreasing the standard per discharge payment amount by between 1.9 and 5.8 percent to adjust for the coding changes. We are proposing to reduce the standard payment amount by the lower of these two numbers, 1.9 percent, because we believe it is a reasonable estimate for the amount of coding change, based on RAND's analysis of direct indications of coding change.

We considered proposing a reduction to the standard payment amount by an amount up to 5.8 percent because RAND's first approach suggested that coding changes could possibly have been responsible for up to 5.8 percent of the observed increase in IRFs' case mix. Furthermore, a separate analysis by RAND found that if all IRFs had been paid based on 100 percent of the IRF PPS payment rates throughout all of 2002 (some IRFs were still transitioning to PPS payments during 2002), PPS payments during 2002 would have been 17 percent higher than IRFs' costs. This suggests that we could potentially have proposed a reduction greater than 1.9 and up to 5.8 percent.

We decided to propose a reduction of 1.9 percent, the lowest possible amount of change attributable to coding change. However, we are continuing to work with RAND to further analyze the data and are soliciting comments on the following factors which may have an effect on the amount of the reduction. First, whether changes that occurred within the transitional IRF PPS rate year could have impacted coding and patient selection and affected these analyses. Second, since we feel it is crucial to maintain access to IRF care, we are soliciting comments on the effect of the proposed range of reductions on access to IRF care, particularly for patients with greater resource needs. The analyses described here are only the first of an ongoing series of studies to evaluate the existence and extent of payment increases due to coding changes. We will continue to review the need for any further reduction in the standard payment amount in subsequent years as part of our overall monitoring and evaluation of the IRF PPS.

Therefore, for FY 2006, we are proposing to reduce the standard payment amount by the lowest amount (1.9 percent) attributable to coding changes. We believe this approach, which is supported by RAND's analysis of the data, would adequately adjust for the increased payments to IRFs caused by purely coding changes, but would still provide the flexibility to account for the possibility that some of the observed changes in case mix may be attributed to other than coding changes. Furthermore, we chose the amount of the proposed reduction in the standard payment amount in order to recognize that IRFs' current cost structures may be changing as they strive to comply with other recent Medicare policy changes, such as the criteria for IRF classification commonly known as the "75 percent rule." We are continuing to work with RAND to analyze the data and are soliciting comments on whether the proposed 1.9 percent is the percentage reduction that ought to be made, or if another percentage reduction (for example, the 3.4 percent observed case mix change or the 5.8 percent that RAND found to be maximum amount of change due to coding) should be applied.

To accomplish the proposed reduction of the standard payment conversion factor by 1.9 percent, we first propose to update the FY 2005 standard payment conversion factor by the estimated market basket of 3.1 percent to get the standard payment amount for FY 2006 ($12,958*1.031 = $13,360). Next, we propose to multiply the FY 2006 standard payment amount by 0.981, which reduces the standard payment amount by 1.9 percent ($13,360*0.981 = $13,106). In section III.B.7 of this proposed rule, we propose to further adjust the $13,106 by the proposed budget neutrality factors for the wage index and the other proposed refinements outlined in this proposed rule that would result in the proposed FY 2006 standard payment conversion factor. In section III.B.7 of this proposed rule, we provide a step-by-step calculation that results in the FY 2006 standard payment conversion factor.

B. Proposed Adjustments to Determine the Proposed FY 2006 Standard Payment Conversion Factor

1. Proposed Market Basket Used for IRF Market Basket Index

Under the broad authority of section 1886(j)(3)(C) of the Act, the Secretary establishes an increase factor that reflects changes over time in the prices of an appropriate mix of goods and services included in covered IRF services, which is referred to as a market basket index. The market basket needs to include both operating and capital. Thus, although the Secretary is required to develop an increase factor under section 1886(j)(3)(C) of the Act, this provision gives the Secretary discretion in the design of such factor.

The index currently used to update payments for rehabilitation facilities is the Excluded hospital including capital market basket. This market basket is based on 1997 Medicare cost report data and includes Medicare-participating rehabilitation (IRF), LTCH, psychiatric (IPF), cancer, and children's hospitals.

We are unable to create a separate market basket specifically for rehabilitation hospitals due to the small number of facilities and the limited data that are provided (for instance, only about 25 percent of rehabilitation facility cost reports reported contract labor cost data for 2002). Since all IRFs are paid under the IRF PPS, nearly all LTCHs are paid under the LTCH PPS, and IPFs for cost reporting periods beginning on or after January 1, 2005 will be paid under the IPF PPS, we propose to update payments for rehabilitation facilities using a market basket reflecting the operating and capital cost structures for IRFs, IPFs, and LTCHs, hereafter referred to as the RPL (rehabilitation, psychiatric, long-term care) market basket. We propose to exclude children's and cancer hospitals from the RPL market basket because their payments are based entirely on reasonable costs subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which is implemented in § 413.40 of the regulations. They are not reimbursed under a prospective payment system. Also, the FY 2002 cost structures for children's and cancer hospitals are noticeably different than the cost structures of the IRFs, IPFs, and LTCHs. The services offered in IRFs, IPFs, and LTCHs are typically more labor-intensive than those offered in cancer and children's hospitals. Therefore, the compensation cost weights for IRFs, IPFs, and LTCHs are larger than those in cancer and children's hospitals. In addition, the depreciation cost weights

for IRFs, IPFs, and LTCHs are noticeably smaller than those for children's and cancer hospitals.

In the following discussion, we provide a background on market baskets and describe the methodologies used to determine the operating and capital portions of the proposed FY 2002-based RPL market basket.

a. Overview of the Proposed RPL Market Basket

The proposed RPL market basket is a fixed weight, Laspeyres-type price index that is constructed in three steps. First, a base period is selected (in this case, FY 2002), and total base period expenditures are estimated for a set of mutually exclusive and exhaustive spending categories based upon type of expenditure. Then the proportion of total operating costs that each category represents is determined. These proportions are called cost or expenditure weights. Second, each expenditure category is matched to an appropriate price or wage variable, referred to as a price proxy. In nearly every instance, these price proxies are price levels derived from publicly available statistical series that are published on a consistent schedule, preferably at least on a quarterly basis.

Finally, the expenditure weight for each cost category is multiplied by the level of its respective price proxy for a given period. The sum of these products (that is, the expenditure weights multiplied by their price levels) for all cost categories yields the composite index level of the market basket in a given period. Repeating this step for other periods produces a series of market basket levels over time. Dividing an index level for a given period by an index level for an earlier period produces a rate of growth in the input price index over that time period.

A market basket is described as a fixed-weight index because it answers the question of how much it would cost, at another time, to purchase the same mix of goods and services purchased to provide hospital services in a base period. The effects on total expenditures resulting from changes in the quantity or mix of goods and services (intensity) purchased subsequent to the base period are not measured. In this manner, the market basket measures only the pure price change. Only when the index is rebased would the quantity and intensity effects be captured in the cost weights. Therefore, we rebase the market basket periodically so the cost weights reflect changes in the mix of goods and services that hospitals purchase (hospital inputs) to furnish patient care between base periods.

The terms rebasing and revising, while often used interchangeably, actually denote different activities. Rebasing means moving the base year for the structure of costs of an input price index (for example, shifting the base year cost structure from FY 1997 to FY 2002). Revising means changing data sources, methodology, or price proxies used in the input price index. We are proposing to rebase and revise the market basket used to update the IRF PPS.

b. Proposed Methodology for Operating Portion of the Proposed RPL Market Basket

The operating portion of the proposed FY 2002-based RPL market basket consists of several major cost categories derived from the FY 2002 Medicare cost reports for IRFs, IPFs, and LTCHs: Wages, drugs, professional liability insurance and a residual. We choose FY 2002 as the base year because we believe this is the most recent, relatively complete year of Medicare cost report data. Due to insufficient Medicare cost report data for IRFs, IPFs, and LTCHs, cost weights for benefits, contract labor, and blood and blood products were developed using the proposed FY 2002-based IPPS market basket (Section IV. Proposed Rebasing and Revision of the Hospital Market Baskets IPPS Hospital Proposed Rule for FY 2006), which we explain in more detail later in this section. For example, less than 30 percent of IRFs, IPFs, and LTCHs reported benefit cost data in FY 2002. We have noticed an increase in cost data for these expense categories over the last 4 years. The next time we rebase the RPL market basket, there may be sufficient IRFs, IPFs, and LTCHs cost report data to develop the weights for these expenditure categories.

Since the cost weights for the RPL market basket are based on facility costs, we are proposing to limit our sample to hospitals with a Medicare average length of stay within a comparable range of the total facility average length of stay. We believe this provides a more accurate reflection of the structure of costs for Medicare treatments. Our goal is to measure cost shares that are reflective of case mix and practice patterns associated with providing services to Medicare beneficiaries.

We propose to use those cost reports for IRFs and LTCHs whose Medicare average length of stay is within 15 percent (that is, 15 percent higher or lower) of the total facility average length of stay for the hospital. This is the same edit applied to the FY 1992 and FY 1997 excluded hospital with capital market baskets. We propose 15 percent because it includes those LTCHs and IRFs whose Medicare LOS is within approximately 5 days of the facility length of stay.

We propose to use a less stringent measure of Medicare length of stay for IPFs whose average length of stay is within 30 or 50 percent (depending on the total facility average length of stay) of the total facility length of stay. This less stringent edit allows us to increase our sample size by over 150 reports and produce a cost weight more consistent with the overall facility. The edit we applied to IPFs when developing the FY–1997 based excluded hospital with capital market basket was based on the best available data at the time.

The detailed cost categories under the residual (that is, the remaining portion of the market basket after excluding wages and salaries, drugs, and professional liability cost weights) are derived from the proposed FY 2002-based IPPS market basket and the 1997 Benchmark Input-Output Tables published by the Bureau of Economic Analysis, U.S. Department of Commerce. The proposed FY 2002-based IPPS market basket is developed using FY 2002 Medicare hospital cost reports with the most recent and detailed cost data. The 1997 Benchmark I–O is the most recent, comprehensive source of cost data for all hospitals. Proposed cost weights for benefits, contract labor, and blood and blood products were derived using the proposed FY 2002-based IPPS market basket. For example, the ratio of the benefit cost weight to the wages and salaries cost weight in the proposed FY 2002-based IPPS market basket was applied to the RPL wages and salaries cost weight to derive a benefit cost weight for the RPL market basket. The remaining proposed operating cost categories were derived using the 1997 Benchmark Input-Output Tables aged to 2002 using relative price changes. (The methodology we used to age the data involves applying the annual price changes from the price proxies to the appropriate cost categories. We repeat this practice for each year.) Therefore, using this methodology roughly 59 percent of the proposed RPL market basket is accounted for by wages, drugs and professional liability insurance data from FY 2002 Medicare cost report data for IRFs, LTCHs, and IPFs.

Table 7 below sets forth the complete proposed FY 2002-based RPL market basket including cost categories, weights, and price proxies. For comparison purposes, the corresponding FY 1997-based excluded hospital with capital market basket is listed as well.

Wages and salaries are 52.895 percent of total costs for the proposed FY 2002-based RPL market basket compared to 47.335 percent for FY 1997-based excluded hospital with capital market basket. Employee benefits are 12.982 percent for the proposed FY 2002-based RPL market basket compared to 10.244 percent for FY 1997-based excluded hospital with capital market basket. As a result, compensation costs (wages and salaries plus employee benefits) for the proposed FY 2002-based RPL market basket are 65.877 percent of costs compared to 57.579 percent for the FY 1997-based excluded hospital with capital market basket. Of the 8 percentage point difference between the compensation shares, approximately 3 percentage points are due to the proposed new base year (FY 2002 instead of FY 1997), 3 percentage points are due to the revised length of stay edit and the remaining 2 percentage points are due to the proposed exclusion of other hospitals (that is, only including IRFs, IPFs, and LTCHs in the market basket).

Following the table is a summary outlining the choice of the proxies used for the operating portion of the proposed market basket. The price proxies for the proposed capital portion are described in more detail in the capital methodology section. (See section III.B.1.c of this proposed rule.)

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Table 7 - Proposed FY 2002-based RPL Market Basket Cost Categories, Weights and Proxies With FY 1997-based Excluded Hospital With Capital Market Basket Used for Comparison

Expense Categories	FY 1997-based Excluded Hospital with Capital Market Basket	Proposed FY 2002-based RPL Market Basket	Proposed FY 2002 RPL Market Basket Price Proxies
TOTAL	100.000	100.000	
Compensation	57.579	65.877	
Wages and Salaries*	47.335	52.895	ECI-Wages and Salaries, Civilian Hospital Workers
Employee Benefits*	10.244	12.982	ECI-Benefits, Civilian Hospital Workers
Professional fees Non-Medical*	4.423	2.892	ECI - Compensation for Professional, Specialty & Technical Workers
Utilities	1.180	0.656	
Electricity	0.726	0.351	PPI – Commercial Electric Power
Fuel Oil, Coal, etc.	0.248	0.108	PPI Refined Petroleum Products
Water and Sewage	0.206	0.197	CPI-U - Water & Sewage Maintenance
Professional Liability Insurance	0.733	1.161	CMS - Professional Liability Premium Index
All Other Products and Services	27.117	19.265	
All Other Prod. Products	17.914	13.323	
Pharmaceuticals	6.318	5.103	PPI Prescription Drugs
Food: Direct Purchase	1.122	0.873	PPI Processed Foods & Feeds
Food: Contract Service	1.043	0.620	CPI-U Food Away From Home

Expense Categories	FY 1997-based Excluded Hospital with Capital Market Basket	Proposed FY 2002-based RPL Market Basket	Proposed FY 2002 RPL Market Basket Price Proxies
Chemicals	2.133	1.100	PPI Industrial Chemicals
Blood and Blood Products**	0.748	–	
Medical Instruments	1.795	1.014	PPI Medical Instruments & Equipment
Photographic Supplies	0.167	0.096	PPI Photographic Supplies
Rubber and Plastics	1.366	1.052	PPI Rubber & Plastic Products
Paper Products	1.110	1.000	PPI Converted Paper & Paperboard Products
Apparel	0.478	0.207	PPI Apparel
Machinery and Equipment	0.852	0.297	PPI Machinery & Equipment
Miscellaneous Products	0.783	1.963	PPI Finished Goods less Food and Energy
All Other Services	9.203	5.942	-
Telephone	0.348	0.240	CPI-U – Telephone Services
Postage	0.702	0.682	CPI-U – Postage
All Other: Labor Intensive*	4.453	2.219	ECI - Compensation for Private Service Occupations

Expense Categories	FY 1997-based Excluded Hospital with Capital Market Basket	Proposed FY 2002-based RPL Market Basket	Proposed FY 2002 RPL Market Basket Price Proxies
All Other: Non-Labor Intensive	3.700	2.800	CPI-U All Items
Capital-Related Costs	8.968	10.149	-
Depreciation	5.586	6.186	-
Fixed Assets	3.503	4.250	Boeckh Institutional Construction: 23 year useful life
Movable Equipment	2.083	1.937	WPI – Machinery & Equipment: 11 year useful life
Interest Costs	2.682	2.775	-
Non-profit	2.280	2.081	Average yield on domestic municipal bonds (Bond Buyer 20 bonds)–vintage weighted (23 years)
For-profit	0.402	0.694	Average yield on Moody's Aaa bonds–vintage weighted (23 years)
Other Capital-Related Costs	0.699	1.187	CPI-U – Residential Rent

* Labor-related
** Blood and blood related products is included in miscellaneous products.
NOTE: Due to rounding, weights may not sum to total.

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Below we provide the proxies that we are proposing to use for the FY 2002-based RPL market basket. With the exception of the Professional Liability proxy, all the proposed price proxies for the operating portion of the proposed RPL market basket are based on Bureau of Labor Statistics (BLS) data and are grouped into one of the following BLS categories:

• Producer Price Indexes—Producer Price Indexes (PPIs) measure price changes for goods sold in other than retail markets. PPIs are preferable price proxies for goods that hospitals purchase as inputs in producing their outputs because the PPIs would better reflect the prices faced by hospitals. For example, we use a special PPI for prescription drugs, rather than the Consumer Price Index (CPI) for prescription drugs because hospitals generally purchase drugs directly from the wholesaler. The PPIs that we use measure price change at the final stage of production.

• Consumer Price Indexes—Consumer Price Indexes (CPIs) measure change in the prices of final goods and services bought by the typical consumer. Because they may not represent the price faced by a producer,

we used CPIs only if an appropriate PPI was not available, or if the expenditures were more similar to those of retail consumers in general rather than purchases at the wholesale level. For example, the CPI for food purchased away from home is used as a proxy for contracted food services.

• Employment Cost Indexes—Employment Cost Indexes (ECIs) measure the rate of change in employee wage rates and employer costs for employee benefits per hour worked. These indexes are fixed-weight indexes and strictly measure the change in wage rates and employee benefits per hour. Appropriately, they are not affected by shifts in employment mix.

We evaluated the price proxies using the criteria of reliability, timeliness, availability, and relevance. Reliability indicates that the index is based on valid statistical methods and has low sampling variability. Timeliness implies that the proxy is published regularly, at least once a quarter. Availability means that the proxy is publicly available. Finally, relevance means that the proxy is applicable and representative of the cost category weight to which it is applied. The CPIs, PPIs, and ECIs selected by us to be proposed in this regulation meet these criteria.

We note that the proposed proxies are the same as those used for the FY 1997-based excluded hospital with capital market basket. Because these proxies meet our criteria of reliability, timeliness, availability, and relevance, we believe they continue to be the best measure of price changes for the cost categories. For further discussion on the FY 1997-based excluded hospital with capital market basket, see the IPPS final rule (67 FR at 50042), published in the **Federal Register** on August 1, 2002.

Wages and Salaries

For measuring the price growth of wages in the proposed FY 2002-based RPL market basket, we propose to use the ECI for wages and salaries for civilian hospital workers as the proxy for wages.

Employee Benefits

The proposed FY 2002-based RPL market basket would use the ECI for employee benefits for civilian hospital workers.

Nonmedical Professional Fees

The ECI for compensation for professional and technical workers in private industry would be applied to this category since it includes occupations such as management and consulting, legal, accounting and engineering services.

Fuel, Oil, and Gasoline

The percentage change in the price of gas fuels as measured by the PPI (Commodity Code #0552) would be applied to this component.

Electricity

The percentage change in the price of commercial electric power as measured by the PPI (Commodity Code #0542) would be applied to this component.

Water and Sewage

The percentage change in the price of water and sewage maintenance as measured by the Consumer Price Index (CPI) for all urban consumers (CPI Code # CUUR0000SEHG01) would be applied to this component.

Professional Liability Insurance

The proposed FY 2002-based RPL market basket would use the percentage change in the hospital professional liability insurance (PLI) premiums as estimated by the CMS Hospital professional liability index for the proxy of this category. In the FY 1997-based excluded hospital with capital market basket, the same price proxy was used.

We continue to research options for improving our proxy for professional liability insurance. This research includes exploring various options for expanding our current survey, including the identification of another entity that would be willing to work with us to collect more complete and comprehensive data. We are also exploring other options such as third party or industry data that might assist us in creating a more precise measure of PLI premiums. At this time we have not identified a preferred option, therefore, no change is proposed for the proxy in this proposed rule.

Pharmaceuticals

The percentage change in the price of prescription drugs as measured by the PPI (PPI Code # PPI32541DRX) would be used as a proxy for this category. This is a special index produced by BLS and is the same proxy used in the 1997-based excluded hospital with capital market basket.

Food, Direct Purchases

The percentage change in the price of processed foods and feeds as measured by the PPI (Commodity Code #02) would be applied to this component.

Food, Contract Services

The percentage change in the price of food purchased away from home as measured by the CPI for all urban consumers (CPI Code # CUUR0000SEFV) would be applied to this component.

Chemicals

The percentage change in the price of industrial chemical products as measured by the PPI (Commodity Code #061) would be applied to this component. While the chemicals hospital's purchase include industrial as well as other types of chemicals, the industrial chemicals component constitutes the largest proportion by far. Thus, we believe that commodity Code #061 is the appropriate proxy.

Medical Instruments

The percentage change in the price of medical and surgical instruments as measured by the PPI (Commodity Code #1562) would be applied to this component

Photographic Supplies

The percentage change in the price of photographic supplies as measured by the PPI (Commodity Code #1542) would be applied to this component.

Rubber and Plastics

The percentage change in the price of rubber and plastic products as measured by the PPI (Commodity Code #07) would be applied to this component.

Paper Products

The percentage change in the price of converted paper and paperboard products as measured by the PPI (Commodity Code #0915) would be used.

Apparel

The percentage change in the price of apparel as measured by the PPI (Commodity Code #381) would be applied to this component.

Machinery and Equipment

The percentage change in the price of machinery and equipment as measured by the PPI (Commodity Code #11) would be applied to this component.

Miscellaneous Products

The percentage change in the price of all finished goods less food and energy as measured by the PPI (Commodity Code #SOP3500) would be applied to this component. Using this index would remove the double-counting of food and energy prices, which are captured elsewhere in the market basket. The weight for this cost category is higher than in the 1997-based index because the weight for blood and blood products (1.322) is added to it. In the 1997-based excluded hospital with capital market basket we included a separate cost

category for blood and blood products, using the BLS Producer Price Index for blood and derivatives as a price proxy. A review of recent trends in the PPI for blood and derivatives suggests that its movements may not be consistent with the trends in blood costs faced by hospitals. While this proxy did not match exactly with the product hospitals are buying, its trend over time appears to be reflective of the historical price changes of blood purchased by hospitals. However, an apparent divergence in trends in the PPI for blood and derivatives and trends in blood costs faced by hospitals over recent years led us to reevaluate whether the PPI for blood and derivatives was an appropriate measure of the changing price of blood. We ran test market baskets classifying blood in 3 separate cost categories: blood and blood products, contained within chemicals as was done for the 1992-based excluded hospital with capital market basket, and within miscellaneous products. These categories use as proxies the following PPIs: the PPI for blood and blood products, the PPI for chemicals, and the PPI for finished goods less food and energy, respectively. Of these three proxies, the PPI for finished goods less food and energy moved most like the recent blood cost and price trends. In addition, the impact on the overall market basket by using different proxies for blood was negligible, mostly due to the relatively small weight for blood in the market basket.

Therefore, we are proposing to use the PPI for finished goods less food and energy for the blood proxy because we believe it would best be able to proxy only price changes rather than nonprice factors such as changes in quantities or required tests associated with blood purchased by hospitals. We will continue to evaluate this proxy for its appropriateness and will explore the development of alternative price indexes to proxy the price changes associated with this cost.

Telephone

The percentage change in the price of telephone services as measured by the CPI for all urban consumers (CPI Code # CUUR0000SEED) would be applied to this component.

Postage

The percentage change in the price of postage as measured by the CPI for all urban consumers (CPI Code # CUUR0000SEEC01) would be applied to this component.

Proposed Changes for All Other Services, Labor Intensive

The percentage change in the ECI for compensation paid to service workers employed in private industry would be applied to this component.

All Other Services, Nonlabor Intensive

The percentage change in the all-items component of the CPI for all urban consumers (CPI Code # CUUR0000SA0) would be applied to this component.

c. Proposed Methodology for Capital Portion of the RPL Market Basket

Unlike for the operating costs of the proposed FY 2002-based RPL market basket, we did not have IRFs, IPFs, and LTCHs FY 2002 Medicare cost report data for the capital cost weights, due to a change in the FY 2002 cost reporting requirements. Rather, we used these hospitals' expenditure data for the capital cost categories of depreciation, interest, and other capital expenses for the most recent year available (FY 2001), and aged the data to a FY 2002 base year using relevant price proxies.

We calculated weights for the RPL market basket capital costs using the same set of Medicare cost reports used to develop the operating share for IRFs, IPFs, and LTCHs. The resulting proposed capital weight for the FY 2002 base year is 10.149 percent. This is based on FY 2001 Medicare cost report data for IRFs, IPFs, and LTCHs, aged to FY 2002 using relevant price proxies.

Lease expenses are not a separate cost category in the market basket, but are distributed among the cost categories of depreciation, interest, and other, reflecting the assumption that the underlying cost structure of leases is similar to capital costs in general. We assumed 10 percent of lease expenses are overhead and assigned them to the other capital expenses cost category as overhead. We base this assignment of 10 percent of lease expenses to overhead on the common assumption that overhead is 10 percent of costs. The remaining lease expenses were distributed to the three cost categories based on the weights of depreciation, interest, and other capital expenses not including lease expenses.

Depreciation contains two subcategories: building and fixed equipment and movable equipment. The split between building and fixed equipment and movable equipment was determined using the FY 2001 Medicare cost reports for IRFs, IPFs, and LTCHs. This methodology was also used to compute the 1997-based index (67 FR at 50044).

Total interest expense cost category is split between the government/nonprofit and for-profit hospitals. The 1997-based excluded hospital with capital market basket allocated 85 percent of the total interest cost weight to the government/nonprofit interest, proxied by average yield on domestic municipal bonds, and 15 percent to for-profit interest, proxied by average yield on Moody's Aaa bonds.

We propose to derive the split using the relative FY 2001 Medicare cost report data for IPPS hospitals on interest expenses for the government/nonprofit and for-profit hospitals. Due to insufficient Medicare cost report data for IRFs, IPFs and LTCHs, we propose to use the same split used in the IPPS capital input price index, which is 75–25. We believe it is important that this split reflects the latest relative cost structure of interest expenses for hospitals. Therefore, we propose to use a 75–25 split to allocate interest expenses to government/nonprofit and for-profit. See the Proposed IPPS Rule for FY 2006, Section IV.D, Capital Input Price Index Section.

Since capital is acquired and paid for over time, capital expenses in any given year are determined by both past and present purchases of physical and financial capital. The vintage-weighted capital index is intended to capture the long-term consumption of capital, using vintage weights for depreciation (physical capital) and interest (financial capital). These vintage weights reflect the purchase patterns of building and fixed equipment and movable equipment over time. Depreciation and interest expenses are determined by the amount of past and current capital purchases. Therefore, we are proposing to use the vintage weights to compute vintage-weighted price changes associated with depreciation and interest expense.

Vintage weights are an integral part of the proposed FY 2002-based RPL market basket. Capital costs are inherently complicated and are determined by complex capital purchasing decisions, over time, based on such factors as interest rates and debt financing. In addition, capital is depreciated over time instead of being consumed in the same period it is purchased. The capital portion of the proposed FY 2002-based RPL market basket would reflect the annual price changes associated with capital costs, and would be a useful simplification of the actual capital investment process. By accounting for the vintage nature of capital, we are able to provide an accurate, stable annual measure of price changes. Annual non-vintage price changes for capital are unstable due to the volatility of interest rate changes and, therefore, do not reflect the actual annual price changes

for Medicare capital-related costs. The capital component of the proposed FY 2002-based RPL market basket would reflect the underlying stability of the capital acquisition process and provide hospitals with the ability to plan for changes in capital payments.

To calculate the vintage weights for depreciation and interest expenses, we needed a time series of capital purchases for building and fixed equipment and movable equipment. We found no single source that provides the best time series of capital purchases by hospitals for all of the above components of capital purchases. The early Medicare Cost Reports did not have sufficient capital data to meet this need because these data were not required. While the AHA Panel Survey provided a consistent database back to 1963, it did not provide annual capital purchases. The AHA Panel Survey provided a time series of depreciation expenses through 1997 which could be used to infer capital purchases over time. From 1998 to 2001, total hospital depreciation expenses were calculated by multiplying the AHA Annual Survey total hospital expenses by the ratio of depreciation to total hospital expenses from the Medicare cost reports. Beginning in 2001, the AHA Annual survey began collecting depreciation expenses. We hope to be able to use this data in future rebasings.

In order to estimate capital purchases from AHA data on depreciation and interest expenses, the expected life for each cost category (building and fixed equipment, movable equipment, and debt instruments) is needed. Due to insufficient Medicare cost report data for IRFs, IPFs and LTCHs, we propose to use FY 2001 Medicare cost reports for IPPS hospitals to determine the expected life of building and fixed equipment and movable equipment. The expected life of any piece of equipment can be determined by dividing the value of the asset (excluding fully depreciated assets) by its current year depreciation amount. This calculation yields the estimated useful life of an asset if depreciation were to continue at current year levels, assuming straight-line depreciation. From the FY 2001 Medicare cost reports for IPPS hospitals the expected life of building and fixed equipment was determined to be 23 years, and the expected life of movable equipment was determined to be 11 years.

Although we are proposing to use this methodology for deriving the useful life of an asset, we plan to review it between the publication of the proposed and final rules. We plan to review alternate data sources, if available, and analyze in more detail the hospital's capital cost structure reported in the Medicare cost reports.

We also propose to use the fixed and movable weights derived from FY 2001 Medicare cost reports for IRFs, IPFs and LTCHs to separate the depreciation expenses into annual amounts of building and fixed equipment depreciation and movable equipment depreciation. By multiplying the annual depreciation amounts by the expected life calculations from the FY 2001 Medicare cost reports, year-end asset costs for building and fixed equipment and movable equipment could be determined. We then calculated a time series back to 1963 of annual capital purchases by subtracting the previous year asset costs from the current year asset costs. From this capital purchase time series we were able to calculate the vintage weights for building and fixed equipment, movable equipment, and debt instruments. Each of these sets of vintage weights are explained in detail below.

For proposed building and fixed equipment vintage weights, the real annual capital purchase amounts for building and fixed equipment derived from the AHA Panel Survey were used. The real annual purchase amount was used to capture the actual amount of the physical acquisition, net of the effect of price inflation. This real annual purchase amount for building and fixed equipment was produced by deflating the nominal annual purchase amount by the building and fixed equipment price proxy, the Boeckh Institutional Construction Index. This is the same proxy used for the FY 1997-based excluded hospital with capital market basket. We believe this proxy continues to meet our criteria of reliability, timeliness, availability, and relevance. Since building and fixed equipment has an expected life of 23 years, the vintage weights for building and fixed equipment are deemed to represent the average purchase pattern of building and fixed equipment over 23-year periods. With real building and fixed equipment purchase estimates available back to 1963, sixteen 23-year periods could be averaged to determine the average vintage weights for building and fixed equipment that are representative of average building and fixed equipment purchase patterns over time. Vintage weights for each 23-year period are calculated by dividing the real building and fixed capital purchase amount in any given year by the total amount of purchases in the 23-year period. This calculation is done for each year in the 23-year period, and for each of the sixteen 23-year periods. The average of each year across the sixteen 23-year periods is used to determine the 2002 average building and fixed equipment vintage weights.

For proposed movable equipment vintage weights, the real annual capital purchase amounts for movable equipment derived from the AHA Panel Survey were used to capture the actual amount of the physical acquisition, net of price inflation. This real annual purchase amount for movable equipment was calculated by deflating the nominal annual purchase amount by the movable equipment price proxy, the Producer Price Index for Machinery and Equipment. This is the same proxy used for the FY 1997-based excluded hospital with capital market basket. We believe this proxy, which meets our criteria, is the best measure of price changes for this cost category. Since movable equipment has an expected life of 11 years, the vintage weights for movable equipment are deemed to represent the average purchase pattern of movable equipment over 11-year periods. With real movable equipment purchase estimates available back to 1963, twenty-eight 11-year periods could be averaged to determine the average vintage weights for movable equipment that are representative of average movable equipment purchase patterns over time. Vintage weights for each 11-year period would be calculated by dividing the real movable capital purchase amount for any given year by the total amount of purchases in the 11-year period. This calculation is done for each year in the 11-year period, and for each of the twenty-eight 11-year periods. The average of each year across the twenty-eight 11-year periods would be used to determine the FY 2002 average movable equipment vintage weights.

For proposed interest vintage weights, the nominal annual capital purchase amounts for total equipment (building and fixed, and movable) derived from the AHA Panel and Annual Surveys were used. Nominal annual purchase amounts were used to capture the value of the debt instrument. Since hospital debt instruments have an expected life of 23 years, the vintage weights for interest are deemed to represent the average purchase pattern of total equipment over 23-year periods. With nominal total equipment purchase estimates available back to 1963, sixteen 23-year periods could be averaged to determine the average vintage weights for interest that are representative of average capital purchase patterns over time. Vintage weights for each 23-year period would be calculated by dividing the nominal total capital purchase

amount for any given year by the total amount of purchases in the 23-year period. This calculation would be done for each year in the 23-year period and for each of the sixteen 23-year periods. The average of the sixteen 23-year periods would be used to determine the FY 2002 average interest vintage weights. The vintage weights for the index are presented in Table 8 below.

In addition to the proposed price proxies for depreciation and interest costs described above in the vintage weighted capital section, we propose to use the CPI–U for Residential Rent as a price proxy for other capital-related costs. The price proxies for each of the capital cost categories are the same as those used for the IPPS final rule (67 FR at 50044) capital input price index.

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TABLE 8.—Proposed CMS FY 2002-based RPL Market Basket

Capital Vintage Weights

Year	Fixed Assets (23 year weights)	Movable Assets (11 year weights)	Interest: Capital-related (23 year weights)
1	0.021	0.065	0.010
2	0.022	0.071	0.012
3	0.025	0.077	0.014
4	0.027	0.082	0.016
5	0.029	0.086	0.019
6	0.031	0.091	0.023
7	0.033	0.095	0.026
8	0.035	0.100	0.029
9	0.038	0.106	0.033
10	0.040	0.112	0.036
11	0.042	0.117	0.039
12	0.045		0.043
13	0.047		0.048
14	0.049		0.053
15	0.051		0.056
16	0.053		0.059
17	0.056		0.062
18	0.057		0.064
19	0.058		0.066
20	0.060		0.070
21	0.060		0.071
22	0.061		0.074
23	0.061		0.076
Total	**1.0000**	**1.0000**	**1.0000**

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The proposed FY 2006 update for IRF PPS using the proposed FY 2002-based RPL market basket and Global Insight's 4th quarter 2004 forecast is be 3.1 percent. This includes increases in both the operating section and the capital section. Global Insight, Inc. is a nationally recognized economic and financial forecasting firm that contracts with CMS to forecast the components of the market baskets. Using the current FY 1997-based excluded hospital with capital market basket (66 FR at 41427), Global Insight's fourth quarter 2004

forecast for FY 2006 is also 3.1 percent. Table 4 below compares the proposed FY 2002-based RPL market basket and the FY 1997-based excluded hospital with capital market basket percent changes. For both the historical and forecasted periods between FY 2000 and FY 2008, the difference between the two market baskets is minor with the exception of FY 2002 where the proposed FY 2002-based RPL market basket increased three tenths of a percentage point higher than the FY 1997-based excluded hospital with capital market basket. This is primarily due to the proposed FY 2002-based RPL market basket having a larger compensation (that is, the sum of wages and salaries and benefits) cost weight than the FY 1997-based index and the price changes associated with compensation costs increasing much faster than the prices of other market basket components. Also contributing is the "all other nonlabor intensive" cost weight, which is smaller in the proposed FY 2002-based RPL market basket than in the FY 1997-based index, and the slower price changes associated with these costs.

TABLE 9.—PROPOSED FY 2002-BASED RPL MARKET BASKET AND FY 1997-BASED EXCLUDED HOSPITAL WITH CAPITAL MARKET BASKET PERCENT CHANGES, FY 2000–FY 2008

Fiscal year (FY)	Proposed rebased FY 2002-based RPL market basket	FY 1997-based excluded hospital market basket with capital
Historical data:		
FY 2000	3.1	3.1
FY 2001	4.0	4.0
FY 2002	3.9	3.6
FY 2003	3.8	3.7
FY 2004	3.6	3.6
Average FYs 2000–2004	3.7	3.6
Forecast:		
FY 2005	3.7	3.8
FY 2006	3.1	3.1
FY 2007	2.9	2.8
FY 2008	2.9	2.8
Average FYs 2005–2008	3.2	3.1

Source: Global Insight, Inc. 4th Qtr 2004, @USMACRO/CNTL1104 @CISSIM/TL1104.SIM

d. Labor-Related Share

Section 1886(j)(6) of the Act specifies that the Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of rehabilitation facilities' costs which are attributable to wages and wage-related costs, of the prospective payment rates computed under paragraph (3) for area differences in wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for such facilities. Not later than October 1, 2001 (and at least every 36 months thereafter), the Secretary shall update the factor under the preceding sentence on the basis of information available to the Secretary (and updated as appropriate) of the wages and wage-related costs incurred in furnishing rehabilitation services. Any adjustments or updates made under this paragraph for a fiscal year shall be made in a manner that assures that the aggregated payments under this subsection in the fiscal year are not greater or less than those that would have been made in the year without such adjustment.

The labor-related share is determined by identifying the national average proportion of operating costs that are related to, influenced by, or vary with the local labor market. Using our current definition of labor-related, the labor-related share is the sum of the relative importance of wages and salaries, fringe benefits, professional fees, labor-intensive services, and a portion of the capital share from an appropriate market basket. We used the proposed FY 2002-based RPL market basket costs to determine the proposed labor-related share for the IRF PPS. The proposed labor-related share for FY 2006 would be the sum of the proposed FY 2006 relative importance of each labor-related cost category, and would reflect the different rates of price change for these cost categories between the base year (FY 2002) and FY 2006. The sum of the proposed relative importance for FY 2006 for operating costs (wages and salaries, employee benefits, professional fees, and labor-intensive services) would be 71.782 percent, as shown in the chart below. The portion of capital that is influenced by local labor markets would estimated to be 46 percent, which is the same percentage currently used in the IRF prospective payment system. Since the relative importance for capital would be 9.079 percent of the proposed FY 2002-based RPL market basket in FY 2006, we are proposing to take 46 percent of 9.079 percent to determine the proposed capital labor-related share for FY 2006. The result would be 4.176 percent, which we propose to add to 71.782 percent for the operating cost amount to determine the total proposed labor-related share for FY 2006. Thus, the labor-related share that we propose to use for IRF PPS in FY 2006 would be 75.958 percent. This proposed labor-related share is determined using the same methodology as employed in calculating all previous IRF labor-related shares (66 FR at 41357).

Table 10 below shows the proposed FY 2006 relative importance labor-related share using the proposed 2002-based RPL market basket and the FY 1997-based excluded hospital with capital market.

TABLE 10.—PROPOSED TOTAL LABOR-RELATED SHARE

Cost category	Proposed FY 2002-based RPL market basket relative importance (percent) FY 2006	FY 1997 excluded hospital with capital market basket relative importance (percent) FY 2006
Wages and salaries	52.823	48.432
Employee benefits	13.863	11.415
Professional fees	2.907	4.540
All other labor intensive services	2.189	4.496
Subtotal	71.782	68.883
Labor-related share of capital costs	4.176	3.307
Total	75.958	72.190

We are currently continuing an evaluation of our labor-related share methodology used in the IPPS (see 67 FR at 31447 for discussion of our previous analysis). Our evaluation includes regression analysis and reviewing the makeup of cost categories based on our current labor-related definition. A complete discussion of our research is provided in the FY 2006 IPPS proposed rule (See FY 2006 IPPS proposed rule, Section IV, B, 3). The labor-related share used in the IPPS was the first labor-related share used in a prospective payment system. Our methodology for calculating the proposed labor-related share for the IRF PPS is based upon the methodology used in the IPPS.

2. Proposed Area Wage Adjustment

Section 1886(j)(6) of the Act requires the Secretary to adjust the proportion (as estimated by the Secretary from time to time) of rehabilitation facilities' costs that are attributable to wages and wage-related costs by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for those facilities. Not later than October 1, 2001 and at least every 36 months thereafter, the Secretary is required to update the factor under the preceding sentence on the basis of information available to the Secretary (and updated as appropriate) of the wages and wage-related costs incurred in furnishing rehabilitation services. Any adjustments or updates made under section 1886(j)(6) of the Act for a FY shall be made in a manner that assures the aggregated payments under section 1886(j)(6) of the Act are not greater or less than those that would have been made in the year without such adjustment.

In our August 1, 2003 final rule, we acknowledged that on June 6, 2003, the Office of Management and Budget (OMB) issued "OMB Bulletin No.03–04," announcing revised definitions of Metropolitan Statistical Areas, and new definitions of Micropolitan Statistical Areas and Combined Statistical Areas. A copy of the Bulletin may be obtained at the following Internet address: *http://www.whitehouse.gov/omb/bulletins/b03–04.html*. At that time, we did not propose to apply these new definitions known as the Core-Based Statistical Areas (CBSAs). After further analysis and discussed in detail below, we are proposing to use revised labor market area definitions as a result of the OMB revised definitions to adjust the FY 2006 IRF PPS payment rate. In addition, the IPPS is applying these revised definitions as discussed in the August 11, 2004 final rule (69 FR at 49207).

a. Proposed Revisions of the IRF PPS Geographic Classification

As discussed in the August 7, 2001 final rule, which implemented the IRF PPS (66 FR at 41316), in establishing an adjustment for area wage levels under § 412.624(e)(1), the labor-related portion of an IRF's Federal prospective payment is adjusted by using an appropriate wage index. As set forth in § 412.624(e)(1), an IRF's wage index is determined based on the location of the IRF in an urban or rural area as defined in § 412.602 and further defined in § 412.62(f)(1)(ii) and § 412.62(f)(1)(iii) as urban and rural areas, respectively. An urban area, under the IRF PPS, is defined in § 412.62(f)(1)(ii) as a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA) as defined by the Office of Management and Budget (OMB). Under § 412.62(f)(1)(iii), a rural area is defined as any area outside of an urban area. In general, an urban area is defined as a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA) as defined by the Office of Management and Budget. Under § 412.62(f)(1)(iii), a rural area is defined as any area outside of an urban area. The urban and rural area geographic classifications defined in § 412.62(f)(1)(ii) and (f)(1)(iii), respectively, were used under the IPPS from FYs 1985 through 2004 (as specified in § 412.63(b)), and have been used under the IRF PPS since it was implemented for cost reporting periods beginning on or after January 1, 2002.

The wage index used for the IRF PPS is calculated by using the acute care IPPS wage index data on the basis of the labor market area in which the acute care hospital is located, but without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act and without applying the "rural floor" under section 4410 of Pub. L. 105–33 (BBA). In addition, Section 4410 of Pub. L. 105–33 (BBA) provides that for the purposes of section 1886(d)(3)(E) of the Act, that the area wage index applicable to hospitals located in an urban area of a State may not be less than the area wage index applicable to hospitals located in rural areas in the State. Consistent with past IRF policy, we treat this provision, commonly referred to as the "rural floor", as applicable to the acute inpatient hospitals and not IRFs. Therefore, the hospital wage index used for IRFs is commonly referred to as "pre-floor" indicating that "rural floor" provision is not applied. As a result, the applicable IRF wage index value is assigned to the IRF on the basis of the labor market area in which the IRF is geographically located.

Below, we will provide a description of the current labor markets that have been used for area wage adjustments under the IRF PPS since its implementation of cost reporting periods beginning on or after January 1, 2002. Previously, we have not described the labor market areas used under the IRF PPS in detail, although we have published each area's wage index in tables, in the IRF PPS final rules and

update notices, each year and noted the use of the geographic area in applying the wage index adjustment in IRF PPS payment examples in the final regulation implementing the IRF PPS (69 FR at 41367 through 41368). The IRF industry has also understood that the same labor market areas in use under the IPPS (from the time the IRF PPS was implemented, for cost reporting periods beginning on or after January 1, 2002) would be used under the IRF PPS. The OMB has adopted new statistical area definitions (as discussed in greater detail below) and we are proposing to adopt new labor market area definitions based on these areas under the IRF PPS (as discussed in greater detail below). Therefore, we believe it is helpful to provide a more detailed description of the current IRF PPS labor market areas, in order to better understand the proposed change to the IRF PPS labor market areas presented below in this proposed rule.

The current IRF PPS labor market areas are defined based on the definitions of MSAs, Primary MSAs (PMSAs), and NECMAs issued by the OMB (commonly referred to collectively as "MSAs"). These MSA definitions, which are discussed in greater detail below, are currently used under the IRF PPS and other prospective payment systems, such as LTCH, IPF, Home Health Agency (HHA), and SNF (Skilled Nursing Facility) PPSs. In the IPPS final rule (67 FR at 49026 through 49034), revised labor market area definitions were adopted under the hospital IPPS (§ 412.64(b)), which were effective October 1, 2004 for acute care hospitals. These new CBSAs standards were announced by the OMB late in 2000.

b. Current IRF PPS Labor Market Areas Based on MSAs

As mentioned earlier, since the implementation of the IRF PPS in the August 7, 2001 IRF PPS final rule, we have used labor market areas to further characterize urban and rural areas as determined under § 412.602 and further defined in § 412.62(f)(1)(ii) and (f)(1)(iii). To this end, we have defined labor market areas under the IRF PPS based on the definitions of MSAs, PMSAs, and NECMAs issued by the OMB, which is consistent with the IPPS approach. The OMB also designates Consolidated MSAs (CMSAs). A CMSA is a metropolitan area with a population of 1 million or more, comprising two or more PMSAs (identified by their separate economic and social character). For purposes of the wage index, we use the PMSAs rather than CMSAs because they allow a more precise breakdown of labor costs (as further discussed in section III.B.2.d.ii of this proposed rule). If a metropolitan area is not designated as part of a PMSA, we use the applicable MSA.

These different designations use counties as the building blocks upon which they are based. Therefore, IRFs are assigned to either an MSA, PMSA, or NECMA based on whether the county in which the IRF is located is part of that area. All of the counties in a State outside a designated MSA, PMSA, or NECMA are designated as rural. For the purposes of calculating the wage index, we combine all of the counties in a State outside a designated MSA, PMSA, or NECMA together to calculate the statewide rural wage index for each State.

c. Core-Based Statistical Areas (CBSAs)

OMB reviews its Metropolitan Area definitions preceding each decennial census. As discussed in the IPPS final rule (69 FR at 49027), in the fall of 1998, OMB chartered the Metropolitan Area Standards Review Committee to examine the Metropolitan Area standards and develop recommendations for possible changes to those standards. Three notices related to the review of the standards, providing an opportunity for public comment on the recommendations of the Committee, were published in the **Federal Register** on the following dates: December 21, 1998 (63 FR at 70526); October 20, 1999 (64 FR at 56628); and August 22, 2000 (65 FR at 51060).

In the December 27, 2000 **Federal Register** (65 FR at 82228 through 82238), OMB announced its new standards. In that notice, OMB defines CBSA, beginning in 2003, as "a geographic entity associated with at least one core of 10,000 or more population, plus adjacent territory that has a high degree of social and economic integration with the core as measured by commuting ties." The standards designate and define two categories of CBSAs: MSAs and Micropolitan Statistical Areas (65 FR at 82235 through 82238).

According to OMB, MSAs are based on urbanized areas of 50,000 or more population, and Micropolitan Statistical Areas (referred to in this discussion as Micropolitan Areas) are based on urban clusters of at least 10,000 population, but less than 50,000 population. Counties that do not fall within CBSAs (either MSAs or Micropolitan Areas) are deemed "Outside CBSAs." In the past, OMB defined MSAs around areas with a minimum core population of 50,000, and smaller areas were "Outside MSAs." On June 6, 2003, OMB announced the new CBSAs, comprised of MSAs and the new Micropolitan Areas based on Census 2000 data. (A copy of the announcement may be obtained at the following Internet address: *http://www.whitehouse.gov/omb/bulletins/fy04/b04–03.html.*)

The new CBSA designations recognize 49 new MSAs and 565 new Micropolitan Areas, and revise the composition of many of the existing MSAs. There are 1,090 counties in MSAs under the new CBSA designations (previously, there were 848 counties in MSAs). Of these 1,090 counties, 737 are in the same MSA as they were prior to the change in designations, 65 are in a different MSA, and 288 were not previously designated to any MSA. There are 674 counties in Micropolitan Areas. Of these, 41 were previously in an MSA, while 633 were not previously designated to an MSA. There are five counties that previously were designated to an MSA but are no longer designated to either an MSA or a new Micropolitan Area: Carter County, KY; St. James Parish, LA; Kane County, UT; Culpepper County, VA; and King George County, VA. For a more detailed discussion of the conceptual basis of the new CBSAs, refer to the IPPS final rule (67 FR at 49026 through 49034).

d. Proposed Revisions to the IRF PPS Labor Market Areas

In its June 6, 2003 announcement, OMB cautioned that these new definitions "should not be used to develop and implement Federal, State, and local nonstatistical programs and policies without full consideration of the effects of using these definitions for such purposes. These areas should not serve as a general-purpose geographic framework for nonstatistical activities, and they may or may not be suitable for use in program funding formulas."

We currently use MSAs to define labor market areas for purposes of the wage index. In fact, MSAs are also used to define labor market areas for purposes of the wage index for many of the other Medicare prospective payment systems (for example, LTCH, SNF, HHA, IPF, and Outpatient). While we recognize MSAs are not designed specifically to define labor market areas, we believe they represent a reasonable and appropriate proxy for this purpose, because they are based upon characteristics we believe also generally reflect the characteristics of unified labor market areas. For example, CBSAs reflect a core population plus an adjacent territory that reflects a high degree of social and economic integration. This integration is measured by commuting ties, thus demonstrating that these areas may draw workers from

the same general areas. In addition, the most recent CBSAs reflect the most up to date information. The OMB reviews its MA definitions preceding each decennial census to reflect recent population changes and the CBSAs are based on the Census 2000 data. Our analysis and discussion here are focused on issues related to adopting the new CBSA designations to define labor market areas for the purposes of the IRF PPS.

Historically, Medicare PPSs have utilized Metropolitan Area (MA) definitions developed by OMB. The labor market areas currently used under the IRF PPS are based on the MA definitions issued by OMB. OMB reviews its MA definitions preceding each decennial census to reflect more recent population changes. Thus, the CBSAs are OMB's latest MA definitions based on the Census 2000 data. Because we believe that the OMB's latest MA designations more accurately reflect the local economies and wage levels of the areas in which hospitals are currently located, we are proposing to adopt the revised labor market area designations based on the OMB's CBSA designations.

As specified in § 412.624(e)(1), we explained in the August 7, 2001 final rule that the IRF PPS wage index adjustment was intended to reflect the relative hospital wage levels in the geographic area of the hospital as compared to the national average hospital wage level. Since OMB's CBSA designations are based on Census 2000 data and reflect the most recent available geographic classifications, we are proposing to revise the labor market area definitions used under the IRF PPS. Specifically, we are proposing to revise the IRF PPS labor market definitions based on the OMB's new CBSA designations effective for IRF PPS discharges occurring on or after October 1, 2005. Accordingly, we are proposing to revise § 412.602 to specify that for discharges occurring on or after October 1, 2005, the application of the wage index under the IRF PPS would be made on the basis of the location of the facility in an urban or rural area as defined in § 412.64(b)(1)(ii)(A) through (C). (As a conforming change, we are also proposing to revise § 412.602, definitions for rural and urban areas effective for discharges occurring on or after October 1, 2005 would be defined in § 412.64(b)(1)(ii)(A) through (C). To further clarify, we will revise the regulation text to explicitly reference urban and rural definitions for a cost-reporting period beginning on or after January 1, 2002, with respect to discharges occurring during the period covered by such cost reports but before October 1, 2005 under § 412.62(f)(1)(ii) and § 412.62(f)(1)(iii)).

We note that these are the same labor market area definitions (based on the OMB's new CBSA designations) implemented under the IPPS at § 412.64(b), which were effective for those hospitals beginning October 1, 2004 as discussed in the IPPS final rule (69 FR at 49026 through 49034). The similarity between the IPPS and the IRF PPS includes the adoption in the initial implementation of the IRF PPS of the same labor market area definitions under the IRF PPS that existed under the IPPS at that time, as well as the use of acute care hospitals' wage data in calculating the IRF PPS wage index. In addition, the OMB's CBSA-based designations reflect the most recent available geographic classifications and more accurately reflects current labor markets. Therefore, we believe that proposing to revise the IRF PPS labor market area definitions based on OMB's CBSA-based designations are consistent with our historical practice of modeling IRF PPS policy after IPPS policy.

Below, we discuss the composition of the proposed IRF PPS labor market areas based on the OMB's new CBSA designations.

i. New England MSAs

As stated above, in the August 7, 2001 final rule, we currently use NECMAs to define labor market areas in New England, because these are county-based designations rather than the 1990 MSA definitions for New England, which used minor civil divisions such as cities and towns. Under the current MSA definitions, NECMAs provided more consistency in labor market definitions for New England compared with the rest of the country, where MSAs are county-based. Under the new CBSAs, OMB has now defined the MSAs and Micropolitan Areas in New England on the basis of counties. The OMB also established New England City and Town Areas, which are similar to the previous New England MSAs.

In order to create consistency among all labor market areas and to maintain these areas on the basis of counties, we are proposing to use the county-based areas for all MSAs in the nation, including those in New England. Census has now defined the New England area based on counties, creating a city- and town-based system as an alternative. We believe that adopting county-based labor market areas for the entire country except those in New England would lead to inconsistencies in our designations. Adopting county-based labor market areas for the entire country provides consistency and stability in Medicare program payment because all of the labor market areas throughout the country, including New England, would be defined using the same system (that is, counties) rather than different systems in different areas of the country, and minimizes programmatic complexity.

In addition, we have consistently employed a county-based system for New England for precisely that reason: to maintain consistency with the labor market area definitions used throughout the country. Because we have never used cities and towns for defining IRF labor market areas, employing a county-based system in New England maintains that consistent practice. We note that this is consistent with the implementation of the CBSA-based designations under the IPPS for New England (see 69 FR at 49028). Accordingly, in this proposed rule, we are proposing to use the New England MSAs as determined under the proposed new CBSA-based labor market area definitions in defining the proposed revised IRF PPS labor market areas.

ii. Metropolitan Divisions

Under OMB's new CBSA designations, a Metropolitan Division is a county or group of counties within a CBSA that contains a core population of at least 2.5 million, representing an employment center, plus adjacent counties associated with the main county or counties through commuting ties. A county qualifies as a main county if 65 percent or more of its employed residents work within the county and the ratio of the number of jobs located in the county to the number of employed residents is at least 0.75. A county qualifies as a secondary county if 50 percent or more, but less than 65 percent, of its employed residents work within the county and the ratio of the number of jobs located in the county to the number of employed residents is at least 0.75. After all the main and secondary counties are identified and grouped, each additional county that already has qualified for inclusion in the MSA falls within the Metropolitan Division associated with the main/secondary county or counties with which the county at issue has the highest employment interchange measure. Counties in a Metropolitan Division must be contiguous (65 FR at 82236).

The construct of relatively large MSAs being comprised of Metropolitan Divisions is similar to the current construct of the CMSAs comprised of PMSAs. As noted above, in the past, OMB designated CMSAs as

Metropolitan Areas with a population of 1 million or more and comprised of two or more PMSAs. Under the IRF PPS, we currently use the PMSAs rather than CMSAs to define labor market areas because they comprise a smaller geographic area with potentially varying labor costs due to different local economies. We believe that CMSAs may be too large of an area with a relatively large number of hospitals, to accurately reflect the local labor costs of all the individual hospitals included in that relatively "large" area. A large market area designation increased the likelihood of including many hospitals located in areas with very different labor market conditions within the same market area designation. This variation could increase the difficulty in calculating a single wage index that would be relevant for all hospitals within the market area designation. Similarly, we believe that MSAs with a population of 2.5 million or greater may be too large of an area to accurately reflect the local labor costs of all the individual hospitals included in that relatively "large" area. Furthermore, as indicated above, Metropolitan Divisions represent the closest approximation to PMSAs, the building block of the current IRF PPS labor market area definitions, and therefore, would most accurately maintain our current structuring of the IRF PPS labor market areas. Therefore, as implemented under the IPPS (69 FR at 49029), we are proposing to use the Metropolitan Divisions where applicable (as describe below) under the proposed new CBSA-based labor market area definitions.

In addition to being comparable to the organization of the labor market areas under the current MSA designations (that is, the use of PMSAs rather than CMSAs), we believe that proposing to use Metropolitan Divisions where applicable (as described below) under the IRF PPS would result in a more accurate adjustment for the variation in local labor market areas for IRFs. Specifically, if we would recognize the relatively "larger" CBSA that comprises two or more Metropolitan Divisions as an independent labor market area for purposes of the wage index, it would be too large and would include the data from too many hospitals to compute a wage index that would accurately reflect the various local labor costs of all the individual hospitals included in that relatively "large" CBSA. As mentioned earlier, a large market area designation increases the likelihood of including many hospitals located in areas with very different labor market conditions within the same market area designation. This variation could increase the difficulty in calculating a single wage index that would be relevant for all hospitals within the market area designation. Rather, by proposing to recognize Metropolitan Divisions where applicable (as described below) under the proposed new CBSA-based labor market area definitions under the IRF PPS, we believe that in addition to more accurately maintaining the current structuring of the IRF PPS labor market areas, the local labor costs would be more accurately reflected, thereby resulting in a wage index adjustment that better reflects the variation in the local labor costs of the local economies of the IRFs located in these relatively "smaller" areas.

Below we describe where Metropolitan Divisions would be applicable under the proposed new CBSA-based labor market area definitions under the IRF PPS.

Under the OMB's CBSA-based designations, there are 11 MSAs containing Metropolitan Divisions: Boston; Chicago; Dallas; Detroit; Los Angeles; Miami; New York; Philadelphia; San Francisco; Seattle; and Washington, DC. Although these MSAs were also CMSAs under the prior definitions, in some cases their areas have been altered. Under the current IRF PPS MSA designations, Boston is a single NECMA. Under the proposed CBSA-based labor market area designations, it would be comprised of four Metropolitan Divisions. Los Angeles would go from four PMSAs under the current IRF PPS MSA designations to two Metropolitan Divisions under the proposed CBSA-based labor market area designations. The New York CMSA would go from 15 PMSAs under the current IRF PPS MSA designations to only four Metropolitan Divisions under the proposed CBSA-based labor market area designations. The five PMSAs in Connecticut under the current IRF PPS MSA designations would become separate MSAs under the proposed CBSA-based labor market area designations because two MSAs became separate MSAs. The number of PMSAs in New Jersey, under the current IRF PPS MSA designations would go from five to two, with the consolidation of two New Jersey PMSAs (Bergen-Passaic and Jersey City) into the New York-Wayne-White Plains, NY-NJ Division, under the proposed CBSA-based labor market area designations. In San Francisco, under the proposed CBSA-based labor market area designations there are only two Metropolitan Divisions. Currently, there are six PMSAs, some of which are now separate MSAs under the current IRF PPS labor market area designations.

Under the current IRF PPS labor market area designations, Cincinnati, Cleveland, Denver, Houston, Milwaukee, Portland, Sacramento, and San Juan are all designated as CMSAs, but would no longer be designated as CMSAs under the proposed CBSA-based labor market area designations. As noted previously, the population threshold to be designated a CMSA under the current IRF PPS labor market area designations is 1 million. In most of these cases, counties currently in a PMSA would become separate, independent MSAs under the proposed CBSA-based labor market area designations, leaving only the MSA for the core area under the proposed CBSA-based labor market area designations.

iii. Micropolitan Areas

Under the new OMB's CBSA-based designations, Micropolitan Areas are essentially a third area definition consisting primarily of areas that are currently rural, but also include some or all of areas that are currently designated as urban MSA. As discussed in greater detail in the IPPS final rule (69 FR at 49029 through 49032), how these areas are treated would have significant impacts on the calculation and application of the wage index. Specifically, whether or not Micropolitan Areas are included as part of the respective statewide rural wage indices would impact the value of the statewide rural wage index of any State that contains a Micropolitan Area because a hospital's classification as urban or rural affects which hospitals' wage data are included in the statewide rural wage index. As discussed above in section III.B.2.b of this proposed rule, we combine all of the counties in a State outside a designated urban area to calculate the statewide rural wage index for each State.

Including Micropolitan Areas as part of the statewide rural labor market area would result in an increase to the statewide rural wage index because hospitals located in those Micropolitan Areas typically have higher labor costs than other rural hospitals in the State. Alternatively, if Micropolitan Areas were to be recognized as independent labor market areas, because there would be so few hospitals in those areas to complete a wage index, the wage indices for IRFs in those areas could become relatively unstable as they might change considerably from year to year.

We currently use MSAs to define urban labor market areas and group all the hospitals in counties within each

State that are not assigned to an MSA into a statewide rural labor market area. Therefore, we used the terms "urban" and "rural" wage indices in the past for ease of reference. However, the introduction of Micropolitan Areas by the OMB potentially complicates this terminology because these areas include many hospitals that are currently included in the statewide rural labor market areas.

We are proposing to treat Micropolitan Areas as rural labor market areas under the IRF PPS for the reasons outlined below. That is, counties that are assigned to a Micropolitan Area under the CBSA-based designations would be treated the same as other "rural" counties that are not assigned to either an MSA or a Micropolitan Area. Therefore, in determining an IRF's applicable wage index (based on IPPS hospital wage index data) we are proposing that an IRF in a Micropolitan Area under OMB's CBSA designations would be classified as "rural" and would be assigned the statewide rural wage index for the State in which it resides.

In the IPPS final rule (69 FR at 49029 through 49032), we discuss our evaluation of the impact of treating Micropolitan areas as part of the statewide rural labor market area instead of treating Micropolitan Areas as independent labor market areas for hospitals paid under the IPPS. As an alternative to treating Micropolitan Areas as part of the statewide rural labor market area for purposes of the IRF PPS, we examined treating Micropolitan Areas as separate (urban) labor market areas, just as we did when implementing the revised labor market areas under the IPPS. As discussed in greater detail in that same final rule, the designation of Micropolitan Areas as separate urban areas for wage index purposes would have a dramatic impact on the calculation of the wage index. This is because Micropolitan areas encompass smaller populations than MSAs, and tend to include fewer hospitals per Micropolitan area. Currently, there are only 25 MSAs with one hospital in the MSA. However, under the new proposed CBSA-based definitions, there are 373 Micropolitan Areas with one hospital, and 49 MSAs with only one hospital.

Since Micropolitan Areas encompass smaller populations than MSAs, they tend to include fewer hospitals per Micropolitan Area, recognizing Micropolitan Areas as independent labor market areas would generally increase the potential for dramatic shifts in those areas' wage indices from one year to the next because a single hospital (or group of hospitals) could have a disproportionate effect on the wage index of the area. The large number of labor market areas with only one hospital and the increased potential for dramatic shifts in the wage indexes from one year to the next is a problem for several reasons. First, it creates instability in the wage index from year to year for a large number of hospitals. Second, it reduces the averaging effect (this averaging effect allows for more data points to be used to calculate the representative standard of measured labor costs within a market area) lessening some of the incentive for hospitals to operate efficiently. This incentive is inherent in a system based on the average hourly wages for a large number of hospitals, as hospitals could profit more by operating below that average. In labor market areas with a single hospital, high wage costs are passed directly into the wage index with no counterbalancing averaging with lower wages paid at nearby competing hospitals. Third, it creates an arguably inequitable system when so many hospitals have wage indexes based solely on their own wages, while other hospitals' wage indexes are based on an average hourly wage across many hospitals. Therefore, in order to minimize the potential instability in payment levels from year to year, we believe it would be appropriate to treat Micropolitan Areas as part of the statewide rural labor market area under the IRF PPS.

For the reasons noted above, and consistent with the treatment of these areas under the IPPS, we are proposing not to adopt Micropolitan Areas as independent labor market areas under the IRF PPS. Under the proposed new CBSA-based labor market area definitions, we are proposing that Micropolitan Areas be considered a part of the statewide rural labor market area. Accordingly, we are proposing that the IRF PPS statewide rural wage index be determined using the acute-care IPPS hospital wage data (the rational for using IPPS hospital wage data is discussed in section III.B.2.f of this proposed rule) from hospitals located in non-MSA areas and that the statewide rural wage index be assigned to IRFs located in those areas.

e. Implementation of the Proposed Changes To Revise the Labor Market Areas

Under section 1886(j) of the Act, as added by section 4421 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) and as amended by section 125 of the Medicare, Medicaid, and State Children's Health Insurance Program (SCHIP) Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113) and section 305 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554), which requires the implementation of such prospective payment system, the Secretary generally has broad authority in developing the IRF PPS, including whether and how to make adjustments to the IRF PPS.

To facilitate an understanding of the proposed policies related to the proposed change to the IRF PPS labor market areas discussed above, in Table 3 of the Addendum of this proposed rule, we are providing a listing of each IRF's state and county location; existing MSA labor market area designation; and its proposed new CBSA designation based on county information from our online survey, certification, and reporting (OSCAR) database, and an Iowa Foundation for Medical Care (IFMC) report listing providers and their state and county location that submitted IRF–PAIs during the past 18 months (report request made in February 2005). We encourage IRFs to review the county location and both the current and proposed labor market area assignments for accuracy. Any questions or corrections (including additions or deletions) to the information provided in Table 3 of the Addendum should be emailed to the following CMS Web address: *IRFPPSInfo@cms.hhs.gov*. A link to this address can be found on the following CMS Web page *http://www.cms.hhs.gov/providers/irfpps/*.

When the revised labor market areas based on OMB's new CBSA-based designations were adopted under the IPPS beginning on October 1, 2004, a transition to the new designations was established due to the scope and substantial implications of these new boundaries and to buffer the subsequent substantial impacts on numerous hospitals. As discussed in the IPPS final rule (69 FR at 49032), during FY 2005, a blend of wage indices is calculated for those acute care IPPS hospitals experiencing a drop in their wage indices because of the adoption of the new labor market areas. The most substantial decrease in wage index impacts urban acute-care hospitals that were designated as rural under the CBSA-based designations.

While we recognize that, just like IPPS hospitals, IRFs may experience decreases in their wage index as a result of the proposed labor market area changes, our data analysis showed that a majority of IRFs either expect no change in wage index or an increase in wage index based on CBSA definitions.

In addition, a very small number of IRFs (3 percent) would experience a decline of 5 percent or more in the wage index based on CBSA designations. A 5 percent decrease in the wage index for an IRF may result in a noticeable decrease in their wage index compared to what their wage index would have been for FY 2006 under the MSA-based designations. We also found that a very small number of IRFs (4 percent) would experience a change in either rural or urban designation under the CBSA-based definitions. Since a majority of IRFs would not be significantly impacted by the proposed labor market areas, we believe it is not necessary to propose a transition to the proposed new CBSA-based labor market area for the purposes of the IRF PPS wage index. The main purpose of a transition is to buffer hospitals that would be significantly impacted by a proposed policy. Since the impact of the proposed labor market areas upon IRFs would be minimal, the need to transition is absent. We recognize that there would be many alternatives to efficiently implement the proposed CBSA-based geographic designations. The statute confers broad authority to the Secretary under 1886(j)(6) of the Act to establish factor for area wage differences by a factor such that budget neutral wage index options may be considered. Thus, we considered three budget neutral alternatives that could implement the adoption of the proposed CBSA-based designations as discussed below. Even though a majority of IRFs would not be significantly impacted by the proposed labor market areas, we wanted to be diligent and at least examine transition policies and the affect on the system. We needed to conduct the analysis to determine how IRFs fare under such a proposed policy.

One alternative we considered institutes a one-year transition with a blended wage index, equal to 50 percent of the FY 2006 MSA-based wage index and 50 percent of the FY 2006 CBSA-based wage index (both based on the FY 2001 hospital wage data), for all providers. In this scenario, a blended wage index of 50 percent of the FY 2006 MSA-based wage index and 50 percent of the FY 2006 CBSA-based wage index was used because in the IPPS final rule (69 FR at 49033) a blended wage index employed 50 percent of the FY 2001 hospital wage index data and the old labor market definitions, and 50 percent of the wage index employing FY 2001 wage index data and the new labor market definitions. However, we found that while this would help some IRFs that are adversely affected by the changes to the MSAs, it would also reduce the wage index values (compared to fully adopting the CBSA wage index value) for IRFs that would be positively affected by the changes. Thus, the unadjusted payment rate for all providers would be slightly reduced. Therefore, a majority of the IRFs would not benefit if all providers are given a blended wage index in a budget neutral manner (such that estimated aggregate, overall payments to IRFs would not change under the proposed labor market area definitions).

A second alternative we considered consists of a one-year transition with a blended wage index, equal to 50 percent of the FY 2006 MSA wage index and 50 percent of the FY 2006 CBSA-based wage index (both based on the FY 2001 hospital wage data), only for providers that would experience a decrease due solely to the changes in the labor market definitions. In this second alternative, a blended wage index of 50 percent of the FY 2006 MSA wage index and 50 percent of the FY 2006 CBSA-based wage index was determined because in the IPPS final rule (69 FR at 49033) a blended wage index employed 50 percent of the FY 2001 hospital wage index data and the old labor market definitions, and 50 percent of the wage index employing FY 2001 wage index data and the new labor market definitions. Therefore, providers that would experience a decrease in their FY 2006 wage index under the CBSA-based definitions compared to the wage index they would have received under the MSA-based definitions (in both cases using FY 2001 hospital wage data) would receive a blended wage index as described above.

When we performed our analysis, we found that the unadjusted payment amounts decreased substantially more under this option than they did either by using the first option discussed above or by fully adopting the CBSA-based designations. As with the first alternative, the positive impact of blending in order decrease the impacts for a relatively small number of IRFs would require reduced payment rates for all providers, including the IRFs receiving a blended wage index.

As discussed in the August 11, 2004 IPPS final rule (69 FR at 49032), during FY 2005, a hold harmless policy was implemented to minimize the overall impact of hospitals that were in FY 2004 designated as urban under the MSA designations, but would become rural under the CBSA designations. In the same final rule, hospitals were afforded a three-year hold harmless policy because the IPPS determined that acute-care hospitals that changed designations from urban to rural would be substantially impacted by the significant change in wage index. Although we considered a hold harmless policy for IRFs that would be substantially impacted from the change in wage index due to the CBSA-based designation, we found that an extremely small number of IRFs (4.4 percent) would change designations. In addition, currently urban facilities that become rural under the CBSA-based definitions would receive the rural facility adjustment, which we are proposing to increase from 19.14 percent to 24.1 percent (discussed in further detail in section III.B.4 of this proposed rule). Thus, the impact on urban facilities that become rural would be mitigated by the rural adjustment.

We also found that 91 percent of rural facilities that would be designated as urban under the CBSA-based definitions would experience an increase in the wage index. Furthermore, a majority (74 percent) of rural facilities that become urban would experience at least a 5 percent to 10 percent or more increase in wage index. Thus, we do not believe it is appropriate or necessary to adopt a hold harmless policy for facilities that would experience a change in designation under the CBSA-based definitions.

Finally, we note that section 505 of the MMA established new section 1886(d)(13) of the Act. The new section 1886(d)(13) requires that the Secretary establish a process to make adjustments to the hospital wage index based on commuting patterns of hospital employees. We believe that this requirement for an "out-commuting" or "out-migration" adjustment applies specifically to the IPPS. Therefore, we will not be proposing such an adjustment for the IRF PPS.

We are not proposing a transition, a hold harmless policy, nor an "out-commuting" adjustment under the IRF PPS from the current MSA-based labor market areas designations to the new CBSA-based labor market area designations as discussed below. We are proposing to adopt the new CBSA-based labor market area definitions beginning with the 2006 IRF PPS fiscal year without a transition period, without a hold harmless policy, and without an "out-commuting" adjustment. We believe that this proposed policy is appropriate because despite significant similarities between the IRF PPS and the IPPS, there are clear distinctions between the payment systems, particularly regarding wage index issues.

The most significant distinction upon which we have based this proposed

policy determination is that where acute care hospitals have been paid using full wage index adjusted payments since 1983 and have used the previous IPPS MSA-based labor market area designations for over 10 years, under the IRF PPS we have been using the excluded pre-reclassification and pre-floor MSA-based wage index for cost reporting periods beginning on or after January 1, 2002. Since the implementation of the IRF PPS has only used the MSA-based labor market area designations since 2002 of which the first year was a transition year, many IRFs received a blended payment that consisted of a percentage of TEFRA and a percentage of the IRF PPS rate (as described below). Since many IRFs were initially under the transition period whereby many IRFs received a blend of TEFRA payments and the adjusted Federal prospective payment rates in accordance with section 1886(j)(1) of the Act and as specified in § 412.626, IRFs may still be adjusting to the changes in wage index and thus has not established a long history of an expected wage index from year to year. We may reasonably expect that IRFs would not experience a substantial impact on their respective wage indices because under a relatively new IRF PPS, IRFs are adjusting to the change of being paid a Federal prospective payment rate. Our data analysis also shows that a minimal number of IRFs would experience a decrease of more than 5 percent in the wage index. A 5 percent decrease in the wage index for an IRF would possibly result in a noticeable decrease in their wage index compared to what their wage index would have been for FY 2006 under the MSA-based designations. In addition, under the CBSA designation, a small number of IRFs would experience a change from their current urban or rural designation. Therefore, the overall impact of IRFs under the MSA-based designations versus the CBSA-based designations did not result in a dramatic change overall.

Although the wage index has been a stable feature of the acute care hospital IPPS since its 1983 implementation and has utilized the prior MSA-based labor market area designation for over 10 years, this is not the case for the IRF PPS which has only been implemented for cost reporting periods beginning on or after January 1, 2002. Therefore, if the proposed CBSA-based labor market area designations were adopted they would have a negligible impact on IRFs because the adoption of the CBSA-based designations are proposed in a budget neutral manner (as discussed in detail in section IV of this proposed rule).

The impact of adopting the proposed CBSA-based wage index has shown in our impact analysis to have very little impact on the overall payment rates to the extent the proposed refinements to the overall system are also implemented (as discussed below). In addition, unlike other post-acute care payment systems, the IRF PPS payments apply a rural facility adjustment to account for higher costs in rural facilities (as discussed in 66 FR at 41359). We are proposing to increase the current rural adjustment from 19.14 percent to 24.1 percent (as discussed in section III.4 of this proposed rule). Therefore, IRFs that are designated as urban under the MSA-based definitions, but that would be classified as rural under the proposed CBSA-based definitions, will receive a facility add-on of 24.1 percent.

In sum, the IRF PPS has only been implemented for hospital cost reporting periods beginning on or after January 1, 2002 (which means that payment to IRFs have only been governed by the IRF PPS for slightly more than 3 years). In addition, a small number of IRFs would experience a change in rural or urban designations under the CBSA-based designations. To the extent the proposed changes in this rule are adopted, the change in labor market area for an urban facility to a rural facility is expected to be offset by the rural adjustment we are proposing to increase from 19.14 to 24.1 percent as discussed below. We also found that a majority of IRFs would experience no change in wage index or an increase. Thus, we are proposing to fully adopt the CBSA-based designations without a hold harmless policy. We believe that it is not appropriate or necessary to propose a transition to the proposed new CBSA-based labor market area for the purpose of the IRF PPS wage index adjustment as specified under § 412.624 as explained previously in this section. In addition, as explained above, we believe there are not sufficient data to support a transition from MSA-based designations to the proposed CBSA-based designations.

f. Wage Index Data

In the August 7, 2001 final rule, we established an IRF wage index based on FY 1997 acute care hospital wage data to adjust the FY 2002 IRF payment rates. For the FY 2003 IRF PPS payment rates, we applied the same wage adjustment as used for FY 2002 IRF PPS rates because we determined that the application of the wage index and labor-related share used in FY 2002 provided an appropriate adjustment to account for geographic variation in wage levels that was consistent with the statute. For the FY 2004 IRF PPS payment rates, we used the hospital wage index based on FY 1999 acute care hospital wage data. For the FY 2005 IRF PPS payment rates, we used the hospital wage index based on FY 2000 acute care hospital wage data. We are proposing to use FY 2001 acute care hospital wage data for FY 2006 IRF PPS payment rates because it is the most recent final data available. We believe that a wage index based on acute care hospital wage data is the best proxy and most appropriate wage index to use in adjusting payments to IRFs, since both acute care hospitals and IRFs compete in the same labor markets. Since acute care hospitals compete in the same labor market areas as IRFs, the wage data of acute care hospitals should accurately capture the relationship of wages and wage-related costs of IRF in an area as comparable to the national average. In the August 1, 2001 final rule (66 FR at 41358) we established FY 2002 IRF PPS wage index values for the 2002 IRF PPS fiscal year calculated from the same data used to compute the FY 2001 acute care hospital inpatient wage index data without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act and without applying the "rural floor" under section 4410 of Pub. L. 105–33 (BBA) (as discussed in section III.B.2.a of this proposed rule). Acute care hospital inpatient wage index data is also used to establish the wage index adjustment used in other PPSs (for example, LTCH, IPF, HHA, and SNF). As we discussed in the August 7, 2001 final rule (66 FR at 41316, 41358), since hospitals that are excluded from the IPPS are not required to provide wage-related information on the Medicare cost report and because we would need to establish instructions for the collection of this IRF data it is not appropriate at this time to propose a wage index specific to IRF facilities. Because we do not have an IRF specific wage index that we can compare to the hospital wage index, we are unable to determine at this time the degree to which the acute care hospital data fully represent IRF wages or if a geographic reclassification adjustment under the IRF PPS is appropriate. However, we believe that a wage index based on acute care hospital data is the best and most appropriate wage index to use in adjusting payments to IRFs, since both acute care hospitals and IRFs compete in the same labor markets. Also, we propose to continue to use the same method for calculating wage indices as was indicated in the August 7, 2001 final rule (69 FR at 41357 through 41358). In addition, 1886(d)(8) and

1886(d)(10) of the Act which permits reclassification is applicable only to inpatient acute care hospitals at this time. The wage adjustment established under the IRF PPS is based on an IRF's actual location without regard to the urban or rural designation of any related or affiliated provider.

In proposing to adopt the CBSA-based designations, we recognize that there may be geographic areas where there are no hospitals, and thus no hospital wage data on which to base the calculation of the IRF PPS wage index. We found that this occurred in two States—Massachusetts and Puerto Rico—where, using the CBSA-based designations, there were no hospitals located in rural areas. At present, no IRFs are affected by this lack of data, because currently there are no rural IRFs in these two States. If, rural IRFs open in these two States, we propose, for FY 2006, to use the rural FY 2001 MSA-based hospital wage data for that State to determine the wage index of such IRFs. In other words, we would use the same wage data (the FY 2001 hospital wage data) used to calculate the FY 2006 IRF wage index. However, rather than using CBSA-based designations, we would use MSA-based designations to determine the rural wage index of the State. Using such MSA-based designations there would be rural wage indices for both Massachusetts and Puerto Rico. We believe this is the most reasonable approach, as we would be using the same hospital wage data used to calculate the CBSA-based wage indices.

In the event this occurs in urban areas where IRFs are located, we are proposing to use the average of the urban hospital wage data throughout the State as a reasonable proxy for the urban areas without hospital wage data. Therefore, urban IRFs located in geographic areas without any hospital wage data would receive a wage index based on the average wage index for all urban areas within the State. This does not presently affect any urban IRFs for FY 2006 because there are no IRFs located in urban areas without hospital wage data. However, the policy would apply to future years when there may be urban IRFs located in geographic areas with no corresponding hospital wage data.

We believe this policy is reasonable because it maintains a CBSA-based wage index system, while creating an urban proxy for IRFs located in urban areas without corresponding hospital wage data. We note that we could not apply a similar averaging in rural areas, because in the rural areas there is no State rural hospital wage data available for averaging on a State-wide basis. For example, in Massachusetts and Puerto Rico, using a CBSA-based designation system, there are simply no rural hospitals in the State upon which we could base an average.

In addition, we note that the Secretary has broad authority under 1886(j)(6) to update the wage index on the basis of information available to the Secretary (and updated as appropriate) of the wages and wage-related costs incurred in furnishing rehabilitation services. Therefore, for FY 2006 we propose to use FY 2001 MSA-based hospital wage data for rural Massachusetts and rural Puerto Rico in the event there are rural IRFs in such States. In addition, for FY 2006 and thereafter, we propose to calculate a statewide urban average in the event that there exist urban IRFs in geographic areas with no corresponding hospital wage data. We solicit comments on these approaches to calculate the wage index values for areas without hospital wage data for this and subsequent fiscal years. We note that for fiscal years 2007 and thereafter, we likely will not calculate the MSA-based rural area indices, as the acute care hospital IPPS will no longer publish MSA-based wage tables. Thus, we specifically request comments on the approach to be used for IRFs in rural areas without corresponding hospital wage data for fiscal years 2007 and thereafter.

For the reasons discussed above, we are proposing to continue the use of the acute care hospital inpatient wage index data generated from cost reporting periods beginning during FY 2001 without taking into account geographic reclassification as specified under sections 1886(d)(8) and (d)(10) of the Act and without applying the "rural floor" under section 4410 of Pub. L. 105–33 (BBA) (as discussed in section III.B.2.a of this proposed rule). We believe that cost reporting period FY 2001 would be used to determine the applicable wage index values under the IRF PPS because these are the best available data. These data are the same FY 2001 acute care hospital inpatient wage data that were used to compute the FY 2005 wage indices. The proposed full wage index values that would be applicable for IRF PPS discharges occurring on or after October 1, 2005 are shown in Addendum 1, Tables 2a (for urban areas) and 2b (for rural areas) in the Addendum of this proposed rule.

In addition, any proposed adjustment or update to the IRF wage index made as specified under section 1886(j)(6) of the Act would be made in a budget neutral manner that assures that the estimated aggregated payments under this subsection in the FY year are not greater or less than those that would have been made in the year without such adjustment. Therefore, we are proposing to calculate a budget-neutral wage adjustment factor as established in the July 30, 2004 notice and as specified in § 412.624(e)(1). We will continue to use the following steps to ensure that the proposed FY 2006 IRF standard payment conversion factor reflects the update to the proposed CBSA wage indices and to the proposed labor-related share in a budget neutral manner:

Step 1: Determine the total amount of the estimated FY 2005 IRF PPS rates using the FY 2005 standard payment conversion factor and the labor-related share and the wage indices from FY 2005 (as published in the July 30, 2004 final notice).

Step 2: Calculate the total amount of estimated IRF PPS payments using the FY 2005 standard payment conversion factor and the proposed updated CBSA-based FY 2006 labor-related share and wage indices described above.

Step 3: Divide the amount calculated in step 1 by the amount calculated in step 2, which equals the proposed FY 2006 budget-neutral wage adjustment factor of 0.9996.

Step 4: Apply the proposed FY 2006 budget-neutral wage adjustment factor from step 3 to the FY 2005 IRF PPS standard payment conversion factor after the application of the market basket update, described above, to determine the proposed FY 2006 standard payment conversion factor.

3. Proposed Teaching Status Adjustment

Section 1886(j)(3)(A)(v) of the Act requires the Secretary to adjust the prospective payment rates for the IRF PPS by such factors as the Secretary determines are necessary to properly reflect variations in necessary costs of treatment among rehabilitation facilities. Under this authority, in the August 7, 2001 final rule (66 FR 41316, 41359), we considered implementing an adjustment for IRFs that are, or are part of, teaching institutions. However, because the results of our regression analysis, using FY 1999 data, showed that the indirect teaching cost variable was not significant, we did not implement a payment adjustment for indirect teaching costs in that final rule. The regression analysis conducted by RAND for this proposed rule, using FY 2003 data, shows that the indirect teaching cost variable is significant in explaining the higher costs of IRFs that have teaching programs. Therefore, we are proposing to establish a facility level adjustment to the Federal per discharge base rate for IRFs that are, or are part of,

teaching institutions for the reasons discussed below (the "teaching status adjustment"). However, as discussed below, we have some concerns about proposing a teaching status adjustment. The policy implications of implementing a teaching status adjustment on the basis of the results of RAND's recent analysis oblige us to seek assurance that these results do not reflect an aberration based on only a single year's data and that the teaching status adjustment can be implemented in such a way that it would be equitable to all IRFs. Analysis of future data (FY 2004 or later) would give us such assurance because it would allow the effects of the other proposed changes outlined in this proposed rule to be realized and allow us to determine whether the significant coefficient on the teaching variable continues to be present in the future data.

The purpose of the proposed teaching status adjustment would be to account for the higher indirect operating costs experienced by facilities that participate in graduate medical education programs.

We are proposing to implement the proposed teaching status adjustment in a budget neutral manner (that is, keeping aggregate payments for FY 2006 with the proposed teaching adjustment the same as aggregate payments for FY 2006 without the proposed teaching adjustment) for the reasons discussed below. (As a conforming change, we are proposing to revise § 412.624 to add a new section (e)(4) as the teaching status adjustment. Specifically, § 412.624(e)(4) would be for discharges on or after October 1, 2005. We propose to adjust the Federal prospective payment on a facility basis by a factor as specified by CMS for facilities that are teaching institutions or units of teaching institutions. This adjustment would be made on a claim basis as an interim payment and the final payment in full for the claim would be made during the final settlement of the cost report. Thus, we would redesignate the current (e)(4) and (e)(5) as (e)(5) and (e)(6)).

Medicare makes direct graduate medical education (GME) payments (for direct costs such as resident and teaching physician salaries, and other direct teaching costs) to all teaching hospitals including those paid under the IPPS, and those that were once paid under the TEFRA rate of increase limits but are now paid under other PPSs. These direct GME payments are made separately from payments for hospital operating costs and are not part of the PPSs. However, the direct GME payments may not address the higher indirect operating costs which may often be experienced by teaching hospitals. For teaching hospitals paid under the TEFRA rate-of-increase limits, Medicare did not make separate medical education payments because payments to these hospitals were based on the hospitals' reasonable costs. Because payments under TEFRA were based on hospitals' reasonable costs, the higher indirect costs that might be associated with teaching programs would automatically have been factored into the TEFRA payments.

When the IRF PPS was implemented, we did not adjust payments to IRFs for indirect medical education costs because we did not find that adjustments for such costs were supported by the regression analyses or by the impact analyses. As discussed in the August 7, 2001 final rule (69 FR 41316, 41359), the indirect teaching variable was not significant for either the fully specified regression or the payment regression in RAND's analysis. Furthermore, the impacts among the various classes of facilities reflecting the fully phased-in IRF PPS illustrated that IRFs with the highest measure of indirect teaching would lose approximately 2 percent of estimated payments under the IRF PPS when compared with payments under TEFRA rate-of-increase limits. These impacts did not account for changes in behavior that facilities were likely to adopt in response to the inherent incentives of the IRF PPS, and we believed that IRFs could change their behavior to mitigate any potential reduction in payments.

The earlier research conducted by RAND was based on 1999 data and on a sample of IRFs. RAND recently conducted research to support us in developing potential refinements to the IRF classification system and the PPS. The regression analysis conducted by RAND for this proposed rule, using FY 2003 data, showed that the indirect teaching cost variable is significant in explaining the higher costs of IRFs that have teaching programs.

In conducting the analysis on the FY 2003 data, RAND used the resident counts that were reported on the hospital cost reports (worksheet S–3, line 25, column 9 for freestanding IRF hospitals and worksheet S–3, Part 1, line 14 (or line 14.01 for subprovider 2), column 9 for rehabilitation units of acute care hospitals). That is, for the freestanding rehabilitation hospitals, RAND used the number of residents and interns reported for the entire hospital. For the rehabilitation units of acute care hospitals, RAND used the number of residents and interns reported for the rehabilitation unit (reported separately on the cost report from the number reported for the rest of the hospital). RAND did not distinguish between different types of resident specialties, nor did they distinguish among the different types of services residents provide, because this information is not reported on the cost reports.

RAND used regression analysis (with the logarithm of costs as the dependent variable) to re-examine the effect of IRFs' teaching status on the costs of care. With FY 2003 data that include all Medicare-covered IRF discharges, RAND found a statistically significant difference in costs between IRFs with teaching programs and those without teaching programs in the regression analysis. The different results obtained using the FY 2003 data (compared with the 1999 data) may be due to improvements in IRF coding after implementation of the IRF PPS. More accurately coded data may have allowed RAND to determine better the differences in case mix among hospitals with and without teaching programs, which would then have allowed the effect of whether or not an IRF has a teaching program to become significant in the regression analysis. There are two main reasons that indirect operating costs may be higher in teaching hospitals: (1) Because the teaching activities themselves result in inefficiencies that increase costs, and (2) because patients needing more costly services tend to be treated more often in teaching hospitals than in non-teaching hospitals, that is, the case mix that is drawn to teaching hospitals. Quantifying more precisely the amount of cost increase that is due to teaching hospitals' case mix allows RAND to more precisely quantify the amount of increase due to the inefficiencies associated with a teaching program.

We would propose to treat the teaching status adjustment as an additional payment to the Federal prospective payment rate, similar to the IME payments made under the IPPS (see § 412.105). Any such teaching status adjustments for the IRF PPS facilities would be made on a claim basis as interim payments, but the final payment in full for the cost reporting period would be made through the cost report. The difference between those interim payments and the actual teaching status adjustment amount computed in the cost report would be adjusted through lump sum payments/recoupments when the cost report is filed and later settled.

As in the IPF PPS, we would propose to calculate a teaching adjustment based on the IRF's "teaching variable," which would be one plus the ratio of the number of FTE residents training in the IRF (subject to limitations described

further below) to the IRF's average daily census (ADC). In RAND's most recent cost regressions using data from FY 2003, the logarithm of the teaching variable has a coefficient value of 1.083. We would propose to convert this cost effect to a teaching status payment adjustment by treating the regression coefficient as an exponent and raising the teaching variable to a power equal to the coefficient value—currently 1.083 (that is, the teaching status adjustment would be calculated by raising the teaching variable (1 + FTE residents/ADC) to the 1.083 power). For a facility with a teaching variable of 0.10, and using a coefficient based upon the coefficient value (1.083) from the FY 2003 data, this method would yield a 10.9 percent increase in the per discharge payment; for a facility with a teaching variable of 0.05, the payment would increase by 5.4 percent. We note that the coefficient value of 1.083 is based on regression analysis holding all other components of the payment system constant. Because we are proposing a number of other revisions to the payment system in this proposed rule, the coefficient value is subject to change for the final rule depending on the other revisions included in the final rule. Moreover, we are concerned that IRFs' responses to other proposed changes described in this proposed rule will influence the effects of a teaching variable on IRFs' costs.

In addition, the teaching adjustment we would propose would limit the incentives for IRFs to add FTE residents for the purpose of increasing their teaching adjustment, as has been done in the payment systems for psychiatric facilities and acute inpatient hospitals. Thus, we would propose to impose a cap on the number of FTE residents that may be counted for purposes of calculating the teaching adjustment, similar to that established by sections 4621 (IME FTE cap for IPPS hospitals) and 4623 (direct GME FTE cap for all hospitals) of the BBA. We note that the FTE,resident cap already applies to teaching hospitals, including IRFs, for purposes of direct GME payments as specified in § 413.75 through § 413.83. The proposed cap would limit the number of residents that teaching hospitals may count for the purposes of calculating the IRF PPS teaching status adjustment, not the number of residents teaching institutions can hire or train.

The proposed FTE resident cap would be identical in freestanding teaching rehabilitation hospitals and in distinct part rehabilitation units with GME programs. Similar to the regulations for counting FTE residents under the IPPS as described in § 412.105(f), we are proposing to calculate a number of FTE residents that trained in the IRF during a "base year" and use that FTE resident number as the cap. An IRF's FTE resident cap would ultimately be determined based on the final settlement of the IRF's most recent cost reporting period ending on or before November 15, 2003. We would also propose that, similar to new IPPS teaching hospitals, IRFs that first begin training residents after November 15, 2003 would initially receive an FTE cap of "0". The FTE caps for new IRFs (as well as existing IRFs) that start training residents in a new GME program (as defined in § 413.79(l)) may be subsequently adjusted in accordance with the policies that are being applied in the IPF PPS (as described in § 412.424(d)(1)(iii)(B)(2)), which in turn are made in accordance with the policies described in 42 CFR 413.79(e) for IPPS hospitals. However, contrary to the policy for IME FTE resident caps under the IPPS, we would not allow IRFs to aggregate the FTE resident caps used to compute the IRF PPS teaching status adjustment through affiliation agreements. We are proposing these policies because we believe it is important to limit the total pool of resident FTE cap positions within the IRF community and avoid incentives for IRFs to add FTE residents in order to increase their payments. We also want to avoid the possibility of hospitals transferring residents between IPPS and IRF training settings in order to increase Medicare payments. We recognize that under the regulations applicable to the IPPS IME adjustment, a new teaching hospital that trains residents from an existing program (not a new program as defined in 42 CFR 413.79(l)) can receive an adjustment to its IME FTE cap by entering into a Medicare GME affiliation agreement (see § 412.105(f)(1)(vi), § 413.75(b), and § 413.79(f)) with other hospitals. However, this option would not be available to new teaching IRFs because, as noted above, we would propose not to allow IRFs to aggregate the FTE resident caps used to compute the IRF PPS teaching adjustment through affiliation agreements.

We would propose that residents with less than full-time status and residents rotating through the rehabilitation hospital or unit for less than a full year be counted in proportion to the time they spend in their assignment with the IRF (for example, a resident on a full-time, 3-month rotation to the IRF would be counted as 0.25 FTEs for purposes of counting residents to calculate the ratio). No FTE resident time counted for purposes of the IPPS IME adjustment would be allowed to be counted for purposes of the teaching status adjustment for the IRF PPS.

The denominator that we would propose to use to calculate the teaching status adjustment under the IPF PPS would be the IRF's average daily census (ADC) from the current cost reporting period because it is closely related to the IRF's patient load, which determines the number of interns and residents the IRF can train. We also believe the ADC is a measure that can be defined precisely and is difficult to manipulate. Although the IPPS IME adjustment uses the hospital's number of beds as the denominator, the capital PPS (as specified at § 412.322) and the IPF PPS (as specified at § 412.424) both use the ADC as the denominator for the indirect graduate medical education adjustments.

If a rehabilitation hospital or unit has more FTE residents in a given year than in the base year (the base year being used to establish the cap), we would base payments in that year on the lower number (the cap amount). This approach would be consistent with the IME adjustment under the IPPS and the IPF PPS. The IRF would be free to add FTE residents above the cap amount, but it would not be allowed to count the number of FTE residents above the cap for purposes of calculating the teaching adjustment. This means that the cap would be an upper limit on the number of FTE residents that may be counted for purposes of calculating the teaching status adjustment. IRFs could adjust their number of FTE residents counted for purposes of calculating the teaching adjustment as long as they remained under the cap.

On the other hand, if a rehabilitation hospital or unit were to have fewer FTE residents in a given year than in the base year (that is, fewer residents than its FTE resident cap), an adjustment in payments in that year would be based on the lower number (the actual number of FTE residents the facility hires and trains).

We would propose to implement a teaching status adjustment in such a way that total estimated aggregate payments to IRFs for FY 2006 would be the same with and without the proposed adjustment (that is, in a budget neutral manner). This is because we believe that the results of RAND's analysis of 2002 and 2003 IRF cost data suggest that additional money does not need to be added to the IRF PPS. RAND's analysis found, for example, that if all IRFs had been paid based on 100 percent of the IRF PPS payment rates throughout all of 2002 (some IRFs were still transitioning to PPS payments during 2002), PPS

payments during 2002 would have been 17 percent higher than IRFs' costs. We are open to examining other evidence regarding the amount of aggregate payments in the system.

Consideration of an adjustment to payments based on an IRF's teaching status is consistent with section 1886 (j)(3)(A)(v) of the Act, which confers broad statutory authority upon the Secretary to adjust the per payment unit payment rate by such factors as the Secretary determines are necessary to properly reflect variations in necessary costs of treatment among rehabilitation facilities.

As mentioned above and discussed below, we have some concerns with implementing a teaching status adjustment for IRFs at this time. We are concerned about volatility in the data given the many changes to the IRF PPS that have been made in recent years and may be adopted in this rulemaking process. Other proposed payment policy changes have the potential to change the magnitude or even the effect of a teaching variable on costs once IRFs have fully responded to the other proposed policy changes in this proposed rule. We also believe it is important to ensure that the data accurately counts residents who provide services to IRF patients.

We note that the significant coefficient we found in the analysis of the FY 2003 data contrasts with the statistically insignificant coefficient we found in the analysis of the 1999 data used to construct the initial IRF PPS. Although we currently believe it may be appropriate to propose a teaching status adjustment for IRFs based on analysis of the FY 2003 data, we recognize that we may need to examine new data (that is, FY 2004 or later) to help us to reconcile these contradictory findings. We also believe the analysis of this new data could potentially lead us to conclude that a teaching status adjustment is not needed.

The results of RAND's analysis using FY 2003 data also show that certain refinements to the IRF case mix system (as discussed in section II of this proposed rule) would improve the system by more appropriately accounting for the variation in costs among different types of IRF patients. In this proposed rule, we propose numerous changes to the CMGs and tiers, and to the threshold amount used to determine whether cases qualify for outlier payments, in order to better align IRF payments with the costs of providing care to Medicare beneficiaries in IRFs. In addition, this proposed rule proposes substantial changes to the wage index (the adoption of CBSA market area definitions) and to the rural and the LIP adjustments. We believe that these proposed changes may have an impact on cost differences between teaching and non-teaching IRFs, and that we will be able to assess their impact on teaching and non-teaching IRFs only after the proposed changes have been implemented.

Furthermore, we believe it is important to ensure that the data accurately count residents who participate in managing the rehabilitation of IRF patients. We are particularly interested in ensuring that the FTE resident counts used for the proposed IRF teaching status adjustment do not duplicate resident counts used for purposes of the IPPS IME adjustment, and that hospitals do not have incentives to shift residents from the acute care hospital to the hospital's rehabilitation unit for purposes of computing the proposed IRF teaching adjustment. We are soliciting comments on the most valid and reliable method of counting residents for purposes of a proposed teaching status adjustment. We note that any changes we may make, based on our further investigation of this issue or on comments we receive on this proposed rule, to the methodology for counting residents could affect the magnitude of the proposed teaching adjustment or even whether the data continue to indicate that the proposed teaching status adjustment is appropriate.

In addition, we recognize that the proposed new teaching status adjustment, especially if implemented in a budget-neutral manner, is an important issue for all providers because it involves a redistribution of resources among facilities. That is, under the proposal, IRFs with teaching programs would receive additional payments, while IRFs without teaching programs would have their payments lowered to maintain total estimated payments for FY 2006 at the same level as without the proposed adjustment. For this reason, we believe caution is warranted in this case.

We are specifically soliciting comments on our consideration of the IRF teaching status adjustment.

4. Proposed Adjustment for Rural Location

Consistent with the broad statutory authority conferred upon the Secretary in section 1886(j)(3)(A)(v) of the Act, we adjust the Federal prospective payment amount associated with a CMG to account for an IRF's geographic wage variation, low-income patients and, if applicable, location in a rural area, as described in § 412.624(e).

Under the broad statutory authority conferred upon the Secretary in section 1886(j)(3)(A)(v) of the Act, we are proposing to increase the adjustment to the Federal prospective payment amount for IRFs located in rural areas from 19.14 percent to 24.1 percent. We are proposing this change because RAND's regression analysis, using the best available data we have (FY 2003), indicates that rural facilities now have 24.1 percent higher costs of caring for Medicare patients than urban facilities. We note that we propose to use the same statistical approach, as described in the November 3, 2000 proposed rule (65 FR 66304, 66356 through 66357) and adopted in the August 7, 2001 final rule (66 FR at 41359) to estimate the proposed update to the rural adjustment. The statistical approach RAND used both when the PPS was first implemented and for the proposed update described in this proposed rule relies on the coefficient determined from the regression analysis. The 19.14 percent rural adjustment has been applied to payments for IRFs located in rural areas since the implementation of the IRF PPS. We note that the FY 2003 data are the best available data we have, just as the 1998 and 1999 data used in the initial development of the IRF PPS were the best available data at that time.

We are proposing to implement the proposed update to the rural adjustment so that total estimated aggregate payments for FY 2006 are the same with the proposed update to the adjustment as they would have been without the proposed update to the adjustment (that is, in a budget neutral manner). We are proposing to make this proposed update to the rural adjustment in a budget neutral manner because we believe that the results of RAND's analysis of 2002 and 2003 IRF cost data (as discussed previously in this proposed rule) suggest that additional money does not need to be added to the IRF PPS. RAND's analysis found, for example, that if all IRFs had been paid based on 100 percent of the IRF PPS payment rates throughout all of 2002 (some IRFs were still transitioning to PPS payments during 2002), PPS payments during 2002 would have been 17 percent higher than IRFs' costs. We are open to examining other evidence regarding the amount of estimated aggregate payments in the system.

This is consistent with section 1886(j)(3)(A)(v) of the Act which confers broad statutory authority upon the Secretary to adjust the per payment unit payment rate by such factors as the Secretary determines are necessary to properly reflect variations in necessary costs of treatment among rehabilitation

facilities. To ensure that total estimated aggregate payments to IRFs do not change, we propose to apply a factor to the standard payment conversion factor to assure that the estimated aggregate payments under this subsection in the FY are not greater or less than those that would have been made in the year without the proposed update to the adjustment. In sections III.B.7 and III.B.8 of this proposed rule, we discuss the methodology and factor we are proposing to apply to the standard payment amount.

5. Proposed Adjustment for Disproportionate Share of Low-Income Patients

Consistent with the broad statutory authority conferred upon the Secretary in section 1886(j)(3)(A)(v) of the Act, we adjust the Federal prospective payment amount associated with a CMG to account for an IRF's geographic wage variation, low-income patients and, if applicable, location in a rural area, as described in § 412.624(e).

Under the broad statutory authority conferred upon the Secretary in section 1886(j)(3)(A)(v) of the Act, we are proposing to update the low-income patient (LIP) adjustment to the Federal prospective payment rate to account for differences in costs among IRFs associated with differences in the proportion of low-income patients they treat. RAND's regression analysis of 2003 data indicates that the LIP formula could be updated to better distribute current payments among facilities according to the proportion of low-income patients they treat. Although the current formula appropriately distributed LIP-adjusted payments among facilities when the IRF PPS was first implemented, we believe the formula should be updated from time to time to reflect changes in the costs of caring for low-income patients.

The proposed LIP adjustment is based on the formula used to account for the costs of furnishing care to low-income patients as discussed in the August 7, 2001 final rule (67 FR at 41360). We propose to update the LIP adjustment from the power of 0.4838 to the power of 0.636. Therefore, the proposed formula to calculate the LIP adjustment would be as follows: (1 + DSH patient percentage) raised to the power of (.636) Where DSH patient percentage =

$$\frac{\text{Medicare SSI Days}}{\text{Total Medicare Days}} + \frac{\text{Medicaid, NonMedicare Days}}{\text{Total Days}}$$

We note that we propose to use the same statistical approach, as described in the August 7, 2001 final rule (66 FR at 41359 through 41360), that was used to develop the original LIP adjustment. We note that the FY 2003 data we propose to use in calculating this adjustment are the best available data, just as the 1998 and 1999 data used in the initial development of the IRF PPS were the best available data at that time.

We are proposing to implement the proposed update to the LIP adjustment so that total estimated aggregate payments for FY 2006 are the same with the proposed update to the adjustment as they would have been without the proposed update to the adjustment (that is, in a budget neutral manner). We are proposing to make this proposed update to the LIP adjustment in a budget neutral manner because we believe that the results of RAND's analysis of 2002 and 2003 IRF cost data (as discussed previously in this proposed rule) suggest that additional money does not need to be added to the IRF PPS. RAND's analysis found, for example, that if all IRFs had been paid based on 100 percent of the IRF PPS payment rates throughout all of 2002 (some IRFs were still transitioning to PPS payments during 2002), PPS payments during 2002 would have been 17 percent higher than IRFs' costs. We are open to examining other evidence regarding the amount of estimated aggregate payments in the system.

This is consistent with section 1886 (j)(3)(A)(v) of the Act which confers broad statutory authority upon the Secretary to adjust the per payment unit payment rate by such factors as the Secretary determines are necessary to properly reflect variations in necessary costs of treatment among rehabilitation facilities. To ensure that total estimated aggregate payments to IRFs do not change, we propose to apply a factor to the standard payment conversion factor to assure that the estimated aggregate payments under this subsection in the FY are not greater or less than those that would have been made in the year without the proposed update to the adjustment. In sections III.B.7 and III.B.8 of this proposed rule, we discuss the methodology and factor we are proposing to apply to the standard payment amount.

6. Proposed Update to the Outlier Threshold Amount

Consistent with the broad statutory authority conferred upon the Secretary in sections 1886(j)(4)(A)(i) and 1886(j)(4)(A)(ii) of the Act, we are proposing to update the outlier threshold amount from the $11,211 threshold amount for FY 2005 to $4,911 in FY 2006 to maintain total estimated outlier payments at 3 percent of total estimated payments. In the August 7, 2001 final rule, we discuss our rationale for setting estimated outlier payments at 3 percent of total estimated payments (66 FR at 41362). We continue to propose to use 3 percent for the same reasons outlined in the August 7, 2001 final rule. We believe it is necessary to update the outlier threshold amount because RAND's analysis of the calendar year 2002 and FY 2003 data indicates that total estimated outlier payments will not equal 3 percent of total estimated payments unless we update the outlier loss threshold. We will continue to analyze the estimated outlier payments for subsequent years and adjust as appropriate in order to maintain estimated outlier payments at 3 percent of total estimated payments. The reasons for estimated outlier payments not equaling 3 percent of total estimated payments are discussed in more detail below.

Section 1886(j)(4) of the Act provides the Secretary with the authority to make payments in addition to the basic IRF prospective payments for cases incurring extraordinarily high costs. In the August 7, 2001 final rule, we codified at § 412.624(e)(4) of the regulations (which would be redesignated as § 412.624(e)(5)) the provision to make an adjustment for additional payments for outlier cases that have extraordinarily high costs relative to the costs of most discharges. Providing additional payments for outliers strongly improves the accuracy of the IRF PPS in determining resource costs at the patient and facility level because facilities receive additional compensation over and above the adjusted Federal prospective payment amount for uniquely high-cost cases. These additional payments reduce the financial losses that would otherwise be caused by treating patients who require more costly care and, therefore, reduce the incentives to underserve these patients.

Under § 412.624(e)(4) (which would be redesignated as § 412.624(e)(5)), we make outlier payments for any discharges if the estimated cost of a case exceeds the adjusted IRF PPS payment for the CMG plus the adjusted threshold amount (we are proposing to make this $4,911, which is then adjusted for each IRF by the facility's wage adjustment, its LIP adjustment, its rural adjustment, and its teaching status adjustment, if applicable). We calculate the estimated cost of a case by multiplying the IRF's overall cost-to-charge ratio by the Medicare allowable covered charge. In accordance with § 412.624(e)(4), we pay outlier cases 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted IRF PPS payment for the CMG and the adjusted fixed threshold dollar amount).

Consistent with the broad statutory authority conferred upon the Secretary in sections 1886(j)(4)(A)(i) and 1886(j)(4)(A)(ii) of the Act, and in accordance with the methodology stated in the August 1, 2003 final rule (68 FR at 45692 through 45693), we propose to continue to apply a ceiling to an IRF's cost-to-charge ratios (CCR). Also, in the August 1, 2003 final rule (68 FR at 45693 through 45694), we stated the methodology we use to adjust IRF outlier payments and the methodology we use to make these adjustments. We indicated that the methodology is codified in § 412.624(e)(4) (which would be redesignated as § 412.624(e)(5)) and § 412.84(i)(3).

On February 6, 2004, we issued manual instructions in Change Request 2998 stating that we would set forth the upper threshold (ceiling) and the national CCRs applicable to IRFs in each year's annual notice of prospective payment rates published in the **Federal Register**. The upper threshold CCR for IRFs that we are proposing for FY 2006 would be 1.52 based on CBSA-based geographic designations. We are proposing to base this upper threshold CCR on the CBSA-based geographic designations because the CBSAs are the geographic designations we are proposing to adopt for purposes of computing the proposed wage index adjustment to IRF payments for FY 2006. If, instead, we were to use the MSA geographic designations, the upper threshold CCR amount would likely be different than the 1.52 we are proposing above. In addition, this is an estimated threshold and is subject to change in the final rule based on more recent data.

In addition, we are proposing to update the national urban and rural CCRs for IRFs. Under § 412.624(e)(4) (which would be redesignated as § 412.624(e)(5)) and § 412.84(i)(3), we are proposing to apply the national CCRs to the following situations:

- New IRFs that have not yet submitted their first Medicare cost report.
- IRFs whose operating or capital CCR is in excess of 3 standard deviations above the corresponding national geometric mean.
- Other IRFs for whom the fiscal intermediary obtains accurate data with which to calculate either an operating or capital CCR (or both) are not available.

The national CCR based on the facility location of either urban or rural would be used in each of the three situations cited above. Specifically, for FY 2006, we have estimated a proposed national CCR of 0.631 for rural IRFs and 0.518 for urban IRFs. For new facilities, we are proposing to use these national ratios until the facility's actual CCR can be computed using the first tentative settled or final settled cost report data, which will then be used for the subsequent cost report period.

In the August 7, 2001 final rule (66 FR at 41362 through 41363), we describe the process by which we calculate the outlier threshold. We continue to use this process for this proposed rule. We begin by simulating aggregate payments with and without an outlier policy, and applying an iterative process to determine a threshold that would result in outlier payments being equal to 3 percent of total simulated payments under the simulation. We note that the simulation analysis used to calculate the proposed $4,911 outlier threshold includes all of the proposed changes to the PPS discussed in this proposed rule, and is therefore subject to change in the final rule depending on the policies contained in the final rule. In addition, we will continue to analyze the estimated outlier payments for subsequent years and adjust as appropriate in order to maintain estimated outlier payments at 3 percent of total estimated payments.

In this proposed rule, we are proposing to update the threshold amount to $4,911 so that outlier payments will continue to equal 3 percent of total estimated payments under the IRF PPS. RAND found that 2002 outlier payments were equal to 3.1 percent of total payments in 2002. Nevertheless, the outlier loss threshold is affected by cost-to-charge ratios because the cost-to-charge ratios are used to compute the estimated cost of a case, which in turn is used to determine if a particular case qualifies for an outlier payment or not. For example, if the cost-to-charge ratio decreases, then the estimated costs of a case with the same reported charges would decrease. Thus, the chances that the case would exceed the outlier loss threshold and qualify for an outlier payment would decrease, decreasing the likelihood that the case would qualify for an outlier payment. If fewer cases were to qualify for outlier payments, then total estimated outlier payments could fall below 3 percent of total estimated payments.

Our analyses of cost report data from FY 1999 through FY 2002 (and projections for FY 2004 though FY 2006) indicate that the overall cost-to-charge ratios in IRFs have been falling since the IRF PPS was implemented. We are still analyzing possible reasons for this finding. However, because cost-to-charge ratios are used to determine whether a particular case qualifies for an outlier payment, this drop in the cost-to-charge ratios is likely responsible for much of the drop in total estimated outlier payments below 3 percent of total estimated payments. Thus, the outlier threshold would need to be lowered from $11,211 to $4,911 for FY 2006 in order that total estimated outlier payments would equal 3 percent of total estimated payments.

In addition, we are proposing to adjust the outlier threshold for FY 2006 because RAND's analysis of calendar year 2002 and FY 2003 data indicates that many of the other proposed changes discussed in this proposed rule would affect what the outlier threshold would need to be in order for total estimated outlier payments to equal 3 percent of total estimated payments. The outlier loss threshold is affected by the definitions of all other elements of the IRF PPS, including the structure of the CMGs and the tiers, the relative weights, the policies for very short-stay cases and for cases in which the patient expires in the facility (that is, cases that qualify for the special CMG assignments), and the facility-level adjustments (such as the rural adjustment, the LIP adjustment, and the proposed teaching status adjustment). In this proposed rule, we are proposing to change many of these components of the IRF PPS. For the reasons discussed above, then, we believe it is appropriate to update the outlier loss threshold for FY 2006. We expect to continue to adjust the outlier threshold in the future when the data indicate that total estimated outlier payments would deviate from equaling 3 percent of total estimated payments.

7. Proposed Budget Neutrality Factor Methodology for Fiscal Year 2006

We are proposing to make a one-time revision (for FY 2006) to the methodology found in § 412.624(d) in

order to make the proposed changes to the tiers and CMGs, the rural adjustment, the LIP adjustment, and the proposed teaching status adjustment in a budget neutral manner. Accordingly, we are proposing to revise § 412.624(d) by adding a section § 412.624(d)(4) for fiscal year 2006. Specifically, we are proposing to revise the methodology found in § 412.624(d) by adding a new paragraph (d)(4). The addition of this paragraph would provide for the application of a factor, as specified by the Secretary, which would be applied to the standard payment amount in order to make the proposed changes described in this preamble in a budget neutral manner for FY 2006. In addition, this paragraph would be used in future years if we propose refinements to the above-cited adjustments. According to the revised methodology, we propose to apply the market basket increase factor (3.1 percent) to the standard payment conversion factor for FY 2005 ($12,958), which equals $13,360. Then, we propose a one-time reduction to the standard payment amount of 1.9 percent to adjust for coding changes that increased payment to IRFs (as discussed in section III.A of this proposed rule), which equals $13,106. We then propose to apply the budget neutral wage adjustment (as discussed in section III.B.2.f of this proposed rule) of 0.9996 to $13,106, which would result in a standard payment amount of $13,101. For FY 2006 only, we propose to change the methodology for computing the standard payment conversion factor by applying budget neutrality factors for the proposed changes to the tiers and CMGs, the rural adjustment, the LIP adjustment, and the proposed teaching status adjustment. The next section contains a detailed explanation of these proposed budget neutrality factors, including the steps for computing these factors and how they affect total estimated aggregate payments and payments to individual IRF providers. The factors we are proposing to apply (as discussed in the next section) are 0.9994 for the proposed tier and CMG changes, 0.9865 for the proposed teaching status adjustment, 0.9963 for the proposed change to the rural adjustment, and 0.9836 for the proposed change to the LIP adjustment. These factors are subject to change as we analyze more current data. We have combined these factors, by multiplying the four factors together, into one budget neutrality factor for all four of these proposed changes (0.9994 * 0.9865 * 0.9963 * 0.9836 = 0.9662). We apply this overall budget neutrality factor to $13,101, resulting in a standard payment conversion factor for FY 2006 of $12,658. Note that the FY 2006 standard payment conversion factor is lower than it was in FY 2005 because it needed to be reduced to ensure that estimated aggregate payments for FY 2006 would remain the same as they otherwise would have been without the proposed changes. If we did not proposed to decrease the standard payment conversion factor, each of the proposed changes would increase total estimated aggregate payments by increasing payments to rural and teaching facilities, and to facilities with a higher average case mix of patients and facilities that treat a higher proportion of low-income patients. To assess how overall payments to a particular type of IRF would likely be affected by the proposed budget-neutral changes, please see Table 13 of this proposed rule.

The FY 2006 standard payment conversion factor would be applied to each CMG relative weight shown in Table 6, Proposed Relative Weights for Case-Mix Groups, to compute the proposed unadjusted IRF prospective payment rates for FY 2006 shown in Table 12. To further clarify, the proposed one-time budget neutrality factors described above will only be applied for FY 2006. In addition, if no further refinements are proposed for subsequent fiscal years, we will use the methodology as described in § 412.624(c)(3)(ii).

8. Description of the Methodology Used To Implement the Proposed Changes in a Budget Neutral Manner

Section 1886(j)(2)(C)(i) of the Act confers broad statutory authority upon the Secretary to adjust the classification and weighting factors in order to account for relative resource use. In addition, section 1886(j)(2)(C)(ii) provides that insofar as the Secretary determines that such adjustments for a previous fiscal year (or estimates of such adjustments for a future fiscal year) did (or are likely to) result in a change in aggregated payments under the classification system during the fiscal year that are a result of changes in the coding or classification of patients that do not reflect real changes in case mix, the Secretary shall adjust the per payment unit payment rate for subsequent years to eliminate the effect of such coding or classification changes. Similarly, section 1886(j)(3)(A)(v) of the Act confers broad statutory authority upon the Secretary to adjust the per discharge payment rate by such factors as the Secretary determines are necessary to properly reflect variations in necessary costs of treatment among IRFs. Consistent with this broad statutory authority, we are proposing to better distribute aggregate payments among IRFs to more accurately reflect their case mix and the increased costs associated with IRFs that have teaching programs, are located in rural areas, or treat a high proportion of low-income patients.

To ensure that total estimated aggregate payments to IRFs do not change with these proposed changes, we propose to apply a factor to the standard payment amount for each of the proposed changes to ensure that estimated aggregate payments in FY 2006 are not greater or less than those that would have been made in the year without the proposed changes. We propose to calculate these four factors using the following steps:

Step 1: Determine the FY 2006 IRF PPS standard payment amount using the FY 2005 standard payment conversion factor increased by the estimated market basket of 3.1 percent and reduced by 1.9 percent to account for coding changes (as discussed in section III.A of this proposed rule).

Step 2: Multiply the CBSA-based budget neutrality factor discussed in this preamble by the standard payment amount computed in step 1 to account for the wage index and labor-related share (0.9996), as discussed in section III.B.2.f of this proposed rule.

Step 3: Calculate the estimated total amount of IRF PPS payments for FY 2006 (with no change to the tiers and CMGs, no teaching status adjustment, and no changes to the rural and LIP adjustments).

Step 4: Apply the proposed new tier and CMG assignments (as discussed in section II) to calculate the estimated total amount of IRF PPS payments for FY 2006.

Step 5: Divide the amount calculated in step 3 by the amount calculated in step 4 to determine the factor (currently estimated to be 0.9994) that maintains the same total estimated aggregate payments in FY 2006 with and without the proposed changes to the tier and CMG assignments.

Step 6: Apply the factor computed in step 5 to the standard payment amount from step 2, and calculate estimated total IRF PPS payment for FY 2006.

Step 7: Apply the proposed change to the rural adjustment (as discussed in section III.B.4 of this proposed rule) to calculate the estimated total amount of IRF PPS payments for FY 2006.

Step 8: Divide the amount calculated in step 6 by the amount calculated in step 7 to determine the factor (currently estimated to be 0.9963) that keeps total estimated payments in FY 2006 the

same with and without the proposed change to the rural adjustment.

Step 9: Apply the factor computed in step 8 to the standard payment amount from step 6, and calculate estimated total IRF PPS payment for FY 2006.

Step 10: Apply the proposed change to the LIP adjustment (as discussed in section III.B.5 of this proposed rule) to calculate the estimated total amount of IRF PPS payments for FY 2006.

Step 11: Divide the amount calculated in step 9 by the amount calculated in step 10 to determine the factor (currently estimated to be 0.9836) that maintains the same total estimated aggregate payments in FY 2006 with and without the proposed change to the LIP adjustment.

Step 12: Apply the factor computed in step 11 to the standard payment amount from step 9, and calculate estimated total IRF PPS payment for FY 2006.

Step 13: Apply the proposed teaching status adjustment (as discussed in section III.B.5 of this proposed rule) to calculate the estimated total amount of IRF PPS payments for FY 2006.

Step 14: Divide the amount calculated in step 12 by the amount calculated in step 13 to determine the factor (currently estimated to be 0.9865) that maintains the same total estimated aggregate payments in FY 2006 with and without the proposed teaching status adjustment.

As discussed in section III.B.9 of this proposed rule, the proposed FY 2006 IRF PPS standard payment conversion factor that accounts for the proposed new tier and CMG assignments, the proposed changes to the rural and the LIP adjustments, and the proposed teaching status adjustment applies the following factors: the market basket update, the reduction of 1.9 percent to account for coding changes, the budget-neutral CBSA-based wage index and labor-related share budget neutrality factor of 0.9996, the proposed tier and CMG changes budget neutrality factor of 0.9994, the proposed rural adjustment budget neutrality factor of 0.9963, the proposed LIP adjustment budget neutrality factor of 0.9836, and the proposed teaching status adjustment budget neutrality factor of 0.9865.

Each of these proposed budget neutrality factors lowers the proposed standard payment amount. The budget neutrality factor for the proposed tier and CMG changes lowers the standard payment amount from $13,101 to $13,093. The budget neutrality factor for the proposed change to the rural adjustment lowers the standard payment amount from $13,093 to $13,045. The budget neutrality factor for the proposed change to the LIP adjustment lowers the standard payment amount from $13,045 to $12,831. Finally, the budget neutrality factor for the proposed teaching status adjustment lowers the standard payment amount from $12,831 to $12,658. As indicated previously, the standard payment conversion factor would need to be lowered in order to ensure that total estimated payments for FY 2006 with the proposed changes equal total estimated payments for FY 2006 without the proposed changes. This is because these four proposed changes would result in an increase, on average, to total estimated aggregate payments to IRFs, because IRFs with teaching programs, IRFs located in rural areas, IRFs with higher case mix, and IRFs with higher proportions of low-income patients would receive higher payments. To maintain the same total estimated aggregate payments to all IRFs, then, we are proposing to redistribute payments among IRFs. Thus, some redistribution of payments occurs among facilities, while total estimated aggregate payments do not change. To determine how these proposed changes are estimated to affect payments among different types of facilities, please see Table 13 in this proposed rule.

9. Description of the Proposed IRF Standard Payment Conversion Factor for Fiscal Year 2006

In the August 7, 2001 final rule, we established a standard payment amount referred to as the budget neutral conversion factor under § 412.624(c). In accordance with the methodology described in § 412.624(c)(3)(i), the budget neutral conversion factor for FY 2002, as published in the August 7,2001 final rule, was $11,838.00. Under § 412.624(c)(3)(i), this amount reflects, as appropriate, any adjustments for outlier payments, budget neutrality, and coding and classification changes as described in § 412.624(d).

The budget neutral conversion factor is a standardized payment amount and the amount reflects the budget neutrality adjustment for FY 2002. The statute required a budget neutrality adjustment only for FYs 2001 and 2002. Accordingly, we believed it was more consistent with the statute to refer to the standard payment as a standard payment conversion factor, rather than refer to it as a budget neutral conversion factor. Consequently, we changed all references to budget neutral conversion factor to "standard payment conversion factor."

Under § 412.624(c)(3)(i), the standard payment conversion factor for FY 2002 of $11,838.00 reflected the budget neutrality adjustment described in § 412.624(d)(2). Under the then existing § 412.624(c)(3)(ii), we updated the FY 2002 standard payment conversion factor ($11,838.00) to FY 2003 by applying an increase factor (the market basket) of 3.0 percent, as described in the update notice published in the August 1, 2002 **Federal Register** (67 FR at 49931). This yielded the FY 2003 standard payment conversion factor of $12,193.00 that was published in the August 1, 2002 update notice (67 FR at 49931). The FY 2003 standard payment conversion factor ($12,193) was used to update the FY 2004 standard payment conversion factor by applying an increase factor (the market basket) of 3.2 percent and budget neutrality factor of 0.9954, as described in the August 1, 2003 **Federal Register** (68 FR at 45689). This yielded the FY 2004 standard payment conversion factor of $12,525 that was published in the August 1, 2003 **Federal Register** (68 FR at 45689). The FY 2004 standard payment conversion factor ($12,525) was used to update the FY 2005 standard payment conversion factor by applying an increase factor (the market basket) of 3.1 percent and budget neutrality factor of 1.0035, as described in the July 30, 2004 **Federal Register** (69 FR at 45766). This yielded the FY 2005 standard payment conversion factor of $12,958 as published in the July 30, 2004 **Federal Register** (69 FR at 45766).

We propose to use the revised methodology in accordance with § 412.624(c)(3)(ii)and as described in section III.B.7 of this proposed rule. To calculate the standard payment conversion factor for FY 2006, we are proposing to apply the market basket increase factor (3.1 percent) to the standard payment conversion factor for FY 2005 ($12,958), which equals $13,360. Then, we propose a one-time reduction to the standard payment amount of 1.9 percent to adjust for coding changes that increased payment to IRFs, which equals $13,106. We then propose to apply the budget neutral wage adjustment of 0.9996 to $13,106, which would result in a standard payment amount of $13,101. Next, we propose to apply a one-time budget neutrality factor (for FY 2006 only) for the proposed budget neutral refinements to the tiers and CMGs, the teaching status adjustment, the rural adjustment, and the adjustment for the proportion of low-income patients (of 0.9662) to $13,101, which would result in a standard payment conversion factor for FY 2006 of $12,658. The FY 2006 standard payment conversion factor would be applied to each CMG weight

shown in Table 6, Proposed Relative Weights for Case-Mix Groups, to compute the unadjusted IRF prospective payment rates for FY 2006 shown in Table 12.

10. Example of the Proposed Methodology for Adjusting the Federal Prospective Payment Rates

To illustrate the methodology that we propose to use to adjust the Federal prospective payments (as described in section III.B.7 and section III.B.8 of this proposed rule), we provide an example in Table 11 below.

One beneficiary is in Facility A, an IRF located in rural Montana, and another beneficiary is in Facility B, an IRF located in the New York City core-based statistical area. Facility A, a non-teaching hospital, has a disproportionate share hospital (DSH) adjustment of 5 percent, with a low-income patient adjustment of (1.0315), a wage index of (0.8701), and an applicable rural area adjustment (24.1 percent). Facility B, a teaching hospital, has a DSH of 15 percent, with a LIP adjustment of (1.0929), a wage index of (1.3311), and an applicable teaching status adjustment of (1.109).

Both Medicare beneficiaries are classified to CMG 0110 (without comorbidities). To calculate each IRF's total proposed adjusted Federal prospective payment, we compute the wage-adjusted Federal prospective payment and multiply the result by the appropriate low-income patient adjustment, the rural adjustment (if applicable), and the teaching hospital adjustment (if applicable). Table 11 illustrates the components of the proposed adjusted payment calculation.

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Table 11--Example of Computing an IRF's Proposed Federal Prospective Payment

	Facility A	Facility B
Federal Prospective Payment	$27,450.14	$27,450.14
Labor Share	X 0.75958	X 0.75958
Labor Portion of Federal Payment	$20,850.58	$20,850.58
CBSA Based Wage Index (shown in Appendix 1, Tables 2(a) and 2(b))	X 0.8701	X 1.3311
Wage-Adjusted Amount	= $18,142.09	= $27,754.21
Nonlabor Amount	+ $6,599.55	+ $6,599.55
Wage-Adjusted Federal Payment	= $24,741.64	= $34,353.76
Rural Adjustment	X 1.241	X 1.0000
Subtotal	= $30,704.38	= $34,353.76
LIP Adjustment	X 1.0315	X 1.0929
	= $ 31,671.57	= $37,545.22
Teaching status addition	X 1.000	X 1.109
Total FY 2006 Adjusted Federal Prospective Payment	$31,671.57	$41,637.65

Thus, the proposed adjusted payment for Facility A would be $31,671.57, and the adjusted payment for Facility B would be $41,637.65.

Table 12: Proposed FY 2006 Payment Rate Table Based On All Proposed Refinements

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidity
0101	$9,735.27	$9,239.07	$8,207.45	$8,037.83
0102	$11,988.39	$11,378.28	$10,107.41	$9,898.56
0103	$14,128.86	$13,409.89	$11,912.44	$11,666.88
0104	$15,011.12	$14,246.58	$12,656.73	$12,394.71
0105	$18,016.13	$17,099.69	$15,190.87	$14,876.95
0106	$20,970.51	$19,903.44	$17,681.96	$17,316.14
0107	$24,203.36	$22,971.74	$20,407.23	$19,986.98
0108	$27,981.77	$26,557.75	$23,593.25	$23,105.91
0109	$27,817.22	$26,402.06	$23,454.01	$22,970.47
0110	$33,242.44	$31,551.33	$28,028.61	$27,450.14
0201	$10,303.61	$8,640.35	$7,621.38	$7,149.24
0202	$13,211.15	$11,079.55	$9,771.98	$9,165.66
0203	$15,806.04	$13,255.46	$11,690.93	$10,966.89
0204	$16,906.02	$14,178.23	$12,504.84	$11,730.17
0205	$20,735.07	$17,389.56	$15,336.43	$14,385.82
0206	$27,061.54	$22,695.79	$20,017.36	$18,775.61
0207	$35,008.23	$29,358.97	$25,894.47	$24,288.17
0301	$14,294.68	$12,070.67	$10,683.35	$9,827.67
0302	$18,643.97	$15,744.02	$13,933.93	$12,817.49
0303	$22,246.44	$18,785.74	$16,627.55	$15,294.66
0304	$30,658.94	$25,889.41	$22,914.78	$21,076.84
0401	$12,520.03	$10,780.82	$9,690.96	$8,654.27
0402	$17,265.51	$14,868.09	$13,364.32	$11,933.96
0403	$30,053.89	$25,880.55	$23,264.14	$20,774.31
0404	$53,881.31	$46,399.16	$41,708.11	$37,244.90
0405	$41,109.39	$35,400.63	$31,820.95	$28,415.94
0501	$9,752.99	$8,163.14	$7,140.38	$6,403.68
0502	$13,057.99	$10,928.92	$9,560.59	$8,574.53
0503	$17,311.08	$14,488.35	$12,674.46	$11,365.62
0504	$21,670.50	$18,136.38	$15,865.54	$14,227.59
0505	$25,681.82	$21,494.55	$18,803.46	$16,861.72
0506	$34,944.94	$29,247.57	$25,584.35	$22,943.89

Table 12: Proposed FY 2006 Payment Rate Table Based On All Proposed Refinements

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidity
0601	$11,347.90	$9,279.58	$8,817.56	$8,218.84
0602	$15,094.67	$12,344.08	$11,730.17	$10,931.45
0603	$19,323.70	$15,802.25	$15,016.19	$13,994.68
0604	$24,732.47	$20,226.22	$19,218.64	$17,912.34
0701	$11,461.82	$9,792.23	$9,196.04	$8,335.29
0702	$14,882.01	$12,713.70	$11,939.03	$10,821.32
0703	$18,526.25	$15,827.56	$14,863.02	$13,471.91
0704	$22,736.30	$19,423.70	$18,240.18	$16,533.88
0801	$8,304.91	$6,975.82	$6,466.97	$5,817.62
0802	$10,847.91	$9,111.23	$8,446.68	$7,599.86
0803	$16,084.52	$13,508.62	$12,523.83	$11,266.89
0804	$14,011.14	$11,766.88	$10,908.66	$9,815.01
0805	$17,641.45	$14,816.19	$13,736.46	$12,358.01
0806	$21,171.77	$17,780.69	$16,484.51	$14,830.11
0901	$10,647.91	$9,693.50	$8,613.77	$7,708.72
0902	$13,992.15	$12,737.75	$11,318.78	$10,128.93
0903	$18,459.16	$16,804.76	$14,932.64	$13,363.05
0904	$23,140.09	$21,066.71	$18,718.65	$16,751.60
1001	$12,199.78	$11,250.43	$10,039.06	$9,255.53
1002	$16,087.05	$14,833.91	$13,236.47	$12,203.58
1003	$22,627.44	$20,864.18	$18,618.65	$17,165.51
1101	$15,878.20	$13,285.84	$11,631.44	$10,711.20
1102	$23,771.72	$19,889.52	$17,412.34	$16,035.15
1201	$12,890.91	$11,131.45	$10,260.57	$9,261.86
1202	$16,684.51	$14,408.60	$13,280.77	$11,987.13
1203	$20,554.06	$17,749.05	$16,360.47	$14,766.82
1301	$13,085.84	$12,173.20	$10,537.79	$9,313.76
1302	$18,131.32	$16,866.79	$14,599.74	$12,904.83
1303	$23,174.27	$21,559.11	$18,661.69	$16,495.91
1401	$10,344.12	$9,306.16	$8,096.06	$7,349.23
1402	$13,966.84	$12,564.33	$10,931.45	$9,922.61
1403	$17,385.76	$15,640.22	$13,607.35	$12,352.94
1404	$22,048.97	$19,836.35	$17,256.65	$15,665.54
1501	$11,673.21	$11,385.87	$9,730.20	$9,363.12

Table 12: Proposed FY 2006 Payment Rate Table Based On All Proposed Refinements

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidity
1502	$14,757.96	$14,393.41	$12,301.04	$11,837.76
1503	$18,061.70	$17,616.14	$15,055.43	$14,487.08
1504	$23,812.23	$23,224.90	$19,849.01	$19,099.66
1601	$12,740.28	$10,815.00	$9,785.90	$8,739.08
1602	$17,480.70	$14,840.24	$13,426.34	$11,990.92
1603	$21,503.41	$18,254.10	$16,516.16	$14,750.37
1701	$12,787.11	$12,194.72	$10,535.25	$9,266.92
1702	$16,841.47	$16,060.47	$13,875.70	$12,206.11
1703	$20,040.15	$19,111.05	$16,509.83	$14,523.79
1704	$25,072.97	$23,909.70	$20,656.59	$18,170.56
1801	$15,338.96	$12,445.35	$10,436.52	$9,217.56
1802	$24,537.53	$19,908.50	$16,695.90	$14,745.30
1803	$44,029.59	$35,723.41	$29,958.95	$26,459.02
1901	$15,647.82	$13,899.75	$13,514.95	$11,833.96
1902	$29,318.46	$26,042.57	$25,321.06	$22,170.49
1903	$42,327.09	$37,598.06	$36,557.57	$32,008.28
2001	$11,066.89	$9,350.46	$8,383.39	$7,654.29
2002	$14,490.88	$12,242.82	$10,975.75	$10,021.34
2003	$18,719.92	$15,816.17	$14,179.49	$12,945.34
2004	$25,007.14	$21,128.73	$18,941.43	$17,294.63
2101	$27,667.86	$27,667.86	$20,138.88	$18,685.74
5001	$0.00	$0.00	$0.00	$2,786.03
5101	$0.00	$0.00	$0.00	$8,039.10
5102	$0.00	$0.00	$0.00	$20,255.33
5103	$0.00	$0.00	$0.00	$9,118.82
5104	$0.00	$0.00	$0.00	$23,760.33

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IV. Provisions of the Proposed Regulations

(If you choose to comment on issues in this section, please include the caption "Provisions of the Proposed Regulations" at the beginning of your comments.)

We are proposing to make revisions to the regulation in order to implement the proposed prospective payment for IRFs for FY 2006 and subsequent fiscal years. Specifically, we are proposing to make conforming changes in 42 CFR part 412. These proposed revisions and others are discussed in detail below.

A. Section 412.602 Definitions

In § 412.602, we are proposing to revise the definitions of "Rural area" and "Urban area" to read as follows:

Rural area means: For cost-reporting periods beginning on or after January 1, 2002, with respect to discharges occurring during the period covered by such cost reports but before October 1, 2005, an area as defined in § 412.62(f)(1)(iii). For discharges occurring on or after October 1, 2005, rural area means an area as defined in § 412.64(b)(1)(ii)(C).

Urban area means: For cost-reporting periods beginning on or after January 1, 2002, with respect to discharges occurring during the period covered by such cost reports but before October 1, 2005, an area as defined in § 412.62(f)(1)(ii). For discharges occurring on or after October 1, 2005, urban area means an area as defined in § 412.64(b)(1)(ii)(A) and § 412.64(b)(1)(ii)(B).

B. Section 412.622 Basis of payment

In this section, we are proposing to correct the cross references in paragraphs (b)(1) and (b)(2)(i). In paragraph (b)(1), we are proposing to remove the cross references "§§ 413.85 and 413.86 of this chapter" and add in their place "§ 413.75 and § 413.85 of this chapter." In paragraph (b)(2)(i), we are proposing to remove the cross reference "§ 413.80 of this chapter" and add in its place "§ 413.89 of this chapter."

C. Section 412.624 Methodology for calculating the Federal prospective payment rates.

- In paragraph (d)(1), removing the cross reference to "paragraph (e)(4)" and adding in its place "paragraph (e)(5)."
- Adding a new paragraph (d)(4).
- Redesignating paragraphs (e)(4) and (e)(5) as paragraphs (e)(5) and (e)(6).
- Adding a new paragraph (e)(4).
- Revising newly redesignated paragraph (e)(5).
- Revising newly redesignated paragraph (e)(6).
- In paragraph (f)(2)(v), removing the cross references to "paragraphs (e)(1), (e)(2), and (e)(3) of this section" and adding in their place "paragraphs (e)(1), (e)(2), (e)(3), and (e)(4) of this section."

D. Additional Changes

- Reduce the standard payment conversion factor by 1.9 percent to account for coding changes.
- Revise the comorbidity tiers and CMGs.
- Use a weighted motor score index in assigning patients to CMGs.
- Update the relative weights.
- Update payments for rehabilitation facilities using a market basket reflecting the operating and capital cost structures for the RPL market basket.
- Provide the weights and proxies to use for the FY 2002-based RPL market basket.
- Indicate the methodology for the capital portion of the RPL market basket.
- Adopt the new geographic labor market area definitions as specified in § 412.64(b)(1)(ii)(A)–(C).
- Use the New England MSAs as determined under the proposed new CBSA-based labor market area definitions.
- Use FY 2001 acute care hospital wage data in computing the FY 2006 IRF PPS payment rates.
- Implement a teaching status adjustment.
- Update the formulas used to compute the rural and the LIP adjustments to IRF payments.
- Update the outlier threshold amount to maintain total outlier payments at 3 percent of total estimated payments.
- Revise the methodology for computing the standard payment conversion factor (for FY 2006 only) to make the proposed CMG and tier changes, the proposed teaching status adjustment, and the proposed updates to the rural and LIP adjustments in a budget neutral manner.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

VI. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VII. Regulatory Impact Analysis

[If you choose to comment on issues in this section, please include the caption "Regulatory Impact Analysis" at the beginning of your comments.]

A. Introduction

The August 7, 2001 final rule established the IRF PPS for the payment of Medicare services for cost reporting periods beginning on or after January 1, 2002. We incorporated a number of elements into the IRF PPS, such as case-level adjustments, a wage adjustment, an adjustment for the percentage of low-income patients, a rural adjustment, and outlier payments. This proposed rule sets forth updates of the IRF PPS rates contained in the August 7, 2001 final rule and proposes policy changes with regard to the IRF PPS based on analyses conducted by RAND under contract with us on calendar year 2002 and FY 2003 data (updated from the 1999 data used to design the IRF PPS).

In constructing these impacts, we do not attempt to predict behavioral responses, nor do we make adjustments for future changes in such variables as discharges or case-mix. We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, susceptible to forecasting errors due to other changes in the forecasted impact time period. Some examples of such possible events are newly legislated general Medicare program funding changes by the Congress, or changes specifically related to IRFs. In addition, changes to the Medicare program may continue to be made as a result of the BBA, the BBRA, the BIPA, or new statutory provisions. Although these changes may not be specific to the IRF PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon IRFs.

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) and Impact on Small Hospitals (September 16, 1980, Pub. L. 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.

1. Executive Order 12866

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

We estimate that the cost to the Medicare program for IRF services in FY 2006 will increase by $180 million over FY 2005 levels. The updates to the IRF labor-related share and wage indices are made in a budget neutral manner. We are proposing to make changes to the CMGs and the tiers, the teaching status adjustment, and the rural and LIP adjustments in a budget neutral manner (that is, in order that total estimated aggregate payments with the changes equal total estimated aggregate payments without the changes). This means that we are proposing to improve the distribution of payments among facilities depending on the mix of patients they treat, their teaching status, their geographic location (rural vs. urban), and the percentage of low-income patients they treat, without changing total estimated aggregate

payments. To accomplish this redistribution of payments among facilities, we lower the base payment amount, which then gets adjusted upward for each facility according to the facility's characteristics. This proposed redistribution would not, however, affect aggregate payments to facilities. Thus, the proposed changes to the IRF labor-related share and the wage indices, the proposed changes to the CMGs, the tiers, and the motor score index, the proposed teaching status adjustment, the proposed update to the rural adjustment, and the proposed update to the LIP adjustment would have no overall effect on estimated costs to the Medicare program. Therefore, the estimated increased cost to the Medicare program is due to the updated IRF market basket of 3.1 percent, the 1.9 percent reduction to the standard payment conversion factor to account for changes in coding that affect total aggregate payments, and the update to the outlier threshold amount. We have determined that this proposed rule is a major rule as defined in 5 U.S.C. 804(2). Based on the overall percentage change in payments per case estimated using our payment simulation model (a 2.9 percent increase), we estimate that the total impact of these proposed changes for FY 2006 payments compared to FY 2005 payments would be approximately a $180 million increase. This amount does not reflect changes in IRF admissions or case-mix intensity, which would also affect overall payment changes.

2. Regulatory Flexibility Act (RFA)

The RFA requires agencies to analyze the economic impact of our regulations on small entities. If we determine that the proposed regulation would impose a significant burden on a substantial number of small entities, we must examine options for reducing the burden. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most IRFs and most other providers and suppliers are considered small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. (For details, see the Small Business Administration's regulation that set forth size standards for health care industries at 65 at FR 69432.) Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IRFs. Therefore, we assume that all IRFs (approximate total of 1,200 IRFs, of which approximately 60 percent are nonprofit facilities) are considered small entities for the purpose of the analysis that follows. Medicare fiscal intermediaries and carriers are not considered to be small entities. Individuals and States are not included in the definition of a small entity.

3. Impact on Rural Hospitals

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we previously defined a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA). However, under the new labor market definitions that we are proposing to adopt, we would no longer employ NECMAs to define urban areas in New England. Therefore, for purposes of this analysis, we now define a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical Area (MSA).

As discussed in detail below, the rates and policies set forth in this proposed rule would not have an adverse impact on rural hospitals based on the data of the 169 rural units and 21 rural hospitals in our database of 1,188 IRFs for which data were available.

4. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) also requires that agencies assess anticipated costs and benefits before issuing any proposed rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of at least $110 million. This proposed rule would not mandate any requirements for State, local, or tribal governments, nor would it affect private sector costs.

5. Executive Order 13132

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed rule in light of Executive Order 13132 and have determined that it would not have any negative impact on the rights, roles, or responsibilities of State, local, or tribal governments.

6. Overall Impact

The following analysis, in conjunction with the remainder of this document, demonstrates that this proposed rule is consistent with the regulatory philosophy and principles identified in Executive Order 12866, the RFA, and section 1102(b) of the Act. We have determined that the proposed rule would have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

B. Anticipated Effects of the Proposed Rule

We discuss below the impacts of this proposed rule on the budget and on IRFs.

1. Basis and Methodology of Estimates

In this proposed rule, we are proposing policy changes and payment rate updates for the IRF PPS. Based on the overall percentage change in payments per discharge estimated using a payment simulation model developed by RAND under contract with CMS (a 2.9 percent increase), we estimate the total impact of these proposed changes for FY 2006 payments compared to FY 2005 payments to be approximately a $180 million increase. This amount does not reflect changes in hospital admissions or case-mix intensity, which would also affect overall payment changes.

We have prepared separate impact analyses of each of the proposed changes to the IRF PPS. RAND's payment simulation model relies on the most recent available data (FY 2003) to enable us to estimate the impacts on payments per discharge of certain changes we are proposing in this proposed rule.

The data used in developing the quantitative analyses of changes in payments per discharge presented below are taken from the FY 2003 MedPAR file and the most current Provider-Specific File that is used for payment purposes. Data from the most recently available IRF cost reports were used to estimate costs and to categorize hospitals. Our analysis has several qualifications. First, we do not make adjustments for behavioral changes that hospitals may adopt in response to the proposed policy changes, and we do not adjust for future changes in such variables as admissions, lengths of stay, or case-mix. Second, due to the interdependent nature of the IRF PPS payment components, it is very difficult to precisely quantify the impact associated with each proposed change.

Using cases in the FY 2003 MedPAR file, we simulated payments under the IRF PPS given various combinations of payment parameters.

The proposed changes discussed separately below are the following:

- The effects of the proposed annual market basket update (using the proposed rehabilitation hospital, psychiatric hospital, and long-term care hospital (RPL) market basket) to IRF PPS payment rates required by sections 1886(j)(3)(A)(i) and 1886(j)(3)(C) of the Act.
- The effects of applying the proposed budget-neutral labor-related share and wage index adjustment, as required under section 1886(j)(6) of the Act.
- The effects of the proposed decrease to the standard payment conversion factor to account for the increase in estimated aggregate payments due to changes in coding, as required under section 1886(j)(2)(C)(ii) of the Act.
- The effects of the proposed budget-neutral changes to the tier comorbidities, CMGs, motor score index, and relative weights, under the authority of section 1886(j)(2)(C)(i) of the Act.
- The effects of the proposed adoption of new CBSAs based on the new geographic area definitions announced by OMB in June 2003.
- The effects of the proposed implementation of a budget-neutral teaching status adjustment, as permitted under section 1886(j)(3)(A)(v) of the Act.
- The effects of the proposed budget-neutral update to the percentage amount by which payments are adjusted for IRFs located in rural areas, as permitted under section 1886(j)(3)(A)(v) of the Act.
- The effects of the proposed budget-neutral update to the formula used to calculate the payment adjustment for IRFs based on the percentage of low-income patients they treat, as permitted under section 1886(j)(3)(A)(v) of the Act.
- The effects of the proposed change to the outlier loss threshold amount to maintain total estimated outlier payments at 3 percent of total estimated payments to IRFs in FY 2006, consistent with section 1886(j)(4) of the Act.
- The total change in payments based on the proposed FY 2006 policies relative to payments based on FY 2005 policies.

To illustrate the impacts of the proposed FY 2006 changes, our analysis begins with a FY 2005 baseline simulation model using: IRF charges inflated to FY 2005 using the market basket; the FY 2005 PRICER; the estimated percent of outlier payments in FY 2005; the FY 2005 CMG GROUPER (version 1.22); the MSA designations for IRFs based on OMB's MSA definitions prior to June 2003; the FY 2005 wage index; the FY 2005 labor-market share; the FY 2005 formula for the LIP adjustment; and the FY 2005 percentage amount of the rural adjustment.

Each proposed policy change is then added incrementally to this baseline model, finally arriving at a FY 2006 model incorporating all of the proposed changes to the IRF PPS. This allows us to isolate the effects of each change. Note that, in computing estimated payments per discharge for each of the proposed policy changes, the outlier loss threshold has been adjusted so that estimated outlier payments are 3 percent of total estimated payments.

Our final comparison illustrates the percent change in payments per discharge from FY 2005 to FY 2006. One factor that affects the proposed changes in IRFs' payments from FY 2005 to FY 2006 is that we currently estimate total outlier payments during FY 2005 to be 1.2 percent of total estimated payments. As discussed in the August 7, 2001 final rule (66 FR at 41362), our policy is to set total estimated outlier payments at 3 percent of total estimated payments. Because estimated outlier payments during FY 2005 were below 3 percent of total payments, payments in FY 2006 would increase by an additional 1.8 percent over payments in FY 2005 because of the proposed change in the outlier loss threshold to achieve the 3 percent target.

2. Analysis of Table 13

Table 13 displays the results of our analysis. The table categorizes IRFs by geographic location, including urban or rural location and location with respect to CMS' nine regions of the country. In addition, the table divides IRFs into those that are separate rehabilitation hospitals (otherwise called freestanding hospitals in this section), those that are rehabilitation units of a hospital (otherwise called hospital units in this section), rural or urban facilities by ownership (otherwise called for-profit, non-profit, and government), and by teaching status. The top row of the table shows the overall impact on the 1,188 IRFs included in the analysis.

The next twelve rows of Table 13 contain IRFs categorized according to their geographic location, designation as either a freestanding hospital or a unit of a hospital, and by type of ownership: all urban, which is further divided into urban units of a hospital, urban freestanding hospitals, by type of ownership, and rural, which is further divided into rural units of a hospital, rural freestanding hospitals, and by type of ownership. There are 998 IRFs located in urban areas included in our analysis. Among these, there are 802 IRF units of hospitals located in urban areas and 196 freestanding IRF hospitals located in urban areas. There are 190 IRFs located in rural areas included in our analysis. Among these, there are 169 IRF units of hospitals located in rural areas and 21 freestanding IRF hospitals located in rural areas. There are 354 for-profit IRFs. Among these, there are 295 IRFs in urban areas and 59 IRFs in rural areas. There are 708 non-profit IRFs. Among these, there are 603 urban IRFs and 105 rural IRFs. There are 126 government owned IRFs. Among these, there are 100 urban IRFs and 26 rural IRFs.

The following three parts of Table 13 show IRFs grouped by their geographic location within a region, and the last part groups IRFs by teaching status. First, IRFs located in urban areas are categorized with respect to their location within a particular one of nine geographic regions. Second, IRFs located in rural areas are categorized with respect to their location within a particular one of the nine CMS regions. In some cases, especially for rural IRFs located in the New England, Mountain, and Pacific regions, the number of IRFs represented is small. Finally, IRFs are grouped by teaching status, including non-teaching IRFs, IRFs with an intern and resident to ADC ratio less than 10 percent, IRFs with an intern and resident to ADC ratio greater than or equal to 10 percent and less than or equal to 19 percent, and IRFs with an intern and resident to ADC ratio greater than 19 percent.

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Table 13 - Projected Impact of FY 2006 Proposed Refinements to the IRF PPS											
Facility Classification (1)	Number of IRFs (2)	Number of cases (3)	CBSA Wage Index and Labor-share (4)	Outlier (5)	Market Basket (6)	New CMG, New Tiers, and Motor Score (7)	Rural Adjust. (8)	New LIP Adjust. (9)	Teach. Status Adjust. (10)	1.9% Reduct. (11)	Total % Change (12)
Total	1,188	461,738	0.0%	1.8%	3.1%	0.0%	0.0%	0.0%	0.0%	-1.9%	2.9%
Urban unit	802	261,229	0.1%	2.4%	3.1%	0.9%	-0.3%	0.1%	0.6%	-1.9%	5.0%
Rural unit	169	34,664	-1.8%	3.2%	3.1%	1.7%	3.4%	-0.1%	-1.0%	-1.9%	6.5%
Urban hospital	196	158,968	0.3%	0.3%	3.1%	-1.8%	-0.3%	-0.1%	-0.6%	-1.9%	-1.1%
Rural hospital	21	6,877	-1.6%	7.0%	3.1%	-0.7%	3.5%	0.0%	-1.2%	-1.9%	8.1%
Urban For-Profit	295	154,526	0.4%	0.5%	3.1%	-1.9%	-0.3%	-0.1%	-0.9%	-1.9%	-1.1%
Rural For-Profit	59	11,952	-2.8%	3.8%	3.1%	0.3%	3.4%	0.2%	-1.2%	-1.9%	4.7%
Urban Non-Profit	603	237,384	0.0%	2.2%	3.1%	1.0%	-0.3%	0.0%	0.6%	-1.9%	4.6%
Rural Non-Profit	105	23,793	-1.2%	4.2%	3.1%	1.7%	3.4%	-0.3%	-1.0%	-1.9%	8.0%
Urban Government	100	28,287	-0.2%	2.5%	3.1%	0.6%	-0.3%	0.5%	2.1%	-1.9%	6.5%
Rural Government	26	5,796	-1.7%	2.7%	3.1%	1.4%	3.3%	0.3%	-1.2%	-1.9%	6.0%
Urban	998	420,197	0.2%	1.6%	3.1%	-0.1%	-0.3%	0.0%	0.1%	-1.9%	2.6%
Rural	190	41,541	-1.8%	3.9%	3.1%	1.2%	3.4%	-0.1%	-1.1%	-1.9%	6.8%
Urban by region											

Table 13 - Projected Impact of FY 2006 Proposed Refinements to the IRF PPS

Facility Classification (1)	Number of IRFs (2)	Number of cases (3)	CBSA Wage Index and Labor-share (4)	Outlier (5)	Market Basket (6)	New CMG, New Tiers, and Motor Score (7)	Rural Adjust. (8)	New LIP Adjust. (9)	Teach. Status Adjust. (10)	1.9% Reduct. (11)	Total % Change (12)
New England	35	20,612	-0.7%	1.6%	3.1%	-0.7%	-0.3%	-0.3%	-0.7%	-1.9%	-0.1%
Middle Atlantic	156	76,962	-0.4%	2.1%	3.1%	1.1%	-0.3%	0.0%	2.0%	-1.9%	5.6%
South Atlantic	124	73,677	0.6%	0.5%	3.1%	-0.5%	-0.3%	0.0%	-0.3%	-1.9%	1.0%
East North Central	189	69,315	0.1%	2.3%	3.1%	1.2%	-0.3%	-0.2%	0.1%	-1.9%	4.3%
East South Central	54	30,473	0.3%	0.0%	3.1%	-1.4%	-0.3%	0.1%	-0.5%	-1.9%	-0.7%
West North Central	71	22,217	-0.1%	2.2%	3.1%	0.6%	-0.3%	-0.1%	0.2%	-1.9%	3.7%
West South Central	184	76,088	0.5%	1.8%	3.1%	-0.7%	-0.3%	-0.1%	-0.6%	-1.9%	1.5%
Mountain	69	24,287	0.0%	1.2%	3.1%	-2.2%	-0.3%	-0.2%	-0.6%	-1.9%	-1.0%
Pacific	116	26,566	0.8%	2.3%	3.1%	-0.8%	-0.3%	1.1%	0.1%	-1.9%	4.4%
Rural by region											
New England	4	924	0.4%	2.2%	3.1%	1.7%	3.2%	-0.4%	-1.1%	-1.9%	7.3%
Middle Atlantic	19	5,377	-0.8%	8.3%	3.1%	1.5%	3.6%	-0.4%	-1.2%	-1.9%	12.3%
South Atlantic	22	5,440	-1.9%	2.6%	3.1%	1.2%	3.4%	0.2%	-1.2%	-1.9%	5.4%
East North Central	28	5,618	-1.2%	3.1%	3.1%	1.9%	3.3%	-0.5%	-1.1%	-1.9%	6.6%

Table 13 - Projected Impact of FY 2006 Proposed Refinements to the IRF PPS

Facility Classification (1)	Number of IRFs (2)	Number of cases (3)	CBSA Wage Index and Labor-share (4)	Outlier (5)	Market Basket (6)	New CMG, New Tiers, and Motor Score (7)	Rural Adjust. (8)	New LIP Adjust. (9)	Teach. Status Adjust. (10)	1.9% Reduct. (11)	Total % Change (12)
East South Central	20	5,362	-2.1%	2.2%	3.1%	1.1%	3.5%	0.3%	-0.9%	-1.9%	5.3%
West North Central	30	5,351	-1.4%	2.4%	3.1%	2.7%	3.3%	-0.2%	-0.7%	-1.9%	7.2%
West South Central	54	12,016	-2.5%	4.3%	3.1%	0.4%	3.4%	0.1%	-1.2%	-1.9%	5.6%
Mountain	9	902	-5.7%	9.5%	3.1%	2.6%	3.0%	-0.5%	-1.0%	-1.9%	8.7%
Pacific	4	551	1.7%	2.8%	3.1%	-2.7%	3.0%	-0.9%	-1.0%	-1.9%	3.9%
Teaching Status											
Non-teaching	1,053	400,072	0.0%	1.6%	3.1%	-0.1%	0.1%	-0.1%	-1.1%	-1.9%	1.5%
Resident to ADC less than 10%	71	39,888	0.3%	2.5%	3.1%	0.3%	-0.3%	0.2%	2.6%	-1.9%	7.0%
Resident to ADC 10%-19%	42	17,793	-1.2%	3.0%	3.1%	0.4%	-0.3%	1.2%	11.0%	-1.9%	15.8%
Resident to ADC greater than 19%	22	3,985	-0.1%	4.3%	3.1%	0.0%	-0.3%	1.2%	24.3%	-1.9%	32.1%

3. Impact of the Proposed Market Basket Update to the IRF PPS Payment Rates (Using the RPL Market Basket) (Column 6, Table 13)

In column 6 of Table 13, we present the effects of the proposed market basket update to the IRF PPS payment rates, as discussed in section III.B.1 of this proposed rule. Section 1886(j)(3)(A)(i) of the Act requires us annually to update the per discharge prospective payment rate for IRFs by an increase factor specified by the Secretary and based on an appropriate percentage increase in a market basket of goods and services comprising services for which payment is made to IRFs, as specified in section 1886(j)(3)(C) of the Act.

As discussed in detail in section III.B.1 of this proposed rule, we are proposing to use a new market basket that reflects the operating and capital cost structures of inpatient rehabilitation facilities, inpatient psychiatric facilities, and long-term care hospitals, referred to as the rehabilitation hospital, psychiatric hospital, and long-term care hospital (RPL) market basket. The proposed FY 2006 update for IRF PPS payments using the proposed FY 2002-based RPL market basket and the Global Insight's 4th quarter 2004 forecast would be 3.1 percent.

In the aggregate, and across all hospital groups, the proposed update would result in a 3.1 percent increase in overall payments to IRFs.

4. Impact of Updating the Budget-Neutral Labor-Related Share and MSA-Based Wage Index Adjustment (Column 4, Table 14)

In column 4 of Table 14, we present the effects of a budget-neutral update to the labor-related share and the wage index adjustment (using the geographic area definitions developed by OMB before June 2003), as discussed in section III.B.2 of this proposed rule. Since we are not proposing to use the MSA labor market definitions, table 14 is for reference purposes only.

Section 1886(j)(6) of the Act requires us annually to adjust the proportion of rehabilitation facilities' costs that are attributable to wages and wage-related costs, of the prospective payment rates under the IRF PPS for area differences in wage levels by a factor reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for such facilities. This section of the Act also requires any such adjustments to be made in a budget-neutral manner.

In accordance with section 1886(j)(6) of the Act, we are proposing to update the labor-related share and adopt the wage index adjustment based on CBSA designations in a budget neutral manner. However, if we do not adopt the CBSA-based designations, this would not change aggregated payments to IRF as indicated in the first row of column 4 in Table 14. If we only update the MSA-based wage index and labor-related share, there would be small distributional effects among different categories of IRFs. For example, rural IRFs would experience a 1.0 percent decrease while urban facilities would experience a 0.1 percent increase in payments based on the RLP labor-related share and MSA-based wage index. Rural IRFs in the East South Central region would experience the largest decrease of 1.8 percent based on the proposed FY 2006 labor-related share and MSA-based wage index. Urban IRFs in the Pacific region would experience the largest increase in payments of 0.8 percent.

Table 14 -Impact of FY 2006 MSA-based Wage Index to the IRF PPS Without Refinements, For Reference Purposes Only						
Facility Classification (1)	Number of IRFs (2)	Number of cases (3)	MSA Wage Index and Labor-Share (4)	Outlier Impact (5)	Market Basket (6)	Outlier, Market Basket, Labor-Share, MSA Wage Index Change (7)
Total	1,188	461,738	0.0%	1.8%	3.1%	4.9%
Urban unit	791	258,797	0.0%	2.5%	3.1%	5.7%
Rural unit	180	37,096	-0.9%	1.8%	3.1%	4.0%
Urban hospital	193	156,575	0.3%	0.7%	3.1%	4.1%
Rural hospital	24	9,270	-1.3%	1.0%	3.1%	2.8%
Urban For-Profit	292	151,066	0.3%	0.9%	3.1%	4.4%
Rural For-Profit	62	15,412	-1.2%	1.1%	3.1%	2.9%
Urban Non-Profit	596	236,700	0.0%	2.2%	3.1%	5.4%
Rural Non-Profit	112	24,477	-0.8%	1.9%	3.1%	4.3%

Table 14 -Impact of FY 2006 MSA-based Wage Index to the IRF PPS Without Refinements, For Reference Purposes Only

Facility Classification (1)	Number of IRFs (2)	Number of cases (3)	MSA Wage Index and Labor-Share (4)	Outlier Impact (5)	Market Basket (6)	Outlier, Market Basket, Labor-Share, MSA Wage Index Change (7)
Urban Government	96	27,606	-0.2%	2.8%	3.1%	5.8%
Rural Government	30	6,477	-1.2%	1.9%	3.1%	3.8%
Urban	984	415,372	0.1%	1.8%	3.1%	5.1%
Rural	204	46,366	-1.0%	1.6%	3.1%	3.7%
Urban by region						
New England	35	20,612	0.1%	1.3%	3.1%	4.5%
Middle Atlantic	155	78,468	-0.5%	2.0%	3.1%	4.6%
South Atlantic	119	70,114	0.3%	1.3%	3.1%	4.8%
East North Central	186	68,742	0.1%	2.3%	3.1%	5.6%
East South Central	52	28,846	0.3%	1.0%	3.1%	4.4%

Table 14 -Impact of FY 2006 MSA-based Wage Index to the IRF PPS Without Refinements, For Reference Purposes Only

Facility Classification (1)	Number of IRFs (2)	Number of cases (3)	MSA Wage Index and Labor-Share (4)	Outlier Impact (5)	Market Basket (6)	Outlier, Market Basket, Labor-Share, MSA Wage Index Change (7)
West North Central	69	21,916	0.0%	2.2%	3.1%	5.3%
West South Central	187	76,630	0.4%	1.9%	3.1%	5.5%
Mountain	67	23,735	-0.5%	1.4%	3.1%	4.1%
Pacific	114	26,309	0.8%	2.1%	3.1%	6.1%
Rural by region						
New England	4	924	0.4%	2.1%	3.1%	5.7%
Middle Atlantic	20	3,871	-1.1%	0.8%	3.1%	2.9%
South Atlantic	27	9,003	-0.6%	1.0%	3.1%	3.5%
East North Central	31	6,191	-0.8%	2.4%	3.1%	4.8%
East South Central	22	6,989	-1.8%	0.8%	3.1%	2.0%

Table 14 -Impact of FY 2006 MSA-based Wage Index to the IRF PPS Without Refinements, For Reference Purposes Only

Facility Classification (1)	Number of IRFs (2)	Number of cases (3)	MSA Wage Index and Labor-Share (4)	Outlier Impact (5)	Market Basket (6)	Outlier, Market Basket, Labor-Share, MSA Wage Index Change (7)
West North Central	32	5,652	-1.1%	2.2%	3.1%	4.1%
West South Central	51	11,474	-1.1%	1.6%	3.1%	3.6%
Mountain	11	1,454	-0.1%	4.2%	3.1%	7.4%
Pacific	6	808	-0.1%	4.3%	3.1%	7.5%
Teaching Status						
Non-teaching	1,053	400,072	0.0%	1.6%	3.1%	4.8%
Resident to ADC less than 10%	71	39,888	0.4%	2.3%	3.1%	5.9%
Resident to ADC 10%-19%	42	17,793	-0.6%	2.7%	3.1%	5.2%
Resident to ADC greater than 19%	22	3,985	0.0%	4.1%	3.1%	7.3%

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5. Impact of the Proposed 1.9 Percent Decrease in the Standard Payment Amount to Account for Coding Changes (Column 11, Table 13)

In column 11 of Table 13, we present the effects of the proposed decrease in the standard payment amount to account for the increase in aggregate payments due to changes in coding that do not reflect real changes in case mix, as discussed in section III.A of this proposed rule. Section 1886(j)(2)(C)(ii) of the Act requires us to adjust the per discharge PPS payment rate to eliminate the effect of coding or classification changes that do not reflect real changes in case mix if we determine that such changes result in a change in aggregate payments under the classification system.

In the aggregate, and across all hospital groups, the proposed update would result in a 1.9 percent decrease in overall payments to IRFs. Thus, we estimate that the 1.9 percent reduction in the standard payment amount would result in a cost savings to the Medicare program of approximately $120 million.

6. Impact of the Proposed Changes to the CMG Reclassifications and Recalibration of Relative Weights (Column 7, Table 13)

In column 7 of Table 13, we present the effects of the proposed changes to the tier comorbidities, the CMGs, the motor score index, and the proposed recalibration of the relative weights, as discussed in section II.A of this proposed rule. Section 1886(j)(2)(C)(i) of the Act requires us to adjust from time to time the classifications and weighting factors as appropriate to reflect changes in treatment patterns, technology, case mix, number of payment units for which payment under the IRF PPS is made, and any other factors which may affect the relative use of resources.

As described in section II.A.3 of this proposed rule, we are proposing to update the tier comorbidities to remove condition codes from the list that we believe no longer merit additional payments, move dialysis patients to tier one to increase payments for these patients, and to align payments with the comorbidity conditions according to their effects on the relative costliness of patients. We are also proposing to update the CMGs and the relative weights for the CMGs so that they better reflect the relative costliness of different types of IRF patients. We are also proposing to replace the current motor score index with a weighted motor score index that better estimates the relative costliness of IRF patients. Finally, we are proposing to change the coding of patients with missing information for the transfer to toilet item in the motor score index from 1 to 2.

To assess the impact of these proposed changes, we compared aggregate payments using the FY 2005 CMG relative weights (GROUPER version 1.22) to aggregate payments using the proposed FY 2006 CMG relative weights (GROUPER version 1.30). We note that, under the authority in section 1886(j)(2)(C)(i) of the Act and consistent with our rationale as described in section II.B.4 of this proposed rule, we have applied a budget neutrality factor to ensure that the overall payment impact of the proposed CMG changes is budget neutral (that is, in order that total estimated aggregate payments for FY 2006 with the change are equal to total estimated aggregate payment for FY 2006 without the change). Because we found that the proposed relative weights we would use for calculating the FY 2006 payment rates are slightly higher, on average, than the relative weights we are currently using, and that the effect of this would be to increase aggregate payments, the proposed budget neutrality factor for the CMG and tier changes lowers the standard payment amount somewhat. Because the lower standard payment amount is balanced by the higher average weights, the effect is no change in overall payments to IRFs. However, the distribution of payments among facilities is affected, with some facilities receiving higher payments and some facilities receiving lower payments as a result of the tier and CMG changes, as shown in column 7 of Table 13.

Although, in the aggregate, these proposed changes would not change overall payments to IRFs, as shown in the zero impact in the first row of column 7, there are distributional effects of these changes. On average, the impacts of these proposed changes on any particular group of IRFs are very small, with urban IRFs experiencing a 0.1 percent decrease and rural IRFs experiencing a 1.2 percent increase in aggregate payments. The largest impacts are a 2.7 percent increase among rural IRFs in the West North Central region and a 2.7 percent decrease among rural IRFs in the Pacific region.

7. Impact of the Proposed Changes to New Labor Market Areas (Column 4, Table 13)

In accordance with the broad discretion under section 1886(j)(6) of the Act, we currently define hospital labor market areas based on the definitions of Metropolitan Statistical Areas (MSAs), Primary MSAs (PMSAs), and New England County Metropolitan Areas (NECMAs) issued by OMB as discussed in section III.B.2 of this proposed rule. On June 6, 2003, OMB announced new Core-Based Statistical Areas (CBSAs), comprised of MSAs and the new Micropolitan Statistical Areas based on Census 2000 data. We are proposing to adopt the new MSA definitions, consistent with the inpatient prospective payment system, including the 49 new Metropolitan areas designated under the new definitions. We are also proposing to adopt MSA definitions in New England in place of NECMAs. We are proposing not to adopt the newly defined Micropolitan Statistical Areas for use in the payment system, as Micropolitan Statistical Areas would remain part of the statewide rural areas for purposes of the IRF PPS payments, consistent with payments under the inpatient prospective payment system.

The effects of these proposed changes to the new CBSA-based designations are isolated in column 4 of Table 13 by holding all other payment parameters constant in this simulation. That is, column 4 shows the percentage changes in payments when going from a model using the current MSA designations to a model using the proposed new CBSA designations (for Metropolitan areas only).

Table 15 below compares the shifts in proposed wage index values for IRFs for FY 2006 relative to FY 2005. A small number of IRFs (1.6 percent) would experience an increase of between 5 and 10 percent and 1.5 percent of IRFs would experience an increase of more than 10 percent. A small number of IRFs (2.5 percent) would experience decreases in their wage index values of at least 5 percent, but less than 10 percent. Furthermore, IRFs that would experience decreases in their wage index values of greater than 10 percent would be 0.7 percent.

The following table shows the projected impact for IRFs.

TABLE 15.—PROPOSED IMPACT OF THE PROPOSED FY 2006 CBSA-BASED AREA WAGE INDEX

Percent change in area wage index	Percent of IRFs
Decrease Greater Than 10.0	0.7
Decrease Between 5.0 and 10.0	2.5
Decrease Between 2.0 and 5.0	5.7
Decrease Between 0 and 2.0	25.6
No Change	37.2
Increase Between 0 and 2.0	22.1
Increase Between 2.0 and 5.0	3.3
Increase Between 5.0 and 10.0	1.6
Increase Greater Than 10.0	1.5
Total [1]	100.0

[1] May not exactly equal 100 percent due to rounding.

8. Impact of the Proposed Adjustment to the Outlier Threshold Amount (Column 5, Table 13)

We estimate total outlier payments in FY 2005 to be approximately 1.2 percent of total estimated payments, so we are proposing to update the threshold from $11,211 in FY 2005 to $4,911 in FY 2006 in order to set total estimated outlier payments in FY 2006 equal to 3 percent of total estimated payments in FY 2006.

The impact of this proposed change (as shown in column 5 of table 13) is to increase total estimated payments to IRFs by about 1.8 percent.

The effect on payments to rural IRFs would be to increase payments by 3.9 percent, and the effect on payments to urban IRFs would be to increase payments by 1.6 percent. The largest effect would be a 9.5 percent increase in payments to rural IRFs in the Mountain region, and the smallest effect would be

no change in payments for urban IRFs located in the East South Central region.

9. Impact of the Proposed Budget-Neutral Teaching Status Adjustment (Column 10, Table 13)

In column 10 of Table 13, we present the effects of the proposed budget-neutral implementation of a teaching status adjustment to the Federal prospective payment rate for IRFs that have teaching programs, as discussed in section III.B.3 of this proposed rule. Section 1886(j)(3)(A)(v) of the Act requires the Secretary to adjust the Federal prospective payment rates for IRFs under the IRF PPS for such factors as the Secretary determines are necessary to properly reflect variations in necessary costs of treatment among rehabilitation facilities. Under the authority of section 1886 (j)(3)(A)(v) of the Act, we are proposing to apply a budget neutrality factor to ensure that the overall payment impact of the proposed teaching status adjustment is budget neutral (that is, in order that total estimated aggregate payments for FY 2006 with the proposed adjustment would equal total estimated aggregate payments for FY 2006 without the proposed adjustment). Because IRFs with teaching programs would receive additional payments from the implementation of this proposed new teaching status adjustment, the effect of the proposed budget neutrality factor would be to reduce the standard payment amount, therefore reducing payments to IRFs without teaching programs. By design, however, the increased payments to teaching facilities would balance the decreased payments to non-teaching facilities, and total estimated aggregate payments to all IRFs would remain unchanged. Therefore, the first row of column 10 of Table 13 indicates a zero impact in the aggregate. However, the rest of column 10 gives the distributional effects among different types of providers of this change. Some providers' payments increase and some decrease with this change.

On average, the impacts of this proposed change on any particular group of IRFs are very small, with urban IRFs experiencing a 0.1 percent increase and rural IRFs experiencing a 1.1 percent decrease. The largest impacts are a 2.0 percent increase among urban IRFs in the Middle Atlantic region and 1.2 percent decreases among rural IRFs in the Middle Atlantic, South Atlantic, and West South Central regions.

Overall, non-teaching hospitals would experience a 1.1 percent decrease. The largest impacts are a 24.3 percent increase among teaching facilities with intern and resident to ADC ratios greater than 19 percent. Teaching facilities that have intern and resident to ADC ratios greater than or equal to 10 percent and less than or equal to 19 percent would experience an increase of 11 percent. Teaching facilities with resident and intern to ADC ratios less than 10 percent would experience an increase of 2.6 percent.

10. Impact of the Proposed Update to the Rural Adjustment (Column 8, Table 13)

In column 8 of Table 13, we present the effects of the proposed budget-neutral update to the percentage adjustment to the Federal prospective payment rates for IRFs located in rural areas, as discussed in section III.B.4 of this proposed rule. Section 1886(j)(3)(A)(v) of the Act requires the Secretary to adjust the Federal prospective payment rates for IRFs under the IRF PPS for such factors as the Secretary determines are necessary to properly reflect variations in necessary costs of treatment among rehabilitation facilities.

In accordance with section 1886(j)(3)(A)(v) of the Act, we are proposing to change the rural adjustment percentage, based on FY 2003 data, from 19.14 percent to 24.1 percent.

Because we are proposing to make this proposed update to the rural adjustment in a budget neutral manner under the broad authority conferred by section 1886(j)(3)(A)(v) of the Act, payments to urban facilities would decrease in proportion to the total increase in payments to rural facilities. To accomplish this redistribution of resources between urban and rural facilities, we propose to apply a budget neutrality factor to reduce the standard payment amount. Rural facilities would receive an increase in payments to this amount, and urban facilities would not. Overall, aggregate payments to IRFs would not change, as indicated by the zero impact in the first row of column 8. However, payments would be redistributed among rural and urban IRFs, as indicated by the rest of the column. On average, because there are a relatively small number of rural facilities, the impacts of this proposed change on urban IRFs are relatively small, with all urban IRFs experiencing a 0.3 percent decrease. The impact on rural IRFs is somewhat larger, with rural IRFs experiencing a 3.4 percent increase. The largest impacts are a 3.6 percent increase among rural IRFs in the Middle Atlantic region.

11. Impact of the Proposed Update to the LIP Adjustment (Column 9, Table 13)

In column 9 of Table 13, we present the effects of the proposed budget-neutral update to the adjustment to the Federal prospective payment rates for IRFs according to the percentage of low-income patients they treat, as discussed in section III.B.5 of this proposed rule. Section 1886(j)(3)(A)(v) of the Act requires the Secretary to adjust the Federal prospective payment rates for IRFs under the IRF PPS for such factors as the Secretary determines are necessary to properly reflect variations in necessary costs of treatment among rehabilitation facilities.

In accordance with section 1886(j)(3)(A)(v) of the Act, we are proposing to change the formula for the LIP adjustment, based on FY 2003 data, to raise the amount of 1 plus the DSH patient percentage to the power of 0.636 instead of the power of 0.4838. Therefore, the formula to calculate the low-income patient or LIP adjustment would be as follows:

(1 + DSH patient percentage) raised to the power of (.636) Where DSH patient percentage =

$$\frac{\text{Medicare SSI Days}}{\text{Total Medicare Days}} + \frac{\text{Medicaid, NonMedicare Days}}{\text{Total Days}}$$

Because we are proposing to make this proposed update to the LIP adjustment in a budget neutral manner, payments would be redistributed among providers, according to their low-income percentages, but total estimated aggregate payments to facilities would not change. To do this, we propose to apply a budget neutrality factor that lowers the standard payment amount in proportion to the amount of payment increase that is attributable to the increased LIP adjustment payments. This would result in no change to aggregate payments, which is reflected in the zero impact shown in the first row of column 9 of Table 13. The remaining rows of the column show the

impacts on different categories of providers. On average, the impacts of this proposed change on any particular group of IRFs are small, with urban IRFs experiencing no change in aggregate payments and rural IRFs experiencing a 0.1 percent decrease in aggregate payments. The largest impacts are a 1.2 percent increase among IRFs with 10 percent or higher intern and resident to ADC ratios and 0.9 percent decrease among rural IRFs in the Pacific region.

12. All Proposed Changes (Column 12, Table 13)

Column 12 of Table 13 compares our estimates of the proposed payments per discharge, incorporating all proposed changes reflected in this proposed rule for FY 2006, to our estimates of payments per discharge in FY 2005 (without these proposed changes). This column includes all of the proposed policy changes.

Column 12 reflects all FY 2006 proposed changes relative to FY 2005, shown in columns 4 though 11. The average increase for all IRFs is approximately 2.9 percent. This increase includes the effects of the proposed 3.1 percent market basket update. It also reflects the 1.8 percentage point difference between the estimated outlier payments in FY 2005 (1.2 percent of total estimated payments) and the proposed estimate of the percentage of outlier payments in FY 2006 (3 percent), as described in the introduction to the Addendum to this proposed rule. As a result, payments per discharge are estimated to be 1.8 percent lower in FY 2005 than they would have been had the 3 percent target outlier payment percentage been met, resulting in a 1.8 percent greater increase in total FY 2006 payments than would otherwise have occurred.

It also includes the impact of the proposed one-time 1.9 percent reduction in the standard payment conversion factor to account for changes in coding that increased payments to IRFs. Because we propose to make the remainder of the proposed changes outlined in this proposed rule in a budget-neutral manner, they do not affect total IRF payments in the aggregate. However, as described in more detail in each section, they do affect the distribution of payments among providers.

There might also be interactive effects among the various proposed factors comprising the payment system that we are not able to isolate. For these reasons, the values in column 12 may not equal the sum of the proposed changes described above.

The proposed overall change in payments per discharge for IRFs in FY 2006 would increase by 2.9 percent, as reflected in column 12 of Table 13. IRFs in urban areas would experience a 2.6 percent increase in payments per discharge compared with FY 2005. IRFs in rural areas, meanwhile, would experience a 6.8 percent increase. Rehabilitation units in urban areas would experience a 5 percent increase in payments per discharge, while freestanding rehabilitation hospitals in urban areas would experience a 1.1 percent decrease in payments per discharge. Rehabilitation units in rural areas would experience a 6.5 percent increase in payments per discharge, while freestanding rehabilitation hospitals in rural areas would experience a 8.1 percent increase in payments per discharge.

Overall, the largest payment increase would be 32.1 percent among teaching IRFs with an intern and resident to ADC ratio greater than 19 percent and 15.8 percent among teaching IRFs with an intern and resident to ADC ratio greater than or equal to 10 percent and less than or equal to 19 percent. This is largely due to the proposed teaching status adjustment. Other than for teaching IRFs, the largest payment increase would be 12.3 percent among rural IRFs located in the Middle Atlantic region. This is due largely to the change in the proposed CBSA-based designation from urban to rural, whereby the number of cases in the rural Middle Atlantic Region that would receive the proposed new rural adjustment of 24.1 percent would increase. The only overall decreases in payments would occur among all urban freestanding IRFs and urban IRFs located in the New England, East South Central, and Mountain census regions. The largest of these overall payment decreases would be 1.3 percent among all urban freestanding hospitals. This is due largely to the proposed change in the CBSA-based designation from rural to urban. For non-profit IRFs, we found that rural non-profit facilities would receive the largest payment increase of 8 percent. Conversely, for-profit urban facilities would experience a 1.1 percent overall decrease.

13. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table 16 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed rule. This table provides our best estimate of the increase in Medicare payments under the IRF PPS as a result of the proposed changes presented in this proposed rule based on the data for 1,188 IRFs in our database. All expenditures are classified as transfers to Medicare providers (that is, IRFs).

TABLE 16.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM FY 2005 TO FY 2006 (IN MILLIONS)

Category	Transfers
Annualized Monetized Transfers.	$180
From Whom To Whom?	Federal Government To IRF Medicare Providers.

List of Subjects in 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart P—Prospective Payment for Inpatient Rehabilitation Hospitals and Rehabilitation Units

2. Section 412.602 is amended by revising the definitions of "Rural area" and "Urban area" to read as follows:

§ 412.602 Definitions.

* * * * *

Rural area means: For cost-reporting periods beginning on or after January 1, 2002, with respect to discharges occurring during the period covered by such cost reports but before October 1, 2005, an area as defined in § 412.62(f)(1)(iii). For discharges occurring on or after October 1, 2005, rural area means an area as defined in § 412.64(b)(1)(ii)(C).

* * * * *

Urban area means: For cost-reporting periods beginning on or after January 1, 2002, with respect to discharges occurring during the period covered by such cost reports but before October 1, 2005, an area as defined in § 412.62(f)(1)(ii). For discharges occurring on or after October 1, 2005,

urban area means an area as defined in § 412.64(b)(1)(ii)(A) and § 412.64(b)(1)(ii)(B).

§ 412.622 [Amended]

3. Section 412.622 is amended by—

A. In paragraph (b)(1), removing the cross references "§§ 413.85 and 413.86 of this chapter" and adding in their place "§ 413.75 and § 413.85 of this chapter".

B. In paragraph (b)(2)(i), removing the cross reference to "§ 413.80 of this chapter" and adding in its place "§ 413.89 of this chapter".

4. Section 412.624 is amended by—

a. In paragraph (d)(1), removing the cross reference to "paragraph (e)(4)" and adding in its place "paragraph (e)(5)".

b. Adding a new paragraph (d)(4).

c. Redesignating paragraphs (e)(4) and (e)(5) as paragraphs (e)(5) and (e)(6).

d. Adding a new paragraph (e)(4).

e. Revising newly redesignated paragraph (e)(5).

f. Revising newly redesignated paragraph (e)(6).

g. In paragraph (f)(2)(v), removing the cross references to "paragraphs (e)(1), (e)(2), and (e)(3) of this section" and adding in their place "paragraphs (e)(1), (e)(2), (e)(3), and (e)(4) of this section".

The revisions and additions read as follows:

§ 412.624 Methodology for calculating the Federal prospective payment rates.

* * * * *

(d) * * *

(4) *Payment adjustment for Federal fiscal year 2006 and subsequent Federal fiscal years.* CMS adjusts the standard payment conversion factor based on any updates to the adjustments specified in paragraph (e)(2), (e)(3), and (e)(4), of this section, and to any revision specified in § 412.620(c).

(e) * * *

(4) *Adjustments for teaching hospitals.* For discharges on or after October 1, 2005, CMS adjusts the Federal prospective payment on a facility basis by a factor as specified by CMS for facilities that are teaching institutions or units of teaching institutions. This adjustment is made on a claim basis as an interim payment and the final payment in full for the claim is made during the final settlement of the cost report.

(5) *Adjustment for high-cost outliers.* CMS provides for an additional payment to an inpatient rehabilitation facility if its estimated costs for a patient exceed a fixed dollar amount (adjusted for area wage levels and factors to account for treating low-income patients, for rural location, and for teaching programs) as specified by CMS. The additional payment equals 80 percent of the difference between the estimated cost of the patient and the sum of the adjusted Federal prospective payment computed under this section and the adjusted fixed dollar amount. Effective for discharges occurring on or after October 1, 2003, additional payments made under this section will be subject to the adjustments at § 412.84(i), except that national averages will be used instead of statewide averages. Effective for discharges occurring on or after October 1, 2003, additional payments made under this section will also be subject to adjustments at § 412.84(m).

(6) *Adjustments related to the patient assessment instrument.* An adjustment to a facility's Federal prospective payment amount for a given discharge will be made, as specified under § 412.614(d), if the transmission of data from a patient assessment instrument is late.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 14, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

Approved: May 4, 2005.

Michael O. Leavitt,

Secretary.

The following addendum will not appear in the Code of Federal Regulations.

Addendum

This addendum contains the tables referred to throughout the preamble to this proposed rule. The tables presented below are as follows:

Table 1A.—FY 2006 IRF PPS MSA Labor Market Area Designations for Urban Areas for the purposes of comparing Wage Index values with Table 2A.

Table 1B.—FY 2006 IRF PPS MSA Labor Market Area Designations for Rural Areas for the purposes of comparing Wage Index values with Table 2B.

Table 2A.—Proposed Inpatient Rehabilitation Facility (IRF) wage index for urban areas based on proposed CBSA labor market areas for discharges occurring on or after October 1, 2005.

Table 2B.—Proposed Inpatient Rehabilitation Facility (IRF) wage index based on proposed CBSA labor market areas for rural areas for discharges occurring on or after October 1, 2005.

Table 3—Inpatient Rehabilitation Facilities with Corresponding State and County Location; Current Labor Market Area Designation; and Proposed New CBSA-based Labor Market Area Designation.

TABLE 1A.—FY 2006 IRF PPS MSA LABOR MARKET AREA DESIGNATIONS FOR URBAN AREAS FOR THE PURPOSES OF COMPARING WAGE INDEX VALUES WITH TABLE 2A

MSA	Urban area (Constituent Counties or County Equivalents)	Wage index
0040	Abilene, TX	0.8009
	Taylor, TX.	
0060	Aguadilla, PR	0.4294
	Aguada, PR.	
	Aguadilla, PR.	
	Moca, PR.	
0080	Akron, OH	0.9055
	Portage, OH.	
	Summit, OH.	
0120	Albany, GA	1.1266
	Dougherty, GA.	
	Lee, GA.	
0160	Albany-Schenectady-Troy, NY	0.8570
	Albany, NY.	
	Montgomery, NY.	
	Rensselaer, NY.	

TABLE 1A.—FY 2006 IRF PPS MSA LABOR MARKET AREA DESIGNATIONS FOR URBAN AREAS FOR THE PURPOSES OF COMPARING WAGE INDEX VALUES WITH TABLE 2A—Continued

MSA	Urban area (Constituent Counties or County Equivalents)	Wage index
	Saratoga, NY.	
	Schenectady, NY.	
	Schoharie, NY.	
0200	Albuquerque, NM	1.0485
	Bernalillo, NM.	
	Sandoval, NM.	
	Valencia, NM.	
0220	Alexandria, LA	0.8171
	Rapides, LA.	
0240	Allentown-Bethlehem-Easton, PA	0.9536
	Carbon, PA.	
	Lehigh, PA.	
	Northampton, PA.	
0280	Altoona, PA	0.8462
	Blair, PA.	
0320	Amarillo, TX	0.9178
	Potter, TX.	
	Randall, TX.	
0380	Anchorage, AK	1.2109
	Anchorage, AK.	
0440	Ann Arbor, MI	1.0816
	Lenawee, MI.	
	Livingston, MI.	
	Washtenaw, MI.	
0450	Anniston,AL	0.7881
	Calhoun, AL.	
0460	Appleton-Oshkosh-Neenah, WI	0.9115
	Calumet, WI.	
	Outagamie, WI.	
	Winnebago, WI.	
0470	Arecibo, PR	0.3757
	Arecibo, PR.	
	Camuy, PR.	
	Hatillo, PR.	
0480	Asheville, NC	0.9501
	Buncombe, NC.	
	Madison, NC.	
0500	Athens, GA	1.0202
	Clarke, GA.	
	Madison, GA.	
	Oconee, GA.	
0520	Atlanta, GA	0.9971
	Barrow, GA.	
	Bartow, GA.	
	Carroll, GA.	
	Cherokee, GA.	
	Clayton, GA.	
	Cobb, GA.	
	Coweta, GA.	
	De Kalb, GA.	
	Douglas, GA.	
	Fayette, GA.	
	Forsyth, GA.	
	Fulton, GA.	
	Gwinnett, GA.	
	Henry, GA.	
	Newton, GA.	
	Paulding, GA.	
	Pickens, GA.	
	Rockdale, GA.	
	Spalding, GA.	
	Walton, GA.	
0560	Atlantic City-Cape May, NJ	1.0907
	Atlantic City, NJ.	
	Cape May, NJ.	
0580	Auburn-Opelika, AL	0.8215
	Lee, AL.	
0600	Augusta-Aiken, GA-SC	0.9208
	Columbia, GA.	
	McDuffie, GA.	

TABLE 1A.—FY 2006 IRF PPS MSA LABOR MARKET AREA DESIGNATIONS FOR URBAN AREAS FOR THE PURPOSES OF COMPARING WAGE INDEX VALUES WITH TABLE 2A—Continued

MSA	Urban area (Constituent Counties or County Equivalents)	Wage index
	Richmond, GA.	
	Aiken, SC.	
	Edgefield, SC.	
0640	Austin-San Marcos, TX	0.9595
	Bastrop, TX.	
	Caldwell, TX.	
	Hays, TX.	
	Travis, TX.	
	Williamson, TX.	
0680	Bakersfield, CA	1.0036
	Kern, CA.	
0720	Baltimore, MD	0.9907
	Anne Arundel, MD.	
	Baltimore, MD.	
	Baltimore City, MD.	
	Carroll, MD.	
	Harford, MD.	
	Howard, MD.	
	Queen Annes, MD.	
0733	Bangor, ME	0.9955
	Penobscot, ME.	
0743	Barnstable-Yarmouth, MA	1.2335
	Barnstable, MA.	
0760	Baton Rouge, LA	0.8354
	Ascension, LA.	
	East Baton Rouge.	
	Livingston, LA.	
	West Baton Rouge, LA.	
0840	Beaumont-Port Arthur, TX	0.8616
	Hardin, TX.	
	Jefferson, TX.	
	Orange, TX.	
0860	Bellingham, WA	1.1642
	Whatcom, WA.	
0870	Benton Harbor, MI	0.8847
	Berrien, MI.	
0875	Bergen-Passaic, NJ	1.1967
	Bergen, NJ.	
	Passaic, NJ.	
0880	Billings, MT	0.8961
	Yellowstone, MT.	
0920	Biloxi-Gulfport-Pascagoula, MS	0.8649
	Hancock, MS.	
	Harrison, MS.	
	Jackson, MS.	
0960	Binghamton, NY	0.8447
	Broome, NY.	
	Tioga, NY.	
1000	Birmingham, AL	0.9198
	Blount, AL.	
	Jefferson, AL.	
	St. Clair, AL.	
	Shelby, AL.	
1010	Bismarck, ND	0.7505
	Burleigh, ND.	
	Morton, ND.	
1020	Bloomington, IN	0.8587
	Monroe, IN.	
1040	Bloomington-Normal, IL	0.9111
	McLean, IL.	
1080	Boise City, ID	0.9352
	Ada, ID.	
	Canyon, ID.	
1123	Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH	1.1290
	Bristol, MA.	
	Essex, MA.	
	Middlesex, MA.	
	Norfolk, MA.	
	Plymouth, MA.	
	Suffolk, MA.	

TABLE 1A.—FY 2006 IRF PPS MSA LABOR MARKET AREA DESIGNATIONS FOR URBAN AREAS FOR THE PURPOSES OF COMPARING WAGE INDEX VALUES WITH TABLE 2A—Continued

MSA	Urban area (Constituent Counties or County Equivalents)	Wage index
	Worcester, MA.	
	Hillsborough, NH.	
	Merrimack, NH.	
	Rockingham, NH.	
	Strafford, NH.	
1125	Boulder-Longmont, CO	1.0046
	Boulder, CO.	
1145	Brazoria, TX	0.8524
	Brazoria, TX.	
1150	Bremerton, WA	1.0614
	Kitsap, WA.	
1240	Brownsville-Harlingen-San Benito, TX	1.0125
	Cameron, TX.	
1260	Bryan-College Station, TX	0.9243
	Brazos, TX.	
1280	Buffalo-Niagara Falls, NY	0.9339
	Erie, NY.	
	Niagara, NY.	
1303	Burlington, VT	0.9322
	Chittenden, VT.	
	Franklin, VT.	
	Grand Isle, VT.	
1310	Caguas, PR	0.4061
	Caguas, PR.	
	Cayey, PR.	
	Cidra, PR.	
	Gurabo, PR.	
	San Lorenzo, PR.	
1320	Canton-Massillon, OH	0.8895
	Carroll, OH.	
	Stark, OH.	
1350	Casper, WY	0.9243
	Natrona, WY.	
1360	Cedar Rapids, IA	0.8975
	Linn, IA.	
1400	Champaign-Urbana, IL	0.9527
	Champaign, IL.	
1440	Charleston-North Charleston, SC	0.9420
	Berkeley, SC.	
	Charleston, SC.	
	Dorchester, SC.	
1480	Charleston, WV	0.8876
	Kanawha, WV.	
	Putnam, WV.	
1520	Charlotte-Gastonia-Rock Hill, NC-SC	0.9711
	Cabarrus, NC.	
	Gaston, NC.	
	Lincoln, NC.	
	Mecklenburg, NC.	
	Rowan, NC.	
	Union, NC.	
	York, SC.	
1540	Charlottesville, VA	1.0294
	Albemarle, VA.	
	Charlottesville City, VA.	
	Fluvanna, VA.	
	Greene, VA.	
1560	Chattanooga, TN-GA	0.9207
	Catoosa, GA.	
	Dade, GA.	
	Walker, GA.	
	Hamilton, TN.	
	Marion, TN.	
1580	Cheyenne, WY	0.8980
	Laramie, WY.	
1600	Chicago, IL	1.0851
	Cook, IL.	
	De Kalb, IL.	
	Du Page, IL.	
	Grundy, IL.	

TABLE 1A.—FY 2006 IRF PPS MSA LABOR MARKET AREA DESIGNATIONS FOR URBAN AREAS FOR THE PURPOSES OF COMPARING WAGE INDEX VALUES WITH TABLE 2A—Continued

MSA	Urban area (Constituent Counties or County Equivalents)	Wage index
	Kane, IL.	
	Kendall, IL.	
	Lake, IL.	
	McHenry, IL.	
	Will, IL.	
1620	Chico-Paradise, CA	1.0542
	Butte, CA.	
1640	Cincinnati, OH-KY-IN	0.9595
	Dearborn, IN.	
	Ohio, IN.	
	Boone, KY.	
	Campbell, KY.	
	Gallatin, KY.	
	Grant, KY.	
	Kenton, KY.	
	Pendleton, KY.	
	Brown, OH.	
	Clermont, OH.	
	Hamilton, OH.	
	Warren, OH.	
1660	Clarksville-Hopkinsville, TN-KY	0.8022
	Christian, KY.	
	Montgomery, TN.	
1680	Cleveland-Lorain-Elyria, OH	0.9626
	Ashtabula, OH.	
	Geauga, OH.	
	Cuyahoga, OH.	
	Lake, OH.	
	Lorain, OH.	
	Medina, OH.	
1720	Colorado Springs, CO	0.9792
	El Paso, CO.	
1740	Columbia MO	0.8396
	Boone, MO.	
1760	Columbia, SC	0.9450
	Lexington, SC.	
	Richland, SC.	
1800	Columbus, GA-AL	0.8690
	Russell, AL.	
	Chattanoochee, GA.	
	Harris, GA.	
	Muscogee, GA.	
1840	Columbus, OH	0.9753
	Delaware, OH.	
	Fairfield, OH.	
	Franklin, OH.	
	Licking, OH.	
	Madison, OH.	
	Pickaway, OH.	
1880	Corpus Christi, TX	0.8647
	Nueces, TX.	
	San Patricio, TX.	
1890	Corvallis, OR	1.0545
	Benton, OR.	
1900	Cumberland, MD-WV	0.8662
	Allegany MD.	
	Mineral WV.	
1920	Dallas, TX	1.0054
	Collin, TX.	
	Dallas, TX.	
	Denton, TX.	
	Ellis, TX.	
	Henderson, TX.	
	Hunt, TX.	
	Kaufman, TX.	
	Rockwall, TX.	
1950	Danville, VA	0.8643
	Danville City, VA.	
	Pittsylvania, VA.	
1960	Davenport-Moline-Rock Island, IA-IL	0.8773

TABLE 1A.—FY 2006 IRF PPS MSA LABOR MARKET AREA DESIGNATIONS FOR URBAN AREAS FOR THE PURPOSES OF COMPARING WAGE INDEX VALUES WITH TABLE 2A—Continued

MSA	Urban area (Constituent Counties or County Equivalents)	Wage index
	Scott, IA.	
	Henry, IL.	
	Rock Island, IL.	
2000	Dayton-Springfield, OH	0.9231
	Clark, OH.	
	Greene, OH.	
	Miami, OH.	
	Montgomery, OH.	
2020	Daytona Beach, FL	0.8900
	Flagler, FL.	
	Volusia, FL.	
2030	Decatur, AL	0.8894
	Lawrence, AL.	
	Morgan, AL.	
2040	Decatur, IL	0.8122
	Macon, IL.	
2080	Denver, CO	1.0904
	Adams, CO.	
	Arapahoe, CO.	
	Broomfield, CO.	
	Denver, CO.	
	Douglas, CO.	
	Jefferson, CO.	
2120	Des Moines, IA	0.9266
	Dallas, IA.	
	Polk, IA.	
	Warren, IA.	
2160	Detroit, MI	1.0227
	Lapeer, MI.	
	Macomb, MI.	
	Monroe, MI.	
	Oakland, MI.	
	St. Clair, MI.	
	Wayne, MI.	
2180	Dothan, AL	0.7596
	Dale, AL.	
	Houston, AL.	
2190	Dover, DE	0.9825
	Kent, DE.	
2200	Dubuque, IA	0.8748
	Dubuque, IA.	
2240	Duluth-Superior, MN-WI	1.0356
	St. Louis, MN.	
	Douglas, WI.	
2281	Dutchess County, NY	1.1657
	Dutchess, NY.	
2290	Eau Claire, WI	0.9139
	Chippewa, WI.	
	Eau Claire, WI.	
2320	El Paso, TX	0.9181
	El Paso, TX.	
2330	Elkhart-Goshen, IN	0.9278
	Elkhart, IN.	
2335	Elmira, NY	0.8445
	Chemung, NY.	
2340	Enid, OK	0.9001
	Garfield, OK.	
2360	Erie, PA	0.8699
	Erie, PA.	
2400	Eugene-Springfield, OR	1.0940
	Lane, OR.	
2440	Evansville-Henderson, IN-KY	0.8395
	Posey, IN.	
	Vanderburgh, IN.	
	Warrick, IN.	
	Henderson, KY.	
2520	Fargo-Moorhead, ND-MN	0.9114
	Clay, MN.	
	Cass, ND.	
2560	Fayetteville, NC	0.9363

TABLE 1A.—FY 2006 IRF PPS MSA LABOR MARKET AREA DESIGNATIONS FOR URBAN AREAS FOR THE PURPOSES OF COMPARING WAGE INDEX VALUES WITH TABLE 2A—Continued

MSA	Urban area (Constituent Counties or County Equivalents)	Wage index
	Cumberland, NC.	
2580	Fayetteville-Springdale-Rogers, AR	0.8636
	Benton, AR.	
	Washington, AR.	
2620	Flagstaff, AZ-UT	1.0611
	Coconino, AZ.	
	Kane, UT.	
2640	Flint, MI	1.1178
	Genesee, MI.	
2650	Florence, AL	0.7883
	Colbert, AL.	
	Lauderdale, AL.	
2655	Florence, SC	0.8960
	Florence, SC.	
2670	Fort Collins-Loveland, CO	1.0218
	Larimer, CO.	
2680	Ft. Lauderdale, FL	1.0165
	Broward, FL.	
2700	Fort Myers-Cape Coral, FL	0.9371
	Lee, FL.	
2710	Fort Pierce-Port St. Lucie, FL	1.0046
	Martin, FL.	
	St. Lucie, FL.	
2720	Fort Smith, AR-OK	0.8303
	Crawford, AR.	
	Sebastian, AR.	
	Sequoyah, OK.	
2750	Fort Walton Beach, FL	0.8786
	Okaloosa, FL.	
2760	Fort Wayne, IN	0.9737
	Adams, IN.	
	Allen, IN.	
	De Kalb, IN.	
	Huntington, IN.	
	Wells, IN.	
	Whitley, IN.	
2800	Forth Worth-Arlington, TX	0.9520
	Hood, TX.	
	Johnson, TX.	
	Parker, TX.	
	Tarrant, TX.	
2840	Fresno, CA	1.0407
	Fresno, CA.	
	Madera, CA.	
2880	Gadsden, AL	0.8049
	Etowah, AL.	
2900	Gainesville, FL	0.9459
	Alachua, FL.	
2920	Galveston-Texas City, TX	0.9403
	Galveston, TX.	
2960	Gary, IN	0.9342
	Lake, IN.	
	Porter, IN.	
2975	Glens Falls, NY	0.8467
	Warren, NY.	
	Washington, NY.	
2980	Goldsboro, NC	0.8778
	Wayne, NC.	
2985	Grand Forks, ND-MN	0.9091
	Polk, MN.	
	Grand Forks, ND.	
2995	Grand Junction, CO	0.9900
	Mesa, CO.	
3000	Grand Rapids-Muskegon-Holland, MI	0.9519
	Allegan, MI.	
	Kent, MI.	
	Muskegon, MI.	
	Ottawa, MI.	
3040	Great Falls, MT	0.8810
	Cascade, MT.	

TABLE 1A.—FY 2006 IRF PPS MSA LABOR MARKET AREA DESIGNATIONS FOR URBAN AREAS FOR THE PURPOSES OF COMPARING WAGE INDEX VALUES WITH TABLE 2A—Continued

MSA	Urban area (Constituent Counties or County Equivalents)	Wage index
3060	Greeley, CO	0.9444
	Weld, CO.	
3080	Green Bay, WI	0.9586
	Brown, WI.	
3120	Greensboro-Winston-Salem-High Point, NC	0.9312
	Alamance, NC.	
	Davidson, NC.	
	Davie, NC.	
	Forsyth, NC.	
	Guilford, NC.	
	Randolph, NC.	
	Stokes, NC.	
	Yadkin, NC.	
3150	Greenville, NC	0.9183
	Pitt, NC.	
3160	Greenville-Spartanburg-Anderson, SC	0.9400
	Anderson, SC.	
	Cherokee, SC.	
	Greenville, SC.	
	Pickens, SC.	
	Spartanburg, SC.	
3180	Hagerstown, MD	0.9940
	Washington, MD.	
3200	Hamilton-Middletown, OH	0.9066
	Butler, OH.	
3240	Harrisburg-Lebanon-Carlisle, PA	0.9286
	Cumberland, PA.	
	Dauphin, PA.	
	Lebanon, PA.	
	Perry, PA.	
3283	Hartford, CT	1.1054
	Hartford, CT.	
	Litchfield, CT.	
	Middlesex, CT.	
	Tolland, CT.	
3285	Hattiesburg, MS	0.7362
	Forrest, MS.	
	Lamar, MS.	
3290	Hickory-Morganton-Lenoir, NC	0.9502
	Alexander, NC.	
	Burke, NC.	
	Caldwell, NC.	
	Catawba, NC.	
3320	Honolulu, HI	1.1013
	Honolulu, HI.	
3350	Houma, LA	0.7721
	Lafourche, LA.	
	Terrebonne, LA.	
3360	Houston, TX	1.0117
	Chambers, TX.	
	Fort Bend, TX.	
	Harris, TX.	
	Liberty, TX.	
	Montgomery, TX.	
	Waller, TX.	
3400	Huntington-Ashland, WV-KY-OH	0.9564
	Boyd, KY.	
	Carter, KY.	
	Greenup, KY.	
	Lawrence, OH.	
	Cabell, WV.	
	Wayne, WV.	
3440	Huntsville, AL	0.8851
	Limestone, AL.	
	Madison, AL.	
3480	Indianapolis, IN	1.0039
	Boone, IN.	
	Hamilton, IN.	
	Hancock, IN.	
	Hendricks, IN.	

TABLE 1A.—FY 2006 IRF PPS MSA LABOR MARKET AREA DESIGNATIONS FOR URBAN AREAS FOR THE PURPOSES OF COMPARING WAGE INDEX VALUES WITH TABLE 2A—Continued

MSA	Urban area (Constituent Counties or County Equivalents)	Wage index
	Johnson, IN.	
	Madison, IN.	
	Marion, IN.	
	Morgan, IN.	
	Shelby, IN.	
3500	Iowa City, IA	0.9654
	Johnson, IA.	
3520	Jackson, MI	0.9146
	Jackson, MI.	
3560	Jackson, MS	0.8406
	Hinds, MS.	
	Madison, MS.	
	Rankin, MS.	
3580	Jackson, TN	0.8900
	Chester, TN.	
	Madison, TN.	
3600	Jacksonville, FL	0.9548
	Clay, FL.	
	Duval, FL.	
	Nassau, FL.	
	St. Johns, FL.	
3605	Jacksonville, NC	0.8401
	Onslow, NC.	
3610	Jamestown, NY	0.7589
	Chautaqua, NY.	
3620	Janesville-Beloit, WI	0.9583
	Rock, WI.	
3640	Jersey City, NJ	1.0923
	Hudson, NJ.	
3660	Johnson City-Kingsport-Bristol, TN-VA	0.8202
	Carter, TN.	
	Hawkins, TN.	
	Sullivan, TN.	
	Unicoi, TN.	
	Washington, TN.	
	Bristol City, VA.	
	Scott, VA.	
	Washington, VA.	
3680	Johnstown, PA	0.7980
	Cambria, PA.	
	Somerset, PA.	
3700	Jonesboro, AR	0.8144
	Craighead, AR.	
3710	Joplin, MO	0.8721
	Jasper, MO.	
	Newton, MO.	
3720	Kalamazoo-Battlecreek, MI	1.0350
	Calhoun, MI.	
	Kalamazoo, MI.	
	Van Buren, MI.	
3740	Kankakee, IL	1.0603
	Kankakee, IL.	
3760	Kansas City, KS-MO	0.9641
	Johnson, KS.	
	Leavenworth, KS.	
	Miami, KS.	
	Wyandotte, KS.	
	Cass, MO.	
	Clay, MO.	
	Clinton, MO.	
	Jackson, MO.	
	Lafayette, MO.	
	Platte, MO.	
	Ray, MO.	
3800	Kenosha, WI	0.9772
	Kenosha, WI.	
3810	Killeen-Temple, TX	0.9242
	Bell, TX.	
	Coryell, TX.	
3840	Knoxville, TN	0.8508

TABLE 1A.—FY 2006 IRF PPS MSA LABOR MARKET AREA DESIGNATIONS FOR URBAN AREAS FOR THE PURPOSES OF COMPARING WAGE INDEX VALUES WITH TABLE 2A—Continued

MSA	Urban area (Constituent Counties or County Equivalents)	Wage index
	Anderson, TN.	
	Blount, TN.	
	Knox, TN.	
	Loudon, TN.	
	Sevier, TN.	
	Union, TN.	
3850	Kokomo, IN	0.8986
	Howard, IN.	
	Tipton, IN.	
3870	La Crosse, WI-MN	0.9289
	Houston, MN.	
	La Crosse, WI.	
3880	Lafayette, LA	0.8105
	Acadia, LA.	
	Lafayette, LA.	
	St. Landry, LA.	
	St. Martin, LA.	
3920	Lafayette, IN	0.9067
	Clinton, IN.	
	Tippecanoe, IN.	
3960	Lake Charles, LA	0.7972
	Calcasieu, LA.	
3980	Lakeland-Winter Haven, FL	0.8930
	Polk, FL.	
4000	Lancaster, PA	0.9883
	Lancaster, PA.	
4040	Lansing-East Lansing, MI	0.9658
	Clinton, MI.	
	Eaton, MI.	
	Ingham, MI.	
4080	Laredo, TX	0.8747
	Webb, TX.	
4100	Las Cruces, NM	0.8784
	Dona Ana, NM.	
4120	Las Vegas, NV-AZ	1.1121
	Mohave, AZ.	
	Clark, NV.	
	Nye, NV.	
4150	Lawrence, KS	0.8644
	Douglas, KS.	
4200	Lawton, OK	0.8212
	Comanche, OK.	
4243	Lewiston-Auburn, ME	0.9562
	Androscoggin, ME.	
4280	Lexington, KY	0.9219
	Bourbon, KY.	
	Clark, KY.	
	Fayette, KY.	
	Jessamine, KY.	
	Madison, KY.	
	Scott, KY.	
	Woodford, KY.	
4320	Lima, OH	0.9258
	Allen, OH.	
	Auglaize, OH.	
4360	Lincoln, NE	1.0208
	Lancaster, NE.	
4400	Little Rock-North Little, AR	0.8826
	Faulkner, AR.	
	Lonoke, AR.	
	Pulaski, AR.	
	Saline, AR.	
4420	Longview-Marshall, TX	0.8739
	Gregg, TX.	
	Harrison, TX.	
	Upshur, TX.	
4480	Los Angeles-Long Beach, CA	1.1732
	Los Angeles, CA.	
4520	Louisville, KY-IN	0.9162
	Clark, IN.	

TABLE 1A.—FY 2006 IRF PPS MSA LABOR MARKET AREA DESIGNATIONS FOR URBAN AREAS FOR THE PURPOSES OF COMPARING WAGE INDEX VALUES WITH TABLE 2A—Continued

MSA	Urban area (Constituent Counties or County Equivalents)	Wage index
	Floyd, IN.	
	Harrison, IN.	
	Scott, IN.	
	Bullitt, KY.	
	Jefferson, KY.	
	Oldham, KY.	
4600	Lubbock, TX	0.8777
	Lubbock, TX.	
4640	Lynchburg, VA	0.9017
	Amherst, VA.	
	Bedford City, VA.	
	Bedford, VA.	
	Campbell, VA.	
	Lynchburg City, VA.	
4680	Macon, GA	0.9596
	Bibb, GA.	
	Houston, GA.	
	Jones, GA.	
	Peach, GA.	
	Twiggs, GA.	
4720	Madison, WI	1.0395
	Dane, WI.	
4800	Mansfield, OH	0.9105
	Crawford, OH.	
	Richland, OH.	
4840	Mayaguez, PR	0.4769
	Anasco, PR.	
	Cabo Rojo, PR.	
	Hormigueros, PR.	
	Mayaguez, PR.	
	Sabana Grande, PR.	
	San German, PR.	
4880	McAllen-Edinburg-Mission, TX	0.8602
	Hidalgo, TX.	
4890	Medford-Ashland, OR	1.0534
	Jackson, OR.	
4900	Melbourne-Titusville-Palm Bay, FL	0.9633
	Brevard, FL.	
4920	Memphis, TN-AR-MS	0.9234
	Crittenden, AR.	
	De Soto, MS.	
	Fayette, TN.	
	Shelby, TN.	
	Tipton, TN.	
4940	Merced, CA	1.0575
	Merced, CA.	
5000	Miami, FL	0.9870
	Dade, FL.	
5015	Middlesex-Somerset-Hunterdon, NJ	1.1360
	Hunterdon, NJ.	
	Middlesex, NJ.	
	Somerset, NJ.	
5080	Milwaukee-Waukesha, WI	1.0076
	Milwaukee, WI.	
	Ozaukee, WI.	
	Washington, WI.	
	Waukesha, WI.	
5120	Minneapolis-St. Paul, MN-WI	1.1066
	Anoka, MN.	
	Carver, MN.	
	Chisago, MN.	
	Dakota, MN.	
	Hennepin, MN.	
	Isanti, MN.	
	Ramsey, MN.	
	Scott, MN.	
	Sherburne, MN.	
	Washington, MN.	
	Wright, MN.	
	Pierce, WI.	

TABLE 1A.—FY 2006 IRF PPS MSA LABOR MARKET AREA DESIGNATIONS FOR URBAN AREAS FOR THE PURPOSES OF COMPARING WAGE INDEX VALUES WITH TABLE 2A—Continued

MSA	Urban area (Constituent Counties or County Equivalents)	Wage index
	St. Croix, WI.	
5140	Missoula, MT	0.9618
	Missoula, MT.	
5160	Mobile, AL	0.7932
	Baldwin, AL.	
	Mobile, AL.	
5170	Modesto, CA	1.1966
	Stanislaus, CA.	
5190	Monmouth-Ocean, NJ	1.0888
	Monmouth, NJ.	
	Ocean, NJ.	
5200	Monroe, LA	0.7913
	Ouachita, LA.	
5240	Montgomery, AL	0.8300
	Autauga, AL.	
	Elmore, AL.	
	Montgomery, AL.	
5280	Muncie, IN	0.8580
	Delaware, IN.	
5330	Myrtle Beach, SC	0.9022
	Horry, SC.	
5345	Naples, FL	1.0558
	Collier, FL.	
5360	Nashville, TN	1.0108
	Cheatham, TN.	
	Davidson, TN.	
	Dickson, TN.	
	Robertson, TN.	
	Rutherford, TN.	
	Sumner, TN.	
	Williamson, TN.	
	Wilson, TN.	
5380	Nassau-Suffolk, NY	1.2907
	Nassau, NY.	
	Suffolk, NY.	
5483	New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2254
	Fairfield, CT.	
	New Haven, CT.	
5523	New London-Norwich, CT	1.1596
	New London, CT.	
5560	New Orleans, LA	0.9103
	Jefferson, LA.	
	Orleans, LA.	
	Plaquemines, LA.	
	St. Bernard, LA.	
	St. Charles, LA.	
	St. James, LA.	
	St. John The Baptist, LA.	
	St. Tammany, LA.	
5600	New York, NY	1.3586
	Bronx, NY.	
	Kings, NY.	
	New York, NY.	
	Putnam, NY.	
	Queens, NY.	
	Richmond, NY.	
	Rockland, NY.	
	Westchester, NY.	
5640	Newark, NJ	1.1625
	Essex, NJ.	
	Morris, NJ.	
	Sussex, NJ.	
	Union, NJ.	
	Warren, NJ.	
5660	Newburgh, NY-PA	1.1170
	Orange, NY.	
	Pike, PA.	
5720	Norfolk-Virginia Beach-Newport News, VA-NC	0.8894
	Currituck, NC.	
	Chesapeake City, VA.	

TABLE 1A.—FY 2006 IRF PPS MSA LABOR MARKET AREA DESIGNATIONS FOR URBAN AREAS FOR THE PURPOSES OF COMPARING WAGE INDEX VALUES WITH TABLE 2A—Continued

MSA	Urban area (Constituent Counties or County Equivalents)	Wage index
	Gloucester, VA.	
	Hampton City, VA.	
	Isle of Wight, VA.	
	James City, VA.	
	Mathews, VA.	
	Newport News City, VA.	
	Norfolk City, VA.	
	Poquoson City,VA.	
	Portsmouth City, VA.	
	Suffolk City, VA.	
	Virginia Beach City, VA.	
	Williamsburg City, VA.	
	York, VA.	
5775	Oakland, CA	1.5220
	Alameda, CA.	
	Contra Costa, CA.	
5790	Ocala, FL	0.9153
	Marion, FL.	
5800	Odessa-Midland, TX	0.9632
	Ector, TX.	
	Midland, TX.	
5880	Oklahoma City, OK	0.8966
	Canadian, OK.	
	Cleveland, OK.	
	Logan, OK.	
	McClain, OK.	
	Oklahoma, OK.	
	Pottawatomie, OK.	
5910	Olympia, WA	1.1006
	Thurston, WA.	
5920	Omaha, NE-IA	0.9754
	Pottawattamie, IA.	
	Cass, NE.	
	Douglas, NE.	
	Sarpy, NE.	
	Washington, NE.	
5945	Orange County, CA	1.1611
	Orange, CA.	
5960	Orlando, FL	0.9742
	Lake, FL.	
	Orange, FL.	
	Osceola, FL.	
	Seminole, FL.	
5990	Owensboro, KY	0.8434
	Daviess, KY.	
6015	Panama City, FL	0.8124
	Bay, FL.	
6020	Parkersburg-Marietta, WV-OH	0.8288
	Washington, OH.	
	Wood, WV.	
6080	Pensacola, FL	0.8306
	Escambia, FL.	
	Santa Rosa, FL.	
6120	Peoria-Pekin, IL	0.8886
	Peoria, IL.	
	Tazewell, IL.	
	Woodford, IL.	
6160	Philadelphia, PA-NJ	1.0824
	Burlington, NJ.	
	Camden, NJ.	
	Gloucester, NJ.	
	Salem, NJ.	
	Bucks, PA.	
	Chester, PA.	
	Delaware, PA.	
	Montgomery, PA.	
	Philadelphia, PA.	
6200	Phoenix-Mesa, AZ	0.9982
	Maricopa, AZ.	
	Pinal, AZ.	

TABLE 1A.—FY 2006 IRF PPS MSA LABOR MARKET AREA DESIGNATIONS FOR URBAN AREAS FOR THE PURPOSES OF COMPARING WAGE INDEX VALUES WITH TABLE 2A—Continued

MSA	Urban area (Constituent Counties or County Equivalents)	Wage index
6240	Pine Bluff, AR	0.8673
	Jefferson, AR.	
6280	Pittsburgh, PA	0.8756
	Allegheny, PA.	
	Beaver, PA.	
	Butler, PA.	
	Fayette, PA.	
	Washington, PA.	
	Westmoreland, PA.	
6323	Pittsfield, MA	1.0439
	Berkshire, MA.	
6340	Pocatello, ID	0.9601
	Bannock, ID.	
6360	Ponce, PR	0.4954
	Guayanilla, PR.	
	Juana Diaz, PR.	
	Penuelas, PR.	
	Ponce, PR.	
	Villalba, PR.	
	Yauco, PR.	
6403	Portland, ME	1.0112
	Cumberland, ME.	
	Sagadahoc, ME.	
	York, ME.	
6440	Portland-Vancouver, OR-WA	1.1403
	Clackamas, OR.	
	Columbia, OR.	
	Multnomah, OR.	
	Washington, OR.	
	Yamhill, OR.	
	Clark, WA.	
6483	Providence-Warwick-Pawtucket, RI	1.1061
	Bristol, RI.	
	Kent, RI.	
	Newport, RI.	
	Providence, RI.	
	Washington, RI.	
6520	Provo-Orem, UT	0.9613
	Utah, UT.	
6560	Pueblo, CO	0.8752
	Pueblo, CO.	
6580	Punta Gorda, FL	0.9441
	Charlotte, FL.	
6600	Racine, WI	0.9045
	Racine, WI.	
6640	Raleigh-Durham-Chapel Hill, NC	1.0258
	Chatham, NC.	
	Durham, NC.	
	Franklin, NC.	
	Johnston, NC.	
	Orange, NC.	
	Wake, NC.	
6660	Rapid City, SD	0.8912
	Pennington, SD.	
6680	Reading, PA	0.9215
	Berks, PA.	
6690	Redding, CA	1.1835
	Shasta, CA.	
6720	Reno, NV	1.0456
	Washoe, NV.	
6740	Richland-Kennewick-Pasco, WA	1.0520
	Benton, WA.	
	Franklin, WA.	
6760	Richmond-Petersburg, VA	0.9397
	Charles City County, VA.	
	Chesterfield, VA.	
	Colonial Heights City, VA.	
	Dinwiddie, VA.	
	Goochland, VA.	
	Hanover, VA.	

TABLE 1A.—FY 2006 IRF PPS MSA LABOR MARKET AREA DESIGNATIONS FOR URBAN AREAS FOR THE PURPOSES OF COMPARING WAGE INDEX VALUES WITH TABLE 2A—Continued

MSA	Urban area (Constituent Counties or County Equivalents)	Wage index
	Henrico, VA.	
	Hopewell City, VA.	
	New Kent, VA.	
	Petersburg City, VA.	
	Powhatan, VA.	
	Prince George, VA.	
	Richmond City, VA.	
6780	Riverside-San Bernardino, CA	1.0970
	Riverside, CA.	
	San Bernardino, CA.	
6800	Roanoke, VA	0.8428
	Botetourt, VA.	
	Roanoke, VA.	
	Roanoke City, VA.	
	Salem City, VA.	
6820	Rochester, MN	1.1504
	Olmsted, MN.	
6840	Rochester, NY	0.9196
	Genesee, NY.	
	Livingston, NY.	
	Monroe, NY.	
	Ontario, NY.	
	Orleans, NY.	
	Wayne, NY.	
6880	Rockford, IL	0.9626
	Boone, IL.	
	Ogle, IL.	
	Winnebago, IL.	
6895	Rocky Mount, NC	0.8998
	Edgecombe, NC.	
	Nash, NC.	
6920	Sacramento, CA	1.1848
	El Dorado, CA.	
	Placer, CA.	
	Sacramento, CA.	
6960	Saginaw-Bay City-Midland, MI	0.9696
	Bay, MI.	
	Midland, MI.	
	Saginaw, MI.	
6980	St. Cloud, MN	1.0215
	Benton, MN.	
	Stearns, MN.	
7000	St. Joseph, MO	1.0013
	Andrews, MO.	
	Buchanan, MO.	
7040	St. Louis, MO-IL	0.9081
	Clinton, IL.	
	Jersey, IL.	
	Madison, IL.	
	Monroe, IL.	
	St. Clair, IL.	
	Franklin, MO.	
	Jefferson, MO.	
	Lincoln, MO.	
	St. Charles, MO.	
	St. Louis, MO.	
	St. Louis City, MO.	
	Warren, MO.	
	Sullivan City, MO.	
7080	Salem, OR	1.0556
	Marion, OR.	
	Polk, OR.	
7120	Salinas, CA	1.3823
	Monterey, CA.	
7160	Salt Lake City-Ogden, UT	0.9487
	Davis, UT.	
	Salt Lake, UT.	
	Weber, UT.	
7200	San Angelo, TX	0.8167
	Tom Green, TX.	

TABLE 1A.—FY 2006 IRF PPS MSA LABOR MARKET AREA DESIGNATIONS FOR URBAN AREAS FOR THE PURPOSES OF COMPARING WAGE INDEX VALUES WITH TABLE 2A—Continued

MSA	Urban area (Constituent Counties or County Equivalents)	Wage index
7240	San Antonio, TX	0.9023
	Bexar, TX.	
	Comal, TX.	
	Guadalupe, TX.	
	Wilson, TX.	
7320	San Diego, CA	1.1267
	San Diego, CA.	
7360	San Francisco, CA	1.4712
	Marin, CA.	
	San Francisco, CA.	
	San Mateo, CA.	
7400	San Jose, CA	1.4744
	Santa Clara, CA.	
7440	San Juan-Bayamon, PR	0.4802
	Aguas Buenas, PR.	
	Barceloneta, PR.	
	Bayamon, PR.	
	Canovanas, PR.	
	Carolina, PR.	
	Catano, PR.	
	Ceiba, PR.	
	Comerio, PR.	
	Corozal, PR.	
	Dorado, PR.	
	Fajardo, PR.	
	Florida, PR.	
	Guaynabo, PR.	
	Humacao, PR.	
	Juncos, PR.	
	Los Piedras, PR.	
	Loiza, PR.	
	Luguillo, PR.	
	Manati, PR.	
	Morovis, PR.	
	Naguabo, PR.	
	Naranjito, PR.	
	Rio Grande, PR.	
	San Juan, PR.	
	Toa Alta, PR.	
	Toa Baja, PR.	
	Trujillo Alto, PR.	
	Vega Alta, PR.	
	Vega Baja, PR.	
	Yabucoa, PR.	
7460	San Luis Obispo-Atascadero-Paso Robles, CA	1.1118
	San Luis Obispo, CA.	
7480	Santa Barbara-Santa Maria-Lompoc, CA	1.0771
	Santa Barbara, CA.	
7485	Santa Cruz-Watsonville, CA	1.4779
	Santa Cruz, CA.	
7490	Santa Fe, NM	1.0590
	Los Alamos, NM.	
	Santa Fe, NM.	
7500	Santa Rosa, CA	1.2961
	Sonoma, CA.	
7510	Sarasota-Bradenton, FL	0.9629
	Manatee, FL.	
	Sarasota, FL.	
7520	Savannah, GA	0.9460
	Bryan, GA.	
	Chatham, GA.	
	Effingham, GA.	
7560	Scranton—Wilkes-Barre—Hazleton, PA	0.8522
	Columbia, PA.	
	Lackawanna, PA.	
	Luzerne, PA.	
	Wyoming, PA.	
7600	Seattle-Bellevue-Everett, WA	1.1479
	Island, WA.	
	King, WA.	

TABLE 1A.—FY 2006 IRF PPS MSA LABOR MARKET AREA DESIGNATIONS FOR URBAN AREAS FOR THE PURPOSES OF COMPARING WAGE INDEX VALUES WITH TABLE 2A—Continued

MSA	Urban area (Constituent Counties or County Equivalents)	Wage index
	Snohomish, WA.	
7610	Sharon, PA	0.7881
	Mercer, PA.	
7620	Sheboygan, WI	0.8948
	Sheboygan, WI.	
7640	Sherman-Denison, TX	0.9617
	Grayson, TX.	
7680	Shreveport-Bossier City, LA	0.9111
	Bossier, LA.	
	Caddo, LA.	
	Webster, LA.	
7720	Sioux City, IA-NE	0.9094
	Woodbury, IA.	
	Dakota, NE.	
7760	Sioux Falls, SD	0.9441
	Lincoln, SD.	
	Minnehaha, SD.	
7800	South Bend, IN	0.9447
	St. Joseph, IN.	
7840	Spokane, WA	1.0660
	Spokane, WA.	
7880	Springfield, IL	0.8738
	Menard, IL.	
	Sangamon, IL.	
7920	Springfield, MO	0.8597
	Christian, MO.	
	Greene, MO.	
	Webster, MO.	
8003	Springfield, MA	1.0173
	Hampden, MA.	
	Hampshire, MA.	
8050	State College, PA	0.8461
	Centre, PA.	
8080	Steubenville-Weirton, OH-WV	0.8280
	Jefferson, OH.	
	Brooke, WV.	
	Hancock, WV.	
8120	Stockton-Lodi, CA	1.0564
	San Joaquin, CA.	
8140	Sumter, SC	0.8520
	Sumter, SC.	
8160	Syracuse, NY	0.9394
	Cayuga, NY.	
	Madison, NY.	
	Onondaga, NY.	
	Oswego, NY.	
8200	Tacoma, WA	1.1078
	Pierce, WA.	
8240	Tallahassee, FL	0.8655
	Gadsden, FL.	
	Leon, FL.	
8280	Tampa-St. Petersburg-Clearwater, FL	0.9024
	Hernando, FL.	
	Hillsborough, FL.	
	Pasco, FL.	
	Pinellas, FL.	
8320	Terre Haute, IN	0.8582
	Clay, IN.	
	Vermillion, IN.	
	Vigo, IN.	
8360	Texarkana, AR-Texarkana, TX	0.8413
	Miller, AR.	
	Bowie, TX.	
8400	Toledo, OH	0.9524
	Fulton, OH.	
	Lucas, OH.	
	Wood, OH.	
8440	Topeka, KS	0.8904
	Shawnee, KS.	
8480	Trenton, NJ	1.0276

TABLE 1A.—FY 2006 IRF PPS MSA LABOR MARKET AREA DESIGNATIONS FOR URBAN AREAS FOR THE PURPOSES OF COMPARING WAGE INDEX VALUES WITH TABLE 2A—Continued

MSA	Urban area (Constituent Counties or County Equivalents)	Wage index
	Mercer, NJ.	
8520	Tucson, AZ	0.8926
	Pima, AZ.	
8560	Tulsa, OK	0.8729
	Creek, OK.	
	Osage, OK.	
	Rogers, OK.	
	Tulsa, OK.	
	Wagoner, OK.	
8600	Tuscaloosa, AL	0.8440
	Tuscaloosa, AL.	
8640	Tyler, TX	0.9502
	Smith, TX.	
8680	Utica-Rome, NY	0.8295
	Herkimer, NY.	
	Oneida, NY.	
8720	Vallejo-Fairfield-Napa, CA	1.3517
	Napa, CA.	
	Solano, CA.	
8735	Ventura, CA	1.1105
	Ventura, CA.	
8750	Victoria, TX	0.8469
	Victoria, TX.	
8760	Vineland-Millville-Bridgeton, NJ	1.0573
	Cumberland, NJ.	
8780	Visalia-Tulare-Porterville, CA	0.9975
	Tulare, CA.	
8800	Waco, TX	0.8146
	McLennan, TX.	
8840	Washington, DC-MD-VA-WV	1.0971
	District of Columbia, DC.	
	Calvert, MD.	
	Charles, MD.	
	Frederick, MD.	
	Montgomery, MD.	
	Prince Georges, MD.	
	Alexandria City, VA.	
	Arlington, VA.	
	Clarke, VA.	
	Culpepper, VA.	
	Fairfax, VA.	
	Fairfax City, VA.	
	Falls Church City, VA.	
	Fauquier, VA.	
	Fredericksburg City, VA.	
	King George, VA.	
	Loudoun, VA.	
	Manassas City, VA.	
	Manassas Park City, VA.	
	Prince William, VA.	
	Spotsylvania, VA.	
	Stafford, VA.	
	Warren, VA.	
	Berkeley, WV.	
	Jefferson, WV.	
8920	Waterloo-Cedar Falls, IA	0.8633
	Black Hawk, IA.	
8940	Wausau, WI	0.9570
	Marathon, WI.	
8960	West Palm Beach-Boca Raton, FL	1.0362
	Palm Beach, FL.	
9000	Wheeling, OH-WV	0.7449
	Belmont, OH.	
	Marshall, WV.	
	Ohio, WV.	
9040	Wichita, KS	0.9486
	Butler, KS.	
	Harvey, KS.	
	Sedgwick, KS.	
9080	Wichita Falls, TX	0.8395

TABLE 1A.—FY 2006 IRF PPS MSA LABOR MARKET AREA DESIGNATIONS FOR URBAN AREAS FOR THE PURPOSES OF COMPARING WAGE INDEX VALUES WITH TABLE 2A—Continued

MSA	Urban area (Constituent Counties or County Equivalents)	Wage index
	Archer, TX.	
	Wichita, TX.	
9140	Williamsport, PA	0.8485
	Lycoming, PA.	
9160	Wilmington-Newark, DE-MD	1.1121
	New Castle, DE.	
	Cecil, MD.	
9200	Wilmington, NC	0.9237
	New Hanover, NC.	
	Brunswick, NC.	
9260	Yakima, WA	1.0322
	Yakima, WA.	
9270	Yolo, CA	0.9378
	Yolo, CA.	
9280	York, PA	0.9150
	York, PA.	
9320	Youngstown-Warren, OH	0.9517
	Columbiana, OH.	
	Mahoning, OH.	
	Trumbull, OH.	
9340	Yuba City, CA	1.0363
	Sutter, CA.	
	Yuba, CA.	
9360	Yuma, AZ	0.8871
	Yuma, AZ.	

TABLE 1B.—FY 2006 IRF PPS MSA LABOR MARKET AREA DESIGNATIONS FOR RURAL AREAS FOR THE PURPOSES OF COMPARING WAGE INDEX VALUES WITH TABLE 2B

Nonurban area	Wage Index
Alabama	0.7637
Alaska	1.1637
Arizona	0.9140
Arkansas	0.7703
California	1.0297
Colorado	0.9368
Connecticut	1.1917
Delaware	0.9503
Florida	0.8721
Georgia	0.8247
Guam	0.9611
Hawaii	1.0522
Idaho	0.8826
Illinois	0.8340
Indiana	0.8736
Iowa	0.8550
Kansas	0.8087
Kentucky	0.7844
Louisiana	0.7290
Maine	0.9039

TABLE 1B.—FY 2006 IRF PPS MSA LABOR MARKET AREA DESIGNATIONS FOR RURAL AREAS FOR THE PURPOSES OF COMPARING WAGE INDEX VALUES WITH TABLE 2B—Continued

Nonurban area	Wage Index
Maryland	0.9179
Massachusetts	1.0216
Michigan	0.8740
Minnesota	0.9339
Mississippi	0.7583
Missouri	0.7829
Montana	0.8701
Nebraska	0.9035
Nevada	0.9832
New Hampshire	0.9940
New Jersey [1]	.....
New Mexico	0.8529
New York	0.8403
North Carolina	0.8500
North Dakota	0.7743
Ohio	0.8759
Oklahoma	0.7537
Oregon	1.0049

TABLE 1B.—FY 2006 IRF PPS MSA LABOR MARKET AREA DESIGNATIONS FOR RURAL AREAS FOR THE PURPOSES OF COMPARING WAGE INDEX VALUES WITH TABLE 2B—Continued

Nonurban area	Wage Index
Pennsylvania	0.8348
Puerto Rico	0.4047
Rhode Island [1]	.....
South Carolina	0.8640
South Dakota	0.8393
Tennessee	0.7876
Texas	0.7910
Utah	0.8843
Vermont	0.9375
Virginia	0.8479
Virgin Islands	0.7456
Washington	1.0072
West Virginia	0.8083
Wisconsin	0.9498
Wyoming	0.9182

[1] All counties within the State are classified urban.

TABLE 2A.—PROPOSED INPATIENT REHABILITAION FACILITY WAGE INDEX FOR URBAN AREAS BASED ON PROPOSED CBSA LABOR MARKET AREAS FOR DISCHARGES OCCURRING ON OR AFTER OCTOBER 1, 2005

CBSA code	Urban area (Constituent counties)	Full wage Index
10180	Abilene, TX	0.7850
	Callahan County, TX.	
	Jones County, TX.	
	Taylor County, TX.	
10380	Aguadilla-Isabela-San Sebastián, PR	0.4280
	Aguada Municipio, PR.	

TABLE 2A.—PROPOSED INPATIENT REHABILITAION FACILITY WAGE INDEX FOR URBAN AREAS BASED ON PROPOSED CBSA LABOR MARKET AREAS FOR DISCHARGES OCCURRING ON OR AFTER OCTOBER 1, 2005—Continued

CBSA code	Urban area (Constituent counties)	Full wage Index
	Aguadilla Municipio, PR.	
	Aasco Municipio, PR.	
	Isabela Municipio, PR.	
	Lares Municipio, PR.	
	Moca Municipio, PR.	
	Rincín Municipio, PR.	
	San Sebastián Municipio, PR.	
10420	Akron, OH	0.9055
	Portage County, OH.	
	Summit County, OH.	
10500	Albany, GA	1.1266
	Baker County, GA.	
	Dougherty County, GA.	
	Lee County, GA.	
	Terrell County, GA.	
	Worth County, GA.	
10580	Albany-Schenectady-Troy, NY	0.8650
	Albany County, NY.	
	Rensselaer County, NY.	
	Saratoga County, NY.	
	Schenectady County, NY.	
	Schoharie County, NY.	
10740	Albuquerque, NM	1.0485
	Bernalillo County, NM.	
	Sandoval County, NM.	
	Torrance County, NM.	
	Valencia County, NM.	
10780	Alexandria, LA	0.8171
	Grant Parish, LA.	
	Rapides Parish, LA.	
10900	Allentown-Bethlehem-Easton, PA-NJ	0.9501
	Warren County, NJ.	
	Carbon County, PA.	
	Lehigh County, PA.	
	Northampton County, PA.	
11020	Altoona, PA	0.8462
	Blair County, PA.	
11100	Amarillo, TX	0.9178
	Armstrong County, TX.	
	Carson County, TX.	
	Potter County, TX.	
	Randall County, TX.	
11180	Ames, IA	0.9479
	Story County, IA.	
11260	Anchorage, AK	1.2165
	Anchorage Municipality, AK.	
	Matanuska-Susitna Borough, AK.	
11300	Anderson, IN	0.8713
	Madison County, IN.	
11340	Anderson, SC	0.8670
	Anderson County, SC.	
11460	Ann Arbor, MI	1.1022
	Washtenaw County, MI.	
11500	Anniston-Oxford, AL	0.7881
	Calhoun County, AL.	
11540	Appleton, WI	0.9131
	Calumet County, WI.	
	Outagamie County, WI.	
11700	Asheville, NC	0.9191
	Buncombe County, NC.	
	Haywood County, NC.	
	Henderson County, NC.	
	Madison County, NC.	
12020	Athens-Clarke County, GA	1.0202
	Clarke County, GA.	
	Madison County, GA.	
	Oconee County, GA.	
	Oglethorpe County, GA.	
12060	Atlanta-Sandy Springs-Marietta, GA	0.9971
	Barrow County, GA.	

TABLE 2A.—PROPOSED INPATIENT REHABILITAION FACILITY WAGE INDEX FOR URBAN AREAS BASED ON PROPOSED CBSA LABOR MARKET AREAS FOR DISCHARGES OCCURRING ON OR AFTER OCTOBER 1, 2005—Continued

CBSA code	Urban area (Constituent counties)	Full wage Index
	Bartow County, GA.	
	Butts County, GA.	
	Carroll County, GA.	
	Cherokee County, GA.	
	Clayton County, GA.	
	Cobb County, GA.	
	Coweta County, GA.	
	Dawson County, GA.	
	DeKalb County, GA.	
	Douglas County, GA.	
	Fayette County, GA.	
	Forsyth County, GA.	
	Fulton County, GA.	
	Gwinnett County, GA.	
	Haralson County, GA.	
	Heard County, GA.	
	Henry County, GA.	
	Jasper County, GA.	
	Lamar County, GA.	
	Meriwether County, GA.	
	Newton County, GA.	
	Paulding County, GA.	
	Pickens County, GA.	
	Pike County, GA.	
	Rockdale County, GA.	
	Spalding County, GA.	
	Walton County, GA.	
12100	Atlantic City, NJ	1.0931
	Atlantic County, NJ.	
12220	Auburn-Opelika, AL	0.8215
	Lee County, AL.	
12260	Augusta-Richmond County, GA-SC	0.9154
	Burke County, GA.	
	Columbia County, GA.	
	McDuffie County, GA.	
	Richmond County, GA.	
	Aiken County, SC.	
	Edgefield County, SC.	
12420	Austin-Round Rock, TX	0.9595
	Bastrop County, TX.	
	Caldwell County, TX.	
	Hays County, TX.	
	Travis County, TX.	
	Williamson County, TX.	
12540	Bakersfield, CA	1.0036
	Kern County, CA.	
12580	Baltimore-Towson, MD	0.9907
	Anne Arundel County, MD.	
	Baltimore County, MD.	
	Carroll County, MD.	
	Harford County, MD.	
	Howard County, MD.	
	Queen Anne's County, MD.	
	Baltimore City, MD.	
12620	Bangor, ME	0.9955
	Penobscot County, ME.	
12700	Barnstable Town, MA	1.2335
	Barnstable County, MA.	
12940	Baton Rouge, LA	0.8319
	Ascension Parish, LA.	
	East Baton Rouge Parish, LA.	
	East Feliciana Parish, LA.	
	Iberville Parish, LA.	
	Livingston Parish, LA.	
	Pointe Coupee Parish, LA.	
	St. Helena Parish, LA.	
	West Baton Rouge Parish, LA.	
	West Feliciana Parish, LA.	
12980	Battle Creek, MI	0.9366
	Calhoun County, MI.	

TABLE 2A.—PROPOSED INPATIENT REHABILITAION FACILITY WAGE INDEX FOR URBAN AREAS BASED ON PROPOSED CBSA LABOR MARKET AREAS FOR DISCHARGES OCCURRING ON OR AFTER OCTOBER 1, 2005—Continued

CBSA code	Urban area (Constituent counties)	Full wage Index
13020	Bay City, MI	0.9574
	Bay County, MI.	
13140	Beaumont-Port Arthur, TX	0.8616
	Hardin County, TX.	
	Jefferson County, TX.	
	Orange County, TX.	
13380	Bellingham, WA	1.1642
	Whatcom County, WA.	
13460	Bend, OR	1.0603
	Deschutes County, OR.	
13644	Bethesda-Frederick-Gaithersburg, MD	1.0956
	Frederick County, MD.	
	Montgomery County, MD.	
13740	Billings, MT	0.8961
	Carbon County, MT.	
	Yellowstone County, MT.	
13780	Binghamton, NY	0.8447
	Broome County, NY.	
	Tioga County, NY.	
13820	Birmingham-Hoover, AL	0.9157
	Bibb County, AL.	
	Blount County, AL.	
	Chilton County, AL.	
	Jefferson County, AL.	
	St. Clair County, AL.	
	Shelby County, AL.	
	Walker County, AL.	
13900	Bismarck, ND	0.7505
	Burleigh County, ND.	
	Morton County, ND.	
13980	Blacksburg-Christiansburg-Radford, VA	0.7951
	Giles County, VA.	
	Montgomery County, VA.	
	Pulaski County, VA.	
	Radford City, VA.	
14020	Bloomington, IN	0.8587
	Greene County, IN.	
	Monroe County, IN.	
	Owen County, IN.	
14060	Bloomington-Normal, IL	0.9111
	McLean County, IL.	
14260	Boise City-Nampa, ID	0.9352
	Ada County, ID.	
	Boise County, ID.	
	Canyon County, ID.	
	Gem County, ID.	
	Owyhee County, ID.	
14484	Boston-Quincy, MA	1.1771
	Norfolk County, MA.	
	Plymouth County, MA.	
	Suffolk County, MA.	
14500	Boulder, CO	1.0046
	Boulder County, CO.	
14540	Bowling Green, KY	0.8140
	Edmonson County, KY.	
	Warren County, KY.	
14740	Bremerton-Silverdale, WA	1.0614
	Kitsap County, WA.	
14860	Bridgeport-Stamford-Norwalk, CT	1.2835
	Fairfield County, CT.	
15180	Brownsville-Harlingen, TX	1.0125
	Cameron County, TX.	
15260	Brunswick, GA	1.1933
	Brantley County, GA.	
	Glynn County, GA.	
	McIntosh County, GA.	
15380	Buffalo-Niagara Falls, NY	0.9339
	Erie County, NY.	
	Niagara County, NY.	
15500	Burlington, NC	0.8967

TABLE 2A.—PROPOSED INPATIENT REHABILITAION FACILITY WAGE INDEX FOR URBAN AREAS BASED ON PROPOSED CBSA LABOR MARKET AREAS FOR DISCHARGES OCCURRING ON OR AFTER OCTOBER 1, 2005—Continued

CBSA code	Urban area (Constituent counties)	Full wage Index
	Alamance County, NC.	
15540	Burlington-South Burlington, VT	0.9322
	Chittenden County, VT.	
	Franklin County, VT.	
	Grand Isle County, VT.	
15764	Cambridge-Newton-Framingham, MA	1.1189
	Middlesex County, MA.	
15804	Camden, NJ	1.0675
	Burlington County, NJ.	
	Camden County, NJ.	
	Gloucester County, NJ.	
15940	Canton-Massillon, OH	0.8895
	Carroll County, OH.	
	Stark County, OH.	
15980	Cape Coral-Fort Myers, FL	0.9371
	Lee County, FL.	
16180	Carson City, NV	1.0352
	Carson City, NV.	
16220	Casper, WY	0.9243
	Natrona County, WY.	
16300	Cedar Rapids, IA	0.8975
	Benton County, IA.	
	Jones County, IA.	
	Linn County, IA.	
16580	Champaign-Urbana, IL	0.9527
	Champaign County, IL.	
	Ford County, IL.	
	Piatt County, IL.	
16620	Charleston, WV	0.8876
	Boone County, WV.	
	Clay County, WV.	
	Kanawha County, WV.	
	Lincoln County, WV.	
	Putnam County, WV.	
16700	Charleston-North Charleston, SC	0.9420
	Berkeley County, SC.	
	Charleston County, SC.	
	Dorchester County, SC.	
16740	Charlotte-Gastonia-Concord, NC-SC	0.9743
	Anson County, NC.	
	Cabarrus County, NC.	
	Gaston County, NC.	
	Mecklenburg County, NC.	
	Union County, NC.	
	York County, SC.	
16820	Charlottesville, VA	1.0294
	Albemarle County, VA.	
	Fluvanna County, VA.	
	Greene County, VA.	
	Nelson County, VA.	
	Charlottesville City, VA.	
16860	Chattanooga, TN-GA	0.9207
	Catoosa County, GA.	
	Dade County, GA.	
	Walker County, GA.	
	Hamilton County, TN.	
	Marion County, TN.	
	Sequatchie County, TN.	
16940	Cheyenne, WY	0.8980
	Laramie County, WY.	
16974	Chicago-Naperville-Joliet, IL	1.0868
	Cook County, IL.	
	DeKalb County, IL.	
	DuPage County, IL.	
	Grundy County, IL.	
	Kane County, IL.	
	Kendall County, IL.	
	McHenry County, IL.	
	Will County, IL.	
17020	Chico, CA	1.0542

TABLE 2A.—PROPOSED INPATIENT REHABILITAION FACILITY WAGE INDEX FOR URBAN AREAS BASED ON PROPOSED CBSA LABOR MARKET AREAS FOR DISCHARGES OCCURRING ON OR AFTER OCTOBER 1, 2005—Continued

CBSA code	Urban area (Constituent counties)	Full wage Index
	Butte County, CA.	
17140	Cincinnati-Middletown, OH-KY-IN	0.9516
	Dearborn County, IN.	
	Franklin County, IN.	
	Ohio County, IN.	
	Boone County, KY.	
	Bracken County, KY.	
	Campbell County, KY.	
	Gallatin County, KY.	
	Grant County, KY.	
	Kenton County, KY.	
	Pendleton County, KY.	
	Brown County, OH.	
	Butler County, OH.	
	Clermont County, OH.	
	Hamilton County, OH.	
	Warren County, OH.	
17300	Clarksville, TN-KY	0.8022
	Christian County, KY.	
	Trigg County, KY.	
	Montgomery County, TN.	
	Stewart County, TN.	
17420	Cleveland, TN	0.7844
	Bradley County, TN.	
	Polk County, TN.	
17460	Cleveland-Elyria-Mentor, OH	0.9650
	Cuyahoga County, OH.	
	Geauga County, OH.	
	Lake County, OH.	
	Lorain County, OH.	
	Medina County, OH.	
17660	Coeur d'Alene, ID	0.9339
	Kootenai County, ID.	
17780	College Station-Bryan, TX	0.9243
	Brazos County, TX.	
	Burleson County, TX.	
	Robertson County, TX.	
17820	Colorado Springs, CO	0.9792
	El Paso County, CO.	
	Teller County, CO.	
17860	Columbia, M	0.8396
	Boone County, MO.	
	Howard County, MO.	
17900	Columbia, SC	0.9392
	Calhoun County, SC.	
	Fairfield County, SC.	
	Kershaw County, SC.	
	Lexington County, SC.	
	Richland County, SC.	
	Saluda County, SC.	
17980	Columbus, GA-AL	0.8690
	Russell County, AL.	
	Chattahoochee County, GA.	
	Harris County, GA.	
	Marion County, GA.	
	Muscogee County, GA.	
18020	Columbus, IN	0.9388
	Bartholomew County, IN.	
18140	Columbus, OH	0.9737
	Delaware County, OH.	
	Fairfield County, OH.	
	Franklin County, OH.	
	Licking County, OH.	
	Madison County, OH.	
	Morrow County, OH.	
	Pickaway County, OH.	
	Union County, OH.	
18580	Corpus Christi, TX	0.8647
	Aransas County, TX.	
	Nueces County, TX.	

TABLE 2A.—PROPOSED INPATIENT REHABILITAION FACILITY WAGE INDEX FOR URBAN AREAS BASED ON PROPOSED CBSA LABOR MARKET AREAS FOR DISCHARGES OCCURRING ON OR AFTER OCTOBER 1, 2005—Continued

CBSA code	Urban area (Constituent counties)	Full wage Index
	San Patricio County, TX.	
18700	Corvallis, OR	1.0545
	Benton County, OR.	
19060	Cumberland, MD-WV	0.8662
	Allegany County, MD.	
	Mineral County, WV.	
19124	Dallas-Plano-Irving, TX	1.0074
	Collin County, TX.	
	Dallas County, TX.	
	Delta County, TX.	
	Denton County, TX.	
	Ellis County, TX.	
	Hunt County, TX.	
	Kaufman County, TX.	
	Rockwall County, TX.	
19140	Dalton, GA	0.9558
	Murray County, GA.	
	Whitfield County, GA.	
19180	Danville, IL	0.8392
	Vermilion County, IL.	
19260	Danville, VA	0.8643
	Pittsylvania County, VA.	
	Danville City, VA.	
19340	Davenport-Moline-Rock Island, IA-IL	0.8773
	Henry County, IL.	
	Mercer County, IL.	
	Rock Island County, IL.	
	Scott County, IA.	
19380	Dayton, OH	0.9303
	Greene County, OH.	
	Miami County, OH.	
	Montgomery County, OH.	
	Preble County, OH.	
19460	Decatur, AL	0.8894
	Lawrence County, AL.	
	Morgan County, AL.	
19500	Decatur, IL	0.8122
	Macon County, IL.	
19660	Deltona-Daytona Beach-Ormond Beach, FL	0.8898
	Volusia County, FL.	
19740	Denver-Aurora, CO	1.0904
	Adams County, CO.	
	Arapahoe County, CO.	
	Broomfield County, CO.	
	Clear Creek County, CO.	
	Denver County, CO.	
	Douglas County, CO.	
	Elbert County, CO.	
	Gilpin County, CO.	
	Jefferson County, CO.	
	Park County, CO.	
19780	Des Moines, IA	0.9266
	Dallas County, IA.	
	Guthrie County, IA.	
	Madison County, IA.	
	Polk County, IA.	
	Warren County, IA.	
19804	Detroit-Livonia-Dearborn, MI	1.0349
	Wayne County, MI.	
20020	Dothan, AL	0.7537
	Geneva County, AL.	
	Henry County, AL.	
	Houston County, AL.	
20100	Dover, DE	0.9825
	Kent County, DE.	
20220	Dubuque, IA	0.8748
	Dubuque County, IA.	
20260	Duluth, MN-WI	1.0340
	Carlton County, MN.	
	St. Louis County, MN.	

TABLE 2A.—PROPOSED INPATIENT REHABILITAION FACILITY WAGE INDEX FOR URBAN AREAS BASED ON PROPOSED CBSA LABOR MARKET AREAS FOR DISCHARGES OCCURRING ON OR AFTER OCTOBER 1, 2005—Continued

CBSA code	Urban area (Constituent counties)	Full wage Index
	Douglas County, WI.	
20500	Durham, NC	1.0363
	Chatham County, NC.	
	Durham County, NC.	
	Orange County, NC.	
	Person County, NC.	
20740	Eau Claire, WI	0.9139
	Chippewa County, WI.	
	Eau Claire County, WI.	
20764	Edison, NJ	1.1136
	Middlesex County, NJ.	
	Monmouth County, NJ.	
	Ocean County, NJ.	
	Somerset County, NJ.	
20940	El Centro, CA	0.8856
	Imperial County, CA.	
21060	Elizabethtown, KY	0.8684
	Hardin County, KY.	
	Larue County, KY.	
21140	Elkhart-Goshen, IN	0.9278
	Elkhart County, IN.	
21300	Elmira, NY	0.8445
	Chemung County, NY.	
21340	El Paso, TX	0.9181
	El Paso County, TX.	
21500	Erie, PA	0.8699
	Erie County, PA.	
21604	Essex County, MA	1.0662
	Essex County, MA.	
21660	Eugene-Springfield, OR	1.0940
	Lane County, OR.	
21780	Evansville, IN-KY	0.8372
	Gibson County, IN.	
	Posey County, IN.	
	Vanderburgh County, IN.	
	Warrick County, IN.	
	Henderson County, KY.	
	Webster County, KY.	
21820	Fairbanks, AK	1.1146
	Fairbanks North Star Borough, AK.	
21940	Fajardo, PR	0.3939
	Ceiba Municipio, PR.	
	Fajardo Municipio, PR.	
	Luquillo Municipio, PR.	
22020	Fargo, ND-MN	0.9114
	Cass County, ND.	
	Clay County, MN.	
22140	Farmington, NM	0.8049
	San Juan County, NM.	
22180	Fayetteville, NC	0.9363
	Cumberland County, NC.	
	Hoke County, NC.	
22220	Fayetteville-Springdale-Rogers, AR-MO	0.8636
	Benton County, AR.	
	Madison County, AR.	
	Washington County, AR.	
	McDonald County, MO.	
22380	Flagstaff, AZ	1.0787
	Coconino County, AZ.	
22420	Flint, MI	1.1178
	Genesee County, MI.	
22500	Florence, SC	0.8833
	Darlington County, SC.	
	Florence County, SC.	
22520	Florence-Muscle Shoals, AL	0.7883
	Colbert County, AL.	
	Lauderdale County, AL.	
22540	Fond du Lac, WI	0.9897
	Fond du Lac County, WI.	
22660	Fort Collins-Loveland, CO	1.0218

TABLE 2A.—PROPOSED INPATIENT REHABILITAION FACILITY WAGE INDEX FOR URBAN AREAS BASED ON PROPOSED CBSA LABOR MARKET AREAS FOR DISCHARGES OCCURRING ON OR AFTER OCTOBER 1, 2005—Continued

CBSA code	Urban area (Constituent counties)	Full wage Index
	Larimer County, CO.	
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL	1.0165
	Broward County, FL.	
22900	Fort Smith, AR-OK	0.8283
	Crawford County, AR.	
	Franklin County, AR.	
	Sebastian County, AR.	
	Le Flore County, OK.	
	Sequoyah County, OK.	
23020	Fort Walton Beach-Crestview-Destin, FL	0.8786
	Okaloosa County, FL.	
23060	Fort Wayne, IN	0.9807
	Allen County, IN.	
	Wells County, IN.	
	Whitley County, IN.	
23104	Fort Worth-Arlington, TX	0.9472
	Johnson County, TX.	
	Parker County, TX.	
	Tarrant County, TX.	
	Wise County, TX.	
23420	Fresno, CA	1.0536
	Fresno County, CA.	
23460	Gadsden, AL	0.8049
	Etowah County, AL.	
23540	Gainesville, FL	0.9459
	Alachua County, FL.	
	Gilchrist County, FL.	
23580	Gainesville, GA	0.9557
	Hall County, GA.	
23844	Gary, IN	0.9310
	Jasper County, IN.	
	Lake County, IN.	
	Newton County, IN.	
	Porter County, IN.	
24020	Glens Falls, NY	0.8467
	Warren County, NY.	
	Washington County, NY.	
24140	Goldsboro, NC	0.8778
	Wayne County, NC.	
24220	Grand Forks, ND-MN	0.9091
	Polk County, MN.	
	Grand Forks County, ND.	
24300	Grand Junction, CO	0.9900
	Mesa County, CO.	
24340	Grand Rapids-Wyoming, MI	0.9420
	Barry County, MI.	
	Ionia County, MI.	
	Kent County, MI.	
	Newaygo County, MI.	
24500	Great Falls, MT	0.8810
	Cascade County, MT.	
24540	Greeley, CO	0.9444
	Weld County, CO.	
24580	Green Bay, WI	0.9590
	Brown County, WI.	
	Kewaunee County, WI.	
	Oconto County, WI.	
24660	Greensboro-High Point, NC	0.9190
	Guilford County, NC.	
	Randolph County, NC.	
	Rockingham County, NC.	
24780	Greenville, NC	0.9183
	Greene County, NC.	
	Pitt County, NC.	
24860	Greenville, SC	0.9557
	Greenville County, SC.	
	Laurens County, SC.	
	Pickens County, SC.	
25020	Guayama, PR	0.4005
	Arroyo Municipio, PR.	

TABLE 2A.—PROPOSED INPATIENT REHABILITAION FACILITY WAGE INDEX FOR URBAN AREAS BASED ON PROPOSED CBSA LABOR MARKET AREAS FOR DISCHARGES OCCURRING ON OR AFTER OCTOBER 1, 2005—Continued

CBSA code	Urban area (Constituent counties)	Full wage Index
	Guayama Municipio, PR.	
	Patillas Municipio, PR.	
25060	Gulfport-Biloxi, MS	0.8950
	Hancock County, MS.	
	Harrison County, MS.	
	Stone County, MS.	
25180	Hagerstown-Martinsburg, MD-WV	0.9715
	Washington County, MD.	
	Berkeley County, WV.	
	Morgan County, WV.	
25260	Hanford-Corcoran, CA	0.9296
	Kings County, CA.	
25420	Harrisburg-Carlisle, PA	0.9359
	Cumberland County, PA.	
	Dauphin County, PA.	
	Perry County, PA.	
25500	Harrisonburg, VA	0.9275
	Rockingham County, VA.	
	Harrisonburg City, VA.	
25540	Hartford-West Hartford-East Hartford, CT	1.1054
	Hartford County, CT.	
	Litchfield County, CT.	
	Middlesex County, CT.	
	Tolland County, CT.	
25620	Hattiesburg, MS	0.7362
	Forrest County, MS.	
	Lamar County, MS.	
	Perry County, MS.	
25860	Hickory-Lenoir-Morganton, NC	0.9502
	Alexander County, NC.	
	Burke County, NC.	
	Caldwell County, NC.	
	Catawba County, NC.	
25980	Hinesville-Fort Stewart, GA	0.7715
	Liberty County, GA.	
	Long County, GA.	
26100	Holland-Grand Haven, MI	0.9388
	Ottawa County, MI.	
26180	Honolulu, HI	1.1013
	Honolulu County, HI.	
26300	Hot Springs, AR	0.9249
	Garland County, AR.	
26380	Houma-Bayou Cane-Thibodaux, LA	0.7721
	Lafourche Parish, LA	
	Terrebonne Parish, LA.	
26420	Houston-Baytown-Sugar Land, TX	0.9973
	Austin County, TX.	
	Brazoria County, TX.	
	Chambers County, TX.	
	Fort Bend County, TX.	
	Galveston County, TX.	
	Harris County, TX.	
	Liberty County, TX.	
	Montgomery County, TX.	
	San Jacinto County, TX.	
	Waller County, TX.	
26580	Huntington-Ashland, WV-KY-OH	0.9564
	Boyd County, KY.	
	Greenup County, KY.	
	Lawrence County, OH.	
	Cabell County, WV.	
	Wayne County, WV.	
26620	Huntsville, AL	0.8851
	Limestone County, AL.	
	Madison County, AL.	
26820	Idaho Falls, ID	0.9059
	Bonneville County, ID.	
	Jefferson County, ID.	
26900	Indianapolis, IN	1.0113
	Boone County, IN.	

TABLE 2A.—PROPOSED INPATIENT REHABILITAION FACILITY WAGE INDEX FOR URBAN AREAS BASED ON PROPOSED CBSA LABOR MARKET AREAS FOR DISCHARGES OCCURRING ON OR AFTER OCTOBER 1, 2005—Continued

CBSA code	Urban area (Constituent counties)	Full wage Index
	Brown County, IN.	
	Hamilton County, IN.	
	Hancock County, IN.	
	Hendricks County, IN.	
	Johnson County, IN.	
	Marion County, IN.	
	Morgan County, IN.	
	Putnam County, IN.	
	Shelby County, IN.	
26980	Iowa City, IA	0.9654
	Johnson County, IA.	
	Washington County, IA.	
27060	Ithaca, NY	0.9589
	Tompkins County, NY.	
27100	Jackson, MI	0.9146
	Jackson County, MI.	
27140	Jackson, MS	0.8291
	Copiah County, MS.	
	Hinds County, MS.	
	Madison County, MS.	
	Rankin County, MS.	
	Simpson County, MS.	
27180	Jackson, TN	0.8900
	Chester County, TN.	
	Madison County, TN.	
27260	Jacksonville, FL	0.9537
	Baker County, FL.	
	Clay County, FL.	
	Duval County, FL.	
	Nassau County, FL.	
	St. Johns County, FL.	
27340	Jacksonville, NC	0.8401
	Onslow County, NC.	
27500	Janesville, WI	0.9583
	Rock County, WI.	
27620	Jefferson City, MO	0.8338
	Callaway County, MO.	
	Cole County, MO.	
	Moniteau County, MO.	
	Osage County, MO.	
27740	Johnson City, TN	0.8146
	Carter County, TN.	
	Unicoi County, TN.	
	Washington County, TN.	
27780	Johnstown, PA	0.8380
	Cambria County, PA.	
27860	Jonesboro, AR	0.8144
	Craighead County, AR.	
	Poinsett County, AR.	
27900	Joplin, MO	0.8721
	Jasper County, MO.	
	Newton County, MO.	
28020	Kalamazoo-Portage, MI	1.0676
	Kalamazoo County, MI.	
	Van Buren County, MI.	
28100	Kankakee-Bradley, IL	1.0603
	Kankakee County, IL.	
28140	Kansas City, MO-KS	0.9629
	Franklin County, KS.	
	Johnson County, KS.	
	Leavenworth County, KS.	
	Linn County, KS.	
	Miami County, KS.	
	Wyandotte County, KS.	
	Bates County, MO.	
	Caldwell County, MO.	
	Cass County, MO.	
	Clay County, MO.	
	Clinton County, MO.	
	Jackson County, MO.	

TABLE 2A.—PROPOSED INPATIENT REHABILITAION FACILITY WAGE INDEX FOR URBAN AREAS BASED ON PROPOSED CBSA LABOR MARKET AREAS FOR DISCHARGES OCCURRING ON OR AFTER OCTOBER 1, 2005—Continued

CBSA code	Urban area (Constituent counties)	Full wage Index
	Lafayette County, MO.	
	Platte County, MO.	
	Ray County, MO.	
28420	Kennewick-Richland-Pasco, WA	1.0520
	Benton County, WA.	
	Franklin County, WA.	
28660	Killeen-Temple-Fort Hood, TX	0.9242
	Bell County, TX.	
	Coryell County, TX.	
	Lampasas County, TX.	
28700	Kingsport-Bristol-Bristol, TN-VA	0.8240
	Hawkins County, TN.	
	Sullivan County, TN.	
	Bristol City, VA.	
	Scott County, VA.	
	Washington County, VA.	
28740	Kingston, NY	0.9000
	Ulster County, NY.	
28940	Knoxville, TN	0.8548
	Anderson County, TN.	
	Blount County, TN.	
	Knox County, TN.	
	Loudon County, TN.	
	Union County, TN.	
29020	Kokomo, IN	0.8986
	Howard County, IN.	
	Tipton County, IN.	
29100	La Crosse, WI-MN	0.9289
	Houston County, MN.	
	La Crosse County, WI.	
29140	Lafayette, IN	0.9067
	Benton County, IN.	
	Carroll County, IN.	
	Tippecanoe County, IN.	
29180	Lafayette, LA	0.8306
	Lafayette Parish, LA.	
	St. Martin Parish, LA.	
29340	Lake Charles, LA	0.7935
	Calcasieu Parish, LA.	
	Cameron Parish, LA.	
29404	Lake County-Kenosha County, IL-WI	1.0342
	Lake County, IL.	
	Kenosha County, WI.	
29460	Lakeland, FL	0.8930
	Polk County, FL.	
29540	Lancaster, PA	0.9883
	Lancaster County, PA.	
29620	Lansing-East Lansing, MI	0.9658
	Clinton County, MI.	
	Eaton County, MI.	
	Ingham County, MI.	
29700	Laredo, TX	0.8747
	Webb County, TX.	
29740	Las Cruces, NM	0.8784
	Dona Ana County, NM.	
29820	Las Vegas-Paradise, NV	1.1378
	Clark County, NV.	
29940	Lawrence, KS	0.8644
	Douglas County, KS.	
30020	Lawton, OK	0.8212
	Comanche County, OK.	
30140	Lebanon, PA	0.8570
	Lebanon County, PA.	
30300	Lewiston, ID-WA	0.9314
	Nez Perce County, ID.	
	Asotin County, WA.	
30340	Lewiston-Auburn, ME	0.9562
	Androscoggin County, ME.	
30460	Lexington-Fayette, KY	0.9359
	Bourbon County, KY.	

TABLE 2A.—PROPOSED INPATIENT REHABILITAION FACILITY WAGE INDEX FOR URBAN AREAS BASED ON PROPOSED CBSA LABOR MARKET AREAS FOR DISCHARGES OCCURRING ON OR AFTER OCTOBER 1, 2005—Continued

CBSA code	Urban area (Constituent counties)	Full wage Index
	Clark County, KY.	
	Fayette County, KY.	
	Jessamine County, KY.	
	Scott County, KY.	
	Woodford County, KY.	
30620	Lima, OH	0.9330
	Allen County, OH.	
30700	Lincoln, NE	1.0208
	Lancaster County, NE.	
	Seward County, NE.	
30780	Little Rock-North Little Rock, AR	0.8826
	Faulkner County, AR.	
	Grant County, AR.	
	Lonoke County, AR.	
	Perry County, AR.	
	Pulaski County, AR.	
	Saline County, AR.	
30860	Logan, UT-ID	0.9094
	Franklin County, ID.	
	Cache County, UT.	
30980	Longview, TX	0.8801
	Gregg County, TX.	
	Rusk County, TX.	
	Upshur County, TX.	
31020	Longview, WA	1.0224
	Cowlitz County, WA.	
31084	Los Angeles-Long Beach-Glendale, CA	1.1732
	Los Angeles County, CA.	
31140	Louisville, KY-IN	0.9122
	Clark County, IN.	
	Floyd County, IN.	
	Harrison County, IN.	
	Washington County, IN.	
	Bullitt County, KY.	
	Henry County, KY.	
	Jefferson County, KY.	
	Meade County, KY.	
	Nelson County, KY.	
	Oldham County, KY.	
	Shelby County, KY.	
	Spencer County, KY.	
	Trimble County, KY.	
31180	Lubbock, TX	0.8777
	Crosby County, TX.	
	Lubbock County, TX.	
31340	Lynchburg, VA	0.9017
	Amherst County, VA.	
	Appomattox County, VA.	
	Bedford County, VA.	
	Campbell County, VA.	
	Bedford City, VA.	
	Lynchburg City, VA.	
31420	Macon, GA	0.9887
	Bibb County, GA.	
	Crawford County, GA.	
	Jones County, GA.	
	Monroe County, GA.	
	Twiggs County, GA.	
31460	Madera, CA	0.8521
	Madera County, CA.	
31540	Madison, WI	1.0306
	Columbia County, WI.	
	Dane County, WI.	
	Iowa County, WI.	
31700	Manchester-Nashua, NH	1.0642
	Hillsborough County, NH.	
	Merrimack County, NH.	
31900	Mansfield, OH	0.9189
	Richland County, OH.	
32420	Mayaguez, PR	0.4493

TABLE 2A.—PROPOSED INPATIENT REHABILITAION FACILITY WAGE INDEX FOR URBAN AREAS BASED ON PROPOSED CBSA LABOR MARKET AREAS FOR DISCHARGES OCCURRING ON OR AFTER OCTOBER 1, 2005—Continued

CBSA code	Urban area (Constituent counties)	Full wage Index
	Hormigueros Municipio, PR.	
	Mayaguez Municipio, PR.	
32580	McAllen-Edinburg-Pharr, TX	0.8602
	Hidalgo County, TX.	
32780	Medford, OR	1.0534
	Jackson County, OR.	
32820	Memphis, TN-MS-AR	0.9217
	Crittenden County, AR.	
	DeSoto County, MS.	
	Marshall County, MS.	
	Tate County, MS.	
	Tunica County, MS.	
	Fayette County, TN.	
	Shelby County, TN.	
	Tipton County, TN.	
32900	Merced, CA	1.0575
	Merced County, CA.	
33124	Miami-Miami Beach-Kendall, FL	0.9870
	Miami-Dade County, FL.	
33140	Michigan City-La Porte, IN	0.9332
	LaPorte County, IN.	
33260	Midland, TX	0.9384
	Midland County, TX.	
33340	Milwaukee-Waukesha-West Allis, WI	1.0076
	Milwaukee County, WI.	
	Ozaukee County, WI.	
	Washington County, WI.	
	Waukesha County, WI.	
33460	Minneapolis-St. Paul-Bloomington, MN-WI	1.1066
	Anoka County, MN.	
	Carver County, MN.	
	Chisago County, MN.	
	Dakota County, MN.	
	Hennepin County, MN.	
	Isanti County, MN.	
	Ramsey County, MN.	
	Scott County, MN.	
	Sherburne County, MN.	
	Washington County, MN.	
	Wright County, MN.	
	Pierce County, WI.	
	St. Croix County, WI.	
33540	Missoula, MT	0.9618
	Missoula County, MT.	
33660	Mobile, AL	0.7995
	Mobile County, AL.	
33700	Modesto, CA	1.1966
	Stanislaus County, CA.	
33740	Monroe, LA	0.7903
	Ouachita Parish, LA.	
	Union Parish, LA.	
33780	Monroe, MI	0.9506
	Monroe County, MI.	
33860	Montgomery, AL	0.8300
	Autauga County, AL.	
	Elmore County, AL.	
	Lowndes County, AL.	
	Montgomery County, AL.	
34060	Morgantown, WV	0.8730
	Monongalia County, WV.	
	Preston County, WV.	
34100	Morristown, TN	0.7790
	Grainger County, TN.	
	Hamblen County, TN.	
	Jefferson County, TN.	
34580	Mount Vernon-Anacortes, WA	1.0576
	Skagit County, WA.	
34620	Muncie, IN	0.8580
	Delaware County, IN.	
34740	Muskegon-Norton Shores, MI	0.9741

TABLE 2A.—PROPOSED INPATIENT REHABILITAION FACILITY WAGE INDEX FOR URBAN AREAS BASED ON PROPOSED CBSA LABOR MARKET AREAS FOR DISCHARGES OCCURRING ON OR AFTER OCTOBER 1, 2005—Continued

CBSA code	Urban area (Constituent counties)	Full wage Index
	Muskegon County, MI.	
34820	Myrtle Beach-Conway-North Myrtle Beach, SC	0.9022
	Horry County, SC.	
34900	Napa, CA	1.2531
	Napa County, CA.	
34940	Naples-Marco Island, FL	1.0558
	Collier County, FL.	
34980	Nashville-Davidson—Murfreesboro, TN	1.0086
	Cannon County, TN.	
	Cheatham County, TN.	
	Davidson County, TN.	
	Dickson County, TN.	
	Hickman County, TN.	
	Macon County, TN.	
	Robertson County, TN.	
	Rutherford County, TN.	
	Smith County, TN.	
	Sumner County, TN.	
	Trousdale County, TN.	
	Williamson County, TN.	
	Wilson County, TN.	
35004	Nassau-Suffolk, NY	1.2907
	Nassau County, NY.	
	Suffolk County, NY.	
35084	Newark-Union, NJ-PA	1.1687
	Essex County, NJ.	
	Hunterdon County, NJ.	
	Morris County, NJ.	
	Sussex County, NJ.	
	Union County, NJ.	
	Pike County, PA.	
35300	New Haven-Milford, CT	1.1807
	New Haven County, CT.	
35380	New Orleans-Metairie-Kenner, LA	0.9103
	Jefferson Parish, LA.	
	Orleans Parish, LA.	
	Plaquemines Parish, LA.	
	St. Bernard Parish, LA.	
	St. Charles Parish, LA.	
	St. John the Baptist Parish, LA.	
	St. Tammany Parish, LA.	
35644	New York-Wayne-White Plains, NY-NJ	1.3311
	Bergen County, NJ.	
	Hudson County, NJ.	
	Passaic County, NJ.	
	Bronx County, NY.	
	Kings County, NY.	
	New York County, NY.	
	Putnam County, NY.	
	Queens County, NY.	
	Richmond County, NY.	
	Rockland County, NY.	
	Westchester County, NY.	
35660	Niles-Benton Harbor, MI	0.8847
	Berrien County, MI.	
35980	Norwich-New London, CT	1.1596
	New London County, CT.	
36084	Oakland-Fremont-Hayward, CA	1.5220
	Alameda County, CA.	
	Contra Costa County, CA.	
36100	Ocala, FL	0.9153
	Marion County, FL.	
36140	Ocean City, NJ	1.0810
	Cape May County, NJ.	
36220	Odessa, TX	0.9798
	Ector County, TX.	
36260	Ogden-Clearfield, UT	0.9216
	Davis County, UT.	
	Morgan County, UT.	
	Weber County, UT.	

TABLE 2A.—PROPOSED INPATIENT REHABILITAION FACILITY WAGE INDEX FOR URBAN AREAS BASED ON PROPOSED CBSA LABOR MARKET AREAS FOR DISCHARGES OCCURRING ON OR AFTER OCTOBER 1, 2005—Continued

CBSA code	Urban area (Constituent counties)	Full wage Index
36420	Oklahoma City, OK	0.8982
	Canadian County, OK.	
	Cleveland County, OK.	
	Grady County, OK.	
	Lincoln County, OK.	
	Logan County, OK.	
	McClain County, OK.	
	Oklahoma County, OK.	
36500	Olympia, WA	1.1006
	Thurston County, WA.	
36540	Omaha-Council Bluffs, NE-IA	0.9754
	Harrison County, IA.	
	Mills County, IA.	
	Pottawattamie County, IA.	
	Cass County, NE.	
	Douglas County, NE.	
	Sarpy County, NE.	
	Saunders County, NE.	
	Washington County, NE.	
36740	Orlando, FL	0.9742
	Lake County, FL.	
	Orange County, FL.	
	Osceola County, FL.	
	Seminole County, FL.	
36780	Oshkosh-Neenah, WI	0.9099
	Winnebago County, WI.	
36980	Owensboro, KY	0.8434
	Daviess County, KY.	
	Hancock County, KY.	
	McLean County, KY.	
37100	Oxnard-Thousand Oaks-Ventura, CA	1.1105
	Ventura County, CA.	
37340	Palm Bay-Melbourne-Titusville, FL	0.9633
	Brevard County, FL.	
37460	Panama City-Lynn Haven, FL	0.8124
	Bay County, FL.	
37620	Parkersburg-Marietta, WV-OH	0.8288
	Washington County, OH.	
	Pleasants County, WV.	
	Wirt County, WV.	
	Wood County, WV.	
37700	Pascagoula, MS	0.7974
	George County, MS.	
	Jackson County, MS.	
37860	Pensacola-Ferry Pass-Brent, FL	0.8306
	Escambia County, FL.	
	Santa Rosa County, FL.	
37900	Peoria, IL	0.8886
	Marshall County, IL.	
	Peoria County, IL.	
	Stark County, IL.	
	Tazewell County, IL.	
	Woodford County, IL.	
37964	Philadelphia, PA	1.0865
	Bucks County, PA.	
	Chester County, PA.	
	Delaware County, PA.	
	Montgomery County, PA.	
	Philadelphia County, PA.	
38060	Phoenix-Mesa-Scottsdale, AZ	0.9982
	Maricopa County, AZ.	
	Pinal County, AZ.	
38220	Pine Bluff, AR	0.8673
	Cleveland County, AR.	
	Jefferson County, AR.	
	Lincoln County, AR.	
38300	Pittsburgh, PA	0.8736
	Allegheny County, PA.	
	Armstrong County, PA.	
	Beaver County, PA.	

TABLE 2A.—PROPOSED INPATIENT REHABILITAION FACILITY WAGE INDEX FOR URBAN AREAS BASED ON PROPOSED CBSA LABOR MARKET AREAS FOR DISCHARGES OCCURRING ON OR AFTER OCTOBER 1, 2005—Continued

CBSA code	Urban area (Constituent counties)	Full wage Index
	Butler County, PA.	
	Fayette County, PA.	
	Washington County, PA.	
	Westmoreland County, PA.	
38340	Pittsfield, MA	1.0439
	Berkshire County, MA.	
38540	Pocatello, ID	0.9601
	Bannock County, ID.	
	Power County, ID.	
38660	Ponce, PR	0.5006
	Juana Daz Municipio, PR.	
	Ponce Municipio, PR.	
	Villalba Municipio, PR.	
38860	Portland-South Portland-Biddeford, ME	1.0112
	Cumberland County, ME.	
	Sagadahoc County, ME.	
	York County, ME.	
38900	Portland-Vancouver-Beaverton, OR-WA	1.1403
	Clackamas County, OR.	
	Columbia County, OR.	
	Multnomah County, OR.	
	Washington County, OR.	
	Yamhill County, OR.	
	Clark County, WA.	
	Skamania County, WA.	
38940	Port St. Lucie-Fort Pierce, FL	1.0046
	Martin County, FL.	
	St. Lucie County, FL.	
39100	Poughkeepsie-Newburgh-Middletown, NY	1.1363
	Dutchess County, NY.	
	Orange County, NY.	
39140	Prescott, AZ	0.9892
	Yavapai County, AZ.	
39300	Providence-New Bedford-Fall River, RI-MA	1.0929
	Bristol County, MA.	
	Bristol County, RI.	
	Kent County, RI.	
	Newport County, RI.	
	Providence County, RI.	
	Washington County, RI.	
39340	Provo-Orem, UT	0.9588
	Juab County, UT.	
	Utah County, UT.	
39380	Pueblo, CO	0.8752
	Pueblo County, CO.	
39460	Punta Gorda, FL	0.9441
	Charlotte County, FL.	
39540	Racine, WI	0.9045
	Racine County, WI.	
39580	Raleigh-Cary, NC	1.0057
	Franklin County, NC.	
	Johnston County, NC.	
	Wake County, NC.	
39660	Rapid City, SD	0.8912
	Meade County, SD.	
	Pennington County, SD.	
39740	Reading, PA	0.9215
	Berks County, PA.	
39820	Redding, CA	1.1835
	Shasta County, CA.	
39900	Reno-Sparks, NV	1.0456
	Storey County, NV.	
	Washoe County, NV.	
40060	Richmond, VA	0.9397
	Amelia County, VA.	
	Caroline County, VA.	
	Charles City County, VA.	
	Chesterfield County, VA.	
	Cumberland County, VA.	
	Dinwiddie County, VA.	

TABLE 2A.—PROPOSED INPATIENT REHABILITAION FACILITY WAGE INDEX FOR URBAN AREAS BASED ON PROPOSED CBSA LABOR MARKET AREAS FOR DISCHARGES OCCURRING ON OR AFTER OCTOBER 1, 2005—Continued

CBSA code	Urban area (Constituent counties)	Full wage Index
	Goochland County, VA.	
	Hanover County, VA.	
	Henrico County, VA.	
	King and Queen County, VA.	
	King William County, VA.	
	Louisa County, VA.	
	New Kent County, VA.	
	Powhatan County, VA.	
	Prince George County, VA.	
	Sussex County, VA.	
	Colonial Heights City, VA.	
	Hopewell City, VA.	
	Petersburg City, VA.	
	Richmond City, VA.	
40140	Riverside-San Bernardino-Ontario, CA	1.0970
	Riverside County, CA.	
	San Bernardino County, CA.	
40220	Roanoke, VA	0.8415
	Botetourt County, VA.	
	Craig County, VA.	
	Franklin County, VA.	
	Roanoke County, VA.	
	Roanoke City, VA.	
	Salem City, VA.	
40340	Rochester, MN	1.1504
	Dodge County, MN.	
	Olmsted County, MN.	
	Wabasha County, MN.	
40380	Rochester, NY	0.9281
	Livingston County, NY.	
	Monroe County, NY.	
	Ontario County, NY.	
	Orleans County, NY.	
	Wayne County, NY.	
40420	Rockford, IL	0.9626
	Boone County, IL.	
	Winnebago County, IL.	
40484	Rockingham County-Strafford County, NH	1.0221
	Rockingham County, NH.	
	Strafford County, NH.	
40580	Rocky Mount, NC	0.8998
	Edgecombe County, NC.	
	Nash County, NC.	
40660	Rome, GA	0.8878
	Floyd County, GA.	
40900	Sacramento—Arden-Arcade—Roseville, CA	1.1700
	El Dorado County, CA.	
	Placer County, CA.	
	Sacramento County, CA.	
	Yolo County, CA.	
40980	Saginaw-Saginaw Township North, MI	0.9814
	Saginaw County, MI.	
41060	St. Cloud, MN	1.0215
	Benton County, MN.	
	Steams County, MN.	
41100	St. George, UT	0.9458
	Washington County, UT.	
41140	St. Joseph, MO-KS	1.0013
	Doniphan County, KS.	
	Andrew County, MO.	
	Buchanan County, MO.	
	DeKalb County, MO.	
41180	St. Louis, MO-IL	0.9076
	Bond County, IL.	
	Calhoun County, IL.	
	Clinton County, IL.	
	Jersey County, IL.	
	Macoupin County, IL.	
	Madison County, IL.	
	Monroe County, IL.	

TABLE 2A.—PROPOSED INPATIENT REHABILITAION FACILITY WAGE INDEX FOR URBAN AREAS BASED ON PROPOSED CBSA LABOR MARKET AREAS FOR DISCHARGES OCCURRING ON OR AFTER OCTOBER 1, 2005—Continued

CBSA code	Urban area (Constituent counties)	Full wage Index
	St. Clair County, IL.	
	Crawford County, MO.	
	Franklin County, MO.	
	Jefferson County, MO.	
	Lincoln County, MO.	
	St. Charles County, MO.	
	St. Louis County, MO.	
	Warren County, MO.	
	Washington County, MO.	
	St. Louis City, MO.	
41420	Salem, OR	1.0556
	Marion County, OR.	
	Polk County, OR.	
41500	Salinas, CA	1.3823
	Monterey County, CA.	
41540	Salisbury, MD	0.9123
	Somerset County, MD.	
	Wicomico County, MD.	
41620	Salt Lake City, UT	0.9561
	Salt Lake County, UT.	
	Summit County, UT.	
	Tooele County, UT.	
41660	San Angelo, TX	0.8167
	Irion County, TX.	
	Tom Green County, TX.	
41700	San Antonio, TX	0.9003
	Atascosa County, TX.	
	Bandera County, TX.	
	Bexar County, TX.	
	Comal County, TX.	
	Guadalupe County, TX.	
	Kendall County, TX.	
	Medina County, TX.	
	Wilson County, TX.	
41740	San Diego-Carlsbad-San Marcos, CA	1.1267
	San Diego County, CA.	
41780	Sandusky, OH	0.9017
	Erie County, OH.	
41884	San Francisco-San Mateo-Redwood City, CA	1.4712
	Marin County, CA.	
	San Francisco County, CA.	
	San Mateo County, CA.	
41900	San German-Cabo Rojo, PR	0.5240
	Cabo Rojo Municipio, PR.	
	Lajas Municipio, PR.	
	Sabana Grande Municipio, PR.	
	San German Municipio, PR.	
41940	San Jose-Sunnyvale-Santa Clara, CA	1.4722
	San Benito County, CA.	
	Santa Clara County, CA.	
41980	San Juan-Caguas-Guaynabo, PR	0.4645
	Aguas Buenas Municipio, PR.	
	Aibonito Municipio, PR.	
	Arecibo Municipio, PR.	
	Barceloneta Municipio, PR.	
	Barranquitas Municipio, PR.	
	Bayamón Municipio, PR.	
	Caguas Municipio, PR.	
	Camuy Municipio, PR.	
	Canóvanas Municipio, PR.	
	Carolina Municipio, PR	
	Cataño Municipio, PR.	
	Cayey Municipio, PR.	
	Ciales Municipio, PR.	
	Cidra Municipio, PR.	
	Comero Municipio, PR.	
	Corozal Municipio, PR.	
	Dorado Municipio, PR.	
	Florida Municipio, PR.	
	Guaynabo Municipio, PR.	

TABLE 2A.—PROPOSED INPATIENT REHABILITAION FACILITY WAGE INDEX FOR URBAN AREAS BASED ON PROPOSED CBSA LABOR MARKET AREAS FOR DISCHARGES OCCURRING ON OR AFTER OCTOBER 1, 2005—Continued

CBSA code	Urban area (Constituent counties)	Full wage Index
	Gurabo Municipio, PR. Hatillo Municipio, PR. Humacao Municipio, PR. Juncos Municipio, PR. Las Piedras Municipio, PR. Loíza Municipio, PR. Manatí Municipio, PR. Maunabo Municipio, PR. Morovis Municipio, PR. Naguabo Municipio, PR. Naranjito Municipio, PR. Orocovis Municipio, PR. Quebradillas Municipio, PR. Río Grande Municipio, PR. San Juan Municipio, PR. San Lorenzo Municipio, PR. Toa Alta Municipio, PR. Toa Baja Municipio, PR. Trujillo Alto Municipio, PR. Vega Alta Municipio, PR. Vega Baja Municipio, PR. Yabucoa Municipio, PR.	
42020	San Luis Obispo-Paso Robles, CA San Luis Obispo County, CA.	1.1118
42044	Santa Ana-Anaheim-Irvine, CA Orange County, CA.	1.1611
42060	Santa Barbara-Santa Maria-Goleta, CA Santa Barbara County, CA.	1.0771
42100	Santa Cruz-Watsonville, CA Santa Cruz County, CA.	1.4779
42140	Santa Fe, NM Santa Fe County, NM.	1.0909
42220	Santa Rosa-Petaluma, CA Sonoma County, CA.	1.2961
42260	Sarasota-Bradenton-Venice, FL Manatee County, FL. Sarasota County, FL.	0.9629
42340	Savannah, GA Bryan County, GA. Chatham County, GA. Effingham County, GA.	0.9460
42540	Scranton—Wilkes-Barre, PA Lackawanna County, PA. Luzerne County, PA. Wyoming County, PA.	0.8543
42644	Seattle-Bellevue-Everett, WA King County, WA. Snohomish County, WA.	1.1492
43100	Sheboygan, WI Sheboygan County, WI.	0.8948
43300	Sherman-Denison, TX Grayson County, TX.	0.9617
43340	Shreveport-Bossier City, LA Bossier Parish, LA. Caddo Parish, LA. De Soto Parish, LA.	0.9132
43580	Sioux City, IA-NE-SD Woodbury County, IA. Dakota County, NE. Dixon County, NE. Union County, SD.	0.9070
43620	Sioux Falls, SD Lincoln County, SD. McCook County, SD. Minnehaha County, SD. Turner County, SD.	0.9441
43780	South Bend-Mishawaka, IN-MI St. Joseph County, IN. Cass County, MI.	0.9447
43900	Spartanburg, SC	0.9519

TABLE 2A.—PROPOSED INPATIENT REHABILITAION FACILITY WAGE INDEX FOR URBAN AREAS BASED ON PROPOSED CBSA LABOR MARKET AREAS FOR DISCHARGES OCCURRING ON OR AFTER OCTOBER 1, 2005—Continued

CBSA code	Urban area (Constituent counties)	Full wage Index
	Spartanburg County, SC.	
44060	Spokane, WA	1.0660
	Spokane County, WA.	
44100	Springfield, IL	0.8738
	Menard County, IL.	
	Sangamon County, IL.	
44140	Springfield, MA	1.0176
	Franklin County, MA.	
	Hampden County, MA.	
	Hampshire County, MA.	
44180	Springfield, MO	0.8557
	Christian County, MO.	
	Dallas County, MO.	
	Greene County, MO.	
	Polk County, MO.	
	Webster County, MO.	
44220	Springfield, OH	0.8748
	Clark County, OH.	
44300	State College, PA	0.8461
	Centre County, PA.	
44700	Stockton, CA	1.0564
	San Joaquin County, CA.	
44940	Sumter, SC	0.8520
	Sumter County, SC.	
45060	Syracuse, NY	0.9468
	Madison County, NY.	
	Onondaga County, NY.	
	Oswego County, NY.	
45104	Tacoma, WA	1.1078
	Pierce County, WA.	
45220	Tallahassee, FL	0.8655
	Gadsden County, FL.	
	Jefferson County, FL.	
	Leon County, FL.	
	Wakulla County, FL.	
45300	Tampa-St. Petersburg-Clearwater, FL	0.9024
	Hernando County, FL.	
	Hillsborough County, FL.	
	Pasco County, FL.	
	Pinellas County, FL.	
45460	Terre Haute, IN	0.8517
	Clay County, IN.	
	Sullivan County, IN.	
	Vermillion County, IN.	
	Vigo County, IN.	
45500	Texarkana, TX-Texarkana, AR	0.8413
	Miller County, AR.	
	Bowie County, TX.	
45780	Toledo, OH	0.9524
	Fulton County, OH.	
	Lucas County, OH.	
	Ottawa County, OH.	
	Wood County, OH.	
45820	Topeka, KS	0.8904
	Jackson County, KS.	
	Jefferson County, KS.	
	Osage County, KS.	
	Shawnee County, KS.	
	Wabaunsee County, KS.	
45940	Trenton-Ewing, NJ	1.0276
	Mercer County, NJ.	
46060	Tucson, AZ	0.8926
	Pima County, AZ.	
46140	Tulsa, OK	0.8690
	Creek County, OK.	
	Okmulgee County, OK.	
	Osage County, OK.	
	Pawnee County, OK.	
	Rogers County, OK.	
	Tulsa County, OK.	

TABLE 2A.—PROPOSED INPATIENT REHABILITAION FACILITY WAGE INDEX FOR URBAN AREAS BASED ON PROPOSED CBSA LABOR MARKET AREAS FOR DISCHARGES OCCURRING ON OR AFTER OCTOBER 1, 2005—Continued

CBSA code	Urban area (Constituent counties)	Full wage Index
	Wagoner County, OK.	
46220	Tuscaloosa, AL	0.8336
	Greene County, AL.	
	Hale County, AL.	
	Tuscaloosa County, AL.	
46340	Tyler, TX	0.9502
	Smith County, TX.	
46540	Utica-Rome, NY	0.8295
	Herkimer County, NY.	
	Oneida County, NY.	
46660	Valdosta, GA	0.8341
	Brooks County, GA.	
	Echols County, GA.	
	Lanier County, GA.	
	Lowndes County, GA.	
46700	Vallejo-Fairfield, CA	1.4279
	Solano County, CA.	
46940	Vero Beach, FL	0.9477
	Indian River County, FL.	
47020	Victoria, TX	0.8470
	Calhoun County, TX.	
	Goliad County, TX.	
	Victoria County, TX.	
47220	Vineland-Millville-Bridgeton, NJ	1.0573
	Cumberland County, NJ.	
47260	Virginia Beach-Norfolk-Newport News, VA-NC	0.8894
	Currituck County, NC.	
	Gloucester County, VA.	
	Isle of Wight County, VA.	
	James City County, VA.	
	Mathews County, VA.	
	Surry County, VA.	
	York County, VA.	
	Chesapeake City, VA.	
	Hampton City, VA.	
	Newport News City, VA.	
	Norfolk City, VA.	
	Poquoson City, VA.	
	Portsmouth City, VA.	
	Suffolk City, VA.	
	Virginia Beach City, VA.	
	Williamsburg City, VA.	
47300	Visalia-Porterville, CA	0.9975
	Tulare County, CA.	
47380	Waco, TX	0.8146
	McLennan County, TX.	
47580	Warner Robins, GA	0.8489
	Houston County, GA.	
47644	Warren-Farmington Hills-Troy, MI	1.0112
	Lapeer County, MI.	
	Livingston County, MI.	
	Macomb County, MI.	
	Oakland County, MI.	
	St. Clair County, MI.	
47894	Washington-Arlington-Alexandria, DC-VA&-MD-WV	1.1023
	District of Columbia, DC.	
	Calvert County, MD.	
	Charles County, MD.	
	Prince George's County, MD.	
	Arlington County, VA.	
	Clarke County, VA.	
	Fairfax County, VA.	
	Fauquier County, VA.	
	Loudoun County, VA.	
	Prince William County, VA.	
	Spotsylvania County, VA.	
	Stafford County, VA.	
	Warren County, VA.	
	Alexandria City, VA.	
	Fairfax City, VA.	

TABLE 2A.—PROPOSED INPATIENT REHABILITAION FACILITY WAGE INDEX FOR URBAN AREAS BASED ON PROPOSED CBSA LABOR MARKET AREAS FOR DISCHARGES OCCURRING ON OR AFTER OCTOBER 1, 2005—Continued

CBSA code	Urban area (Constituent counties)	Full wage Index
	Falls Church City, VA.	
	Fredericksburg City, VA.	
	Manassas City, VA.	
	Manassas Park City, VA.	
	Jefferson County, WV.	
47940	Waterloo-Cedar Falls, IA	0.8633
	Black Hawk County, IA.	
	Bremer County, IA.	
	Grundy County, IA.	
48140	Wausau, WI	0.9570
	Marathon County, WI.	
48260	Weirton-Steubenville, WV-OH	0.8280
	Jefferson County, OH.	
	Brooke County, WV.	
	Hancock County, WV.	
48300	Wenatchee, WA	0.9427
	Chelan County, WA.	
	Douglas County, WA.	
48424	West Palm Beach-Boca Raton-Boynton Beach, FL	1.0362
	Palm Beach County, FL.	
48540	Wheeling, WV-OH	0.7449
	Belmont County, OH.	
	Marshall County, WV.	
	Ohio County, WV.	
48620	Wichita, KS	0.9457
	Butler County, KS.	
	Harvey County, KS.	
	Sedgwick County, KS.	
	Sumner County, KS.	
48660	Wichita Falls, TX	0.8332
	Archer County, TX.	
	Clay County, TX.	
	Wichita County, TX.	
48700	Williamsport, PA	0.8485
	Lycoming County, PA.	
48864	Wilmington, DE-MD-NJ	1.1049
	New Castle County, DE.	
	Cecil County, MD.	
	Salem County, NJ.	
48900	Wilmington, NC	0.9237
	Brunswick County, NC.	
	New Hanover County, NC.	
	Pender County, NC.	
49020	Winchester, VA-WV	1.0496
	Frederick County, VA.	
	Winchester City, VA.	
	Hampshire County, WV.	
49180	Winston-Salem, NC	0.9401
	Davie County, NC.	
	Forsyth County, NC.	
	Stokes County, NC.	
	Yadkin County, NC.	
49340	Worcester, MA	1.0996
	Worcester County, MA.	
49420	Yakima, WA	1.0322
	Yakima County, WA.	
49500	Yauco, PR	0.4493
	Guánica Municipio, PR.	
	Guayanilla Municipio, PR.	
	Peñuelas Municipio, PR.	
	Yauco Municipio, PR.	
49620	York-Hanover, PA	0.9150
	York County, PA.	
49660	Youngstown-Warren-Boardman, OH-PA	0.9237
	Mahoning County, OH.	
	Trumbull County, OH.	
	Mercer County, PA.	
49700	Yuba City, CA	1.0363
	Sutter County, CA.	
	Yuba County, CA.	

TABLE 2A.—PROPOSED INPATIENT REHABILITAION FACILITY WAGE INDEX FOR URBAN AREAS BASED ON PROPOSED CBSA LABOR MARKET AREAS FOR DISCHARGES OCCURRING ON OR AFTER OCTOBER 1, 2005—Continued

CBSA code	Urban area (Constituent counties)	Full wage Index
49740	Yuma, AZ Yuma County, AZ.	0.8871

TABLE 2B.—PROPOSED INPATIENT REHABILITATION FACILITY WAGE INDEX (BASED ON PROPOSED CBSA LABOR MARKET AREAS) FOR RURAL AREAS FOR DISCHARGES OCCURRING ON OR AFTER OCTOBER 1, 2005

CBSA code	Nonurban area	Full wage index
01	Alabama	0.7628
02	Alaska	1.1746
03	Arizona	0.8936
04	Arkansas	0.7406
05	California	1.0524
06	Colorado	0.9368
07	Connecticut	1.1917
08	Delaware	0.9503
10	Florida	0.8574
11	Georgia	0.7733
12	Hawaii	1.0522
13	Idaho	0.8227
14	Illinois	0.8339
15	Indiana	0.8653
16	Iowa	0.8475
17	Kansas	0.8079
18	Kentucky	0.7755
19	Louisiana	0.7345
20	Maine	0.9039
21	Maryland	0.9220
22	Massachusetts [2]	1.0216

TABLE 2B.—PROPOSED INPATIENT REHABILITATION FACILITY WAGE INDEX (BASED ON PROPOSED CBSA LABOR MARKET AREAS) FOR RURAL AREAS FOR DISCHARGES OCCURRING ON OR AFTER OCTOBER 1, 2005—Continued

CBSA code	Nonurban area	Full wage index
23	Michigan	0.8786
24	Minnesota	0.9330
25	Mississippi	0.7635
26	Missouri	0.7762
27	Montana	0.8701
28	Nebraska	0.9035
29	Nevada	0.9280
30	New Hampshire	0.9940
31	New Jersey [1]	.....
32	New Mexico	0.8680
33	New York	0.8151
34	North Carolina	0.8563
35	North Dakota	0.7743
36	Ohio	0.8693
37	Oklahoma	0.7686
38	Oregon	0.9914
39	Pennsylvania	0.8310
40	Puerto Rico [2]	0.4047
41	Rhode Island [1]	.....
42	South Carolina	0.8683
43	South Dakota	0.8398

TABLE 2B.—PROPOSED INPATIENT REHABILITATION FACILITY WAGE INDEX (BASED ON PROPOSED CBSA LABOR MARKET AREAS) FOR RURAL AREAS FOR DISCHARGES OCCURRING ON OR AFTER OCTOBER 1, 2005—Continued

CBSA code	Nonurban area	Full wage index
44	Tennessee	0.7869
45	Texas	0.7966
46	Utah	0.8287
47	Vermont	0.9375
48	Virgin Islands	0.7456
49	Virginia	0.8049
50	Washington	1.0312
51	West Virginia	0.7865
52	Wisconsin	0.9492
53	Wyoming	0.9182
65	Guam	0.9611

[1] All counties within the State are classified urban.

[2] Massachusetts and Puerto Rico have areas designated as rural, however, no short-term, acute care hospitals are located in the area(s) for FY 2006 under CBSA-based designations. Therefore, we are proposing to use FY 2001 MSA based hospital wage data.

TABLE 3.—INPATIENT REHABILITATION FACILITIES WITH CORRESPONDING STATE AND COUNTY LOCATION; CURRENT LABOR MARKET AREA DESIGNATION; AND PROPOSED NEW CBSA-BASED LABOR MARKET AREA DESIGNATION

Provider number	Provider name	SSA State and county code	FY 06 MSA code	FY 06 CBSA code
26T107	9TH FLOOR REHAB	26470	3760	28140
39T231	DABINGTON MEMORIAL HOSPITAL	39560	6160	37964
193067	ACADIA REHABILITATION HOSPITAL	19000	3880	19
24T043	ACUTE CARE REHABILITATION-ALMC	24230	24	24
42T070	ACUTE REHAB UNIT AT TUOMEY HEALTHCARE SYSTEM	42420	8140	44940
14T182	ADVOCATE ILLINOIS MASONIC MEDICAL CENTER	14141	1600	16974
14T223	ADVOCATE LUTHERAN GENERAL HOSPITAL	14141	1600	16974
19T202	AHS SUMMIT HOSPITAL LLC	19160	0760	12940
05T320	ALAMEDA COUNTY MEDICAL CENTER	05000	5775	36084
02T017	ALASKA REGIONAL HOSPITAL	02020	0380	11260
33T013	ALBANY MEDICAL CENTER HOSP	33000	0160	10580
14T258	ALEXIAN BROTHERS MEDICAL CENTER	14141	1600	16974
05T281	ALHAMBRA HOSPITAL MEDICAL CENTER	05200	4480	31084
52T096	ALL SAINTS HEALTHCARE, INC.	52500	6600	39540
39T074	ALLEGHENY GENERAL HOSPITAL SUBURBAN CAMPUS	39010	6280	38300
17T116	ALLEN COUNTY HOSPITAL	17000	17	17
36T131	ALLIANCE COMMUNITY HOSPITAL	36770	1320	15940
393030	ALLIED SERVICES INST OF REHAB SERVICES	39420	7560	42540
05T305	ALTA BATES MEDICAL CENTER	05000	5775	36084
39T073	ALTOONA HOSPITAL	39120	0280	11020
39T121	ALTOONA REGIONAL HEALTH SYSTEM	39120	0280	11020
35T019	ALTRU REHABILITATION CENTER	35170	2985	24220
05T583	ALVARADO HOSPITAL MEDICAL CENTER INC.	05470	7320	41740
33T010	AMSTERDAM MEMORIAL HOSPITAL	33380	0160	33

TABLE 3.—INPATIENT REHABILITATION FACILITIES WITH CORRESPONDING STATE AND COUNTY LOCATION; CURRENT LABOR MARKET AREA DESIGNATION; AND PROPOSED NEW CBSA-BASED LABOR MARKET AREA DESIGNATION—Continued

Provider number	Provider name	SSA State and county code	FY 06 MSA code	FY 06 CBSA code
01T036	ANDALUSIA REGIONAL HOSPITAL	01190	01	01
393051	ANGELA JANE PAVILION	39620	6160	37964
423029	ANMED HEALTHSOUTH REHABILITATION HOSPITAL	42030	3160	11340
04T039	ARKANSAS METHODIST HOSPITAL	04270	04	04
39T163	ARMSTRONG COUNTY MEMORIAL HOSPITAL	39070	39	38300
11T115	ATLANTA MEDICAL CENTER	11470	0520	12060
15T074	AUGUST F. HOOK REHAB CENTER	15480	3480	26900
49T018	AUGUSTA MEDICAL CENTER	49891	49	49
52T193	AURORA BAYCARE MEDICAL CENTER	52040	3080	24580
52T102	AURORA LAKELAND MEDICAL CENTER REHAB UNIT	52630	52	52
52T035	AURORA SHEBOYGAN MEMORIAL MEDICAL CENTER REHAB UNI	52580	7620	43100
52T064	AURORA SINAI MEDICAL CENTER	52390	5080	33340
43T016	AVERA MCKENNAN HOSPITAL	43490	7760	43620
43T012	AVERA SACRED HEART HOSPITAL	43670	43	43
43T014	AVERA ST. LUKE'S	43060	43	43
45T280	BACHARACH INSTITUTE FOR REHABILITATION	31000	1920	19124
313030	BALL MEMORIAL HOSPITAL-REHAB	15170	0560	12100
15T089	BAPTIST HEALTH REHABILITATION INSTITUTE	04590	5280	34620
043026	BAPTIST HEALTH SYSTEM	45130	4400	30780
45T058	BAPTIST HOSPITAL DAVIS CTR FOR REHABILITATION	10120	7240	41700
10T008	BAPTIST HOSPITAL DESOTO	25160	5000	33124
25T141	BAPTIST HOSPITAL EAST	18550	4920	32820
18T130	BAPTIST HOSPITALS OF SOUTHEAST TEXAS	45700	4520	31140
45T346	BAPTIST MEMORIAL HOSPITAL NORTH MISSISSIPPI	25350	0840	13140
25T034	BAPTIST MEMORIAL MED CENTER, NO LITTLE ROCK	04590	25	25
04T036	BAPTIST REGIONAL MEDICAL CENTER	18990	4400	30780
18T080	BAPTIST REHAB CENTER	44180	18	18
44T133	BAPTIST REHABILITATION GERMANTOWN	44780	5360	34980
44T147	BARBERTON CITIZENS HOSPITAL	36780	4920	32820
36T019	BARTLETT REGIONAL HOSPITAL	02110	0080	10420
02T008	BASTROP REHABILITATION HOSPITAL	19330	02	02
193058	BATON ROUGE GENERAL MEDICAL CENTER	19160	19	19
19T065	BAXTER REGIONAL MEDICAL CENTER	04020	0760	12940
04T027	BAY MEDICAL CENTER FOR REHABILITATION	23080	04	04
23T041	BAYHEALTH MEDICAL CENTER	08000	6960	13020
08T004	BAYLOR ALL SAINTS MEDICAL CENTER OF FORT WORTH	45910	2190	20100
45T137	BAYLOR INSTITUTE FOR REHABILITATION AT GASTON	45390	2800	23104
453036	BAYLOR MEDICAL CENTER	45390	1920	19124
45T079	BAYLOR MEDICAL CENTER AT GARLAND	45390	1920	19124
45T097	BAYSHORE MEDICAL CENTER	45610	3360	26420
27T012	BELLEVUE HOSPITAL CENTRE	33420	3040	24500
33T204	BELMONT COMMUNITY HOSPITAL	36060	5600	35644
36T153	BELOIT MEMORIAL HOSPITAL	52520	9000	48540
52T100	BENEDICTINE HOSPITAL	33740	3620	27500
33T224	BENEFIS HEALTHCARE	27060	33	28740
15T088	BENNETT REHAB CENTER SAINT JOHN'S HEALTH SYSTEM	15470	3480	11300
193070	BENTON REHABILITATION HOSPITAL	19160	0760	12940
36T170	BERGER HEALTH SYSTEM	36660	1840	18140
22T046	BERKSHIRE MEDICAL CENTER	22010	6323	38340
33T169	BETH ISRAEL MEDICAL CENTER	33420	5600	35644
36T179	BETHESDA NORTH HOSPITAL	36310	1640	17140
01T104	BIRMINGHAM BAPT MED CNTR MONTCLAIR SNU	01360	1000	13820
10T213	BLAKE MEDICAL CENTER	10400	7510	42260
14T015	BLESSING HOSPITAL	14000	14	14
23T135	BOGALUSA COMMUNITY REHABILITAION HOSPITAL	19580	2160	19804
193052	BON SECOUR ST. FRANCIS INPATIENT REHAB CENTER	42220	19	19
42T023	BONE AND JOINT HOSPITAL REHAB CENTER	37540	3160	24860
37T105	BOONE HOSPITAL CENTER	26090	5880	36420
26T068	BORGESS-PIPP HEALTH CENTER	23380	1740	17860
23T117	BOSTON MED CTR CORP/UNIVE HOSP CAMPUS	22160	3720	28020
22T031	BOTHWELL REGIONAL HEALTH CENTER	26790	1123	14484
26T009	BOTSFORD GENERAL HOSPITAL	23620	26	26
23T151	BOULDER COMMUNITY HOSPITAL	06060	2160	47644
06T027	BRANDYWINE HOSPITAL	39210	1125	14500
39T076	BRAZOSPORT MEMORIAL HOSPITAL	45180	6160	37964
45T072	BRIDGEPORT HOSPITAL	07010	1145	26420
07T010	BROADWAY METHODIST REHAB	15440	3283	25540

TABLE 3.—INPATIENT REHABILITATION FACILITIES WITH CORRESPONDING STATE AND COUNTY LOCATION; CURRENT LABOR MARKET AREA DESIGNATION; AND PROPOSED NEW CBSA-BASED LABOR MARKET AREA DESIGNATION—Continued

Provider number	Provider name	SSA State and county code	FY 06 MSA code	FY 06 CBSA code
15T132	BROKEN ARROW REHABILITATION	37710	2960	23844
37T176	BROMENN REGIONAL MEDICAL CENTER	14650	8560	46140
14T127	BRONSON VICKSBURG HOSPITAL	23380	1040	14060
23T190	BROOKS REHABILITATION HOSPITAL	10150	3720	28020
103039	BROOKWOOD MEDICAL CENTER	01360	3600	27260
01T139	BROTMAN MEDICAL CENTER	05200	1000	13820
05T144	BROWNSVILLE GENERAL HOSPITAL	39330	4480	31084
39T166	BROWNWOOD REGIONAL MEDICAL CENTER	45220	6280	38300
45T587	BRUNSWICK HOSPITAL	33700	45	45
33T314	BRYANLGH MEDICAL CENTER WEST	28540	5380	35004
28T003	BRYANT T. ALDRIDGE REHABILITATION CENTER	34630	4360	30700
34T147	BRYN MAWR REHABILITATION HOSPITAL	39210	6895	40580
393025	BSA HEALTH SYSTEM	45860	6160	37964
45T231	BUFFALO MERCY REHABILITATION UNIT	33240	0320	11100
33T279	BURBANK REHABILITATION CENTER	22170	1280	15380
22T001	BURKE REHABILIATION HOSPITAL	33800	1123	49340
333028	CABRINI MEDICAL CENTER	33420	5600	35644
39T160	CALDWELL MEMORIAL HOSPITAL	19100	6280	38300
33T133	CAMERON REGIONAL MEDICAL CTR	26240	5600	35644
19T190	CANONSBURG GENERAL HOSPITAL	39750	19	19
26T057	CAPITAL REGION MEDICAL CENTER	26250	3760	28140
26T047	CARDINAL HILL REHABILITATION HOSPITAL	18330	26	27620
183026	CARILION HEALTH SYSTEM	49801	4280	30460
49T024	CARLE FOUNDATION HOSPITAL	14090	6800	40220
14T091	CARLISLE REGIONAL MEDICAL CENTER	39270	1400	16580
39T058	CARLSBAD MEDICAL CENTER	32070	3240	25420
32T063	CAROLINAS HOSPITAL SYSTEM	42200	32	32
42T091	CARONDELET ST JOSEPHS HOSPITAL	03090	2655	22500
03T011	CARONDELET ST MARYS HOSPITAL	03090	8520	46060
03T010	CARSON REHABILITATION CENTER	29120	8520	46060
293029	CARTHAGE AREA HOSPITAL	33330	29	16180
33T263	CASA COLINA HOSP FOR REHAB MEDICINE	05200	33	33
053027	CATAWBA VALLEY MEDICAL CENTER	34170	4480	31084
34T143	CATHOLIC MEDICAL CENTER	30050	3290	25860
30T034	CATSKILL REGIONAL MEDICAL CENTER	33710	1123	31700
33T386	CAYUGA MEDICAL CENTER	33730	33	33
33T307	CCMH INPATIENT REHAB	39640	33	27060
39T246	CEDARS-SINAI MEDICAL CENTER	05200	39	39
44T161	CENTENNIAL MEDICAL CENTER	44180	5360	34980
05T625	CENTINELA HOSPITAL MEDICAL CENTER	05200	4480	31084
05T240	CENTRAL ARKANSAS HOSPITAL	04720	4480	31084
04T014	CENTRAL KANSAS MEDICAL CENTER	17040	04	04
17T033	CENTRAL MAINE REHABILITATION CENTER	20000	17	17
20T024	CENTRAL MONTGOMERY MEDICAL CENTER	39560	4243	30340
39T012	CENTURA HEALTH-ST. ANTHONY CENTRAL HOSPITAL	06150	6160	37964
06T015	CGRMC ACUTE REHABILITATION UNIT	03100	2080	19740
03T016	CHALMETTE MEDICAL CENTER	19430	6200	38060
45T035	CHAMBERSBURG HOSPITAL	39350	3360	26420
45T237	CHARLESTON AREA MED CNTR	51190	7240	41700
19T185	CHARLOTTE INSTITUTE OF REHABILITATION	34590	5560	35380
39T151	CHATTANOOGA	44320	39	39
51T022	CHELSEA COMMUNITY HOSPITAL	23800	1480	16620
343026	CHESHIRE MEDICAL CENTER	30020	1520	16740
44T162	CHESTNUT HILL REHABILITATION HOSPITAL	39620	1560	16860
23T259	CHNE REHAB	26940	0440	11460
30T019	CHRISTUS JASPER MEMORIAL HOSPITAL	45690	30	30
393032	CHRISTUS SANTA ROSA HOSPITAL	45130	6160	37964
26T180	CHRISTUS SCHUMPERT HEALTH SYSTEM	19080	7040	41180
45T573	CHRISTUS SPOHN HOSPITAL SHORELINE	45830	45	45
19T041	CHRISTUS ST MICHAEL REHAB HOSPITAL	45170	7680	43340
45T046	CHRISTUS ST. FRANCES CABRINI HOSPITAL	19390	1880	18580
453065	CHRISTUS ST. JOHN	45610	8360	45500
19T019	CHRISTUS ST. JOSEPH HOSPITAL	45610	0220	10780
45T709	CHRISTUS ST. PATRICK HOSPITAL	19090	3360	26420
19T027	CHS,INC DBA ST CHARLES MEDICAL CTR	38080	3960	29340
38T047	CITRUS VALLEY MEDICAL CENTER-VQ CAMPUS	05200	38	13460
05T369	CJW INPATIENT REHAB	49791	4480	31084

TABLE 3.—INPATIENT REHABILITATION FACILITIES WITH CORRESPONDING STATE AND COUNTY LOCATION; CURRENT LABOR MARKET AREA DESIGNATION; AND PROPOSED NEW CBSA-BASED LABOR MARKET AREA DESIGNATION—Continued

Provider number	Provider name	SSA State and county code	FY 06 MSA code	FY 06 CBSA code
49T112	CL	45610	6760	40060
45T617	CLAXTON-HEPBURN MEDICAL CENTER	33630	3360	26420
33T211	CLINCH VALLEY MEDICAL CENTER	49920	33	33
49T060	CLINTON MEMORIAL HOSPITAL	36130	49	49
36T175	COASTAL REHABILITATION CTR	34240	36	36
36T172	COLISEUM REHABILITATION CENTER	11090	1680	17460
34T131	COLLEGE STATION MEDICAL CENTER	45190	34	34
11T164	COLLETON MEDICAL CENTER	42140	4680	31420
45T299	COLORADO PLAINS MEDICAL CTR	06430	1260	17780
42T030	COLORADO RIVER MEDICAL CENTER	05460	42	42
06T044	COLUMBIA HOSPITAL	52390	06	06
05T469	COLUMBIA REGIONAL HOSPITAL	26090	6780	40140
52T140	COLUMBUS REGIONAL HOSPITAL	15020	5080	33340
26T178	COMANCHE COUNTY MEMORIAL HOSPITAL	37150	1740	17860
15T112	COMMUNITY GENERAL HOSPITAL PM&R	33520	15	18020
37T056	COMMUNITY HEALTH PARTNERS OF OH-WEST	36480	4200	30020
33T159	COMMUNITY HOSPITAL LOS GATOS	05530	8160	45060
05T188	COMMUNITY HOSPITAL OF SPRINGFIELD	36110	7400	41940
36T187	COMMUNITY HOSPITAL/WELLNESS CTRS MONTPELI	36870	2000	44220
36R327	COMMUNITY HOSPITALS OF WILLIAMS COUNTY	36870	36	36
36T121	COMMUNITY HOSPTIAL	15440	36	36
15T125	COMMUNITY MEDICAL CENTER	27310	2960	23844
27T023	COMMUNITY MEMORIAL HOSPITAL	52660	5140	33540
52T103	COMMUNITY REHABILITATION CENTER	23100	5080	33340
23T078	COMMUNITY REHABILITATION HOSPITAL OF COUSHATTA	19400	0870	35660
193080	CONEY ISLAND HOSPITAL	33331	19	19
33T196	CORNERSTONE REHABILITATION HOSPITAL	45650	5600	35644
453085	CORONA REGINAL MEDICAL CENTER	05430	4880	32580
05T329	CORPUS CHRISTI WARM SPGS REHAB HOSP	45830	6780	40140
453055	COTTAGE HOSPITAL	23810	1880	18580
45T040	COVENANT HEALTH SYSTEM	45770	4600	31180
23T070	COVENANT HEALTHCARE	23720	6960	40980
16T067	COVENANT MEDICAL CENTER	16060	8920	47940
26T040	COX HEALTH SYSTEMS	26380	7920	44180
05T008	CPMC REGIONAL REHABILITATION CENTER	05480	7360	41884
39T110	CRICHTON REHABILITATION CENTER	39160	3680	27780
04T042	CRITTENDEN MEMORIAL HOSPITAL	04170	4920	32820
23T254	CRITTENTON REHABCENTRE	23730	2160	47644
44T175	CROCKETT HOSPITAL REHAB	44490	44	44
26T198	CROSSROADS REGIONAL MEDICAL CENTER	26910	7040	41180
193088	CROWLEY REHAB HOSP, LLC	19000	3880	19
39T180	CROZER CHESTER MEDICAL CENTER	39290	6160	37964
34T008	CTR FOR REHAB SCOTLAND MEMORIAL HOSPIT	34820	34	34
39T233	CTR. FOR ACUTE REHABILITATIVE MEDICINE AT HANOVER	39800	9280	49620
07T033	DANBURY HOSPITAL	07000	5483	14860
05T729	DANIEL FREEMAN	05200	4480	31084
49T075	DANVILLE REGIONAL MEDICAL CENTER	49241	1950	19260
19T003	DAUTERIVE HOSPITAL	19220	19	19
15T061	DAVIESS COMMUNITY HOSPITAL	15130	15	15
46T041	DAVIS HOSPITAL AND MEDICAL CENTER	46050	7160	36260
36T038	DEACONESS HOSPITAL	36310	1640	17140
37T032	DEACONESS HOSPITAL	37540	5880	36420
15T019	DEACONESS ST. JOSEPHS	15180	15	15
11T076	DEKALB MEDICAL CENTER REHABILITATION	11370	0520	12060
03T093	DEL E. WEBB MEMORIAL HOSPITAL	03060	6200	38060
45T646	DEL SOL MEDICAL CENTER	45480	2320	21340
39T081	DELAWARE COUNTY MEMORIAL HOSPITAL	39290	6160	37964
25T082	DELTA REGIONAL MEDICAL CENTER	25750	25	25
45T634	DENTON REGIONAL MEDICAL CENTER	45410	1920	19124
06T011	DENVER HEALTH MEDICAL CENTER	06150	2080	19740
49T011	DEPAUL CENTER FOR PHYSICAL REHABILITATION	49641	5720	47260
26T176	DES PERES HOSPITAL	26940	7040	41180
05T243	DESERT REGIONAL MEDICAL CENTER	05430	6780	40140
45T147	DETAR HOSPITAL	45948	8750	47020
19T115	DOCTORS HOSPITAL	11840	7680	43340
11T177	DOCTORS HOSPITAL OF OPELOUSAS	19480	0600	12260
19T191	DOCTORS HOSPITAL OF SHREVEPORT	19080	3880	19

TABLE 3.—INPATIENT REHABILITATION FACILITIES WITH CORRESPONDING STATE AND COUNTY LOCATION; CURRENT LABOR MARKET AREA DESIGNATION; AND PROPOSED NEW CBSA-BASED LABOR MARKET AREA DESIGNATION—Continued

Provider number	Provider name	SSA State and county code	FY 06 MSA code	FY 06 CBSA code
36T151	DOCTORS HOSPITAL OF STARK COUNTY	36770	1320	15940
05T242	DOMINICAN HOSPITAL	05540	7485	42100
39T203	DOYLESTOWN HOSPITAL	39140	6160	37964
46T021	DRMC ACUTE REHABILITATION	46260	46	41100
39T086	DUBOIS REGNL MED CNTR	39230	39	39
34T155	DURHAM REGIONAL HOSPITAL	34310	6640	20500
23T230	E W SPARROW INPATIENT REHAB	23320	4040	29620
19T146	EAST JEFFERSON GENERAL HOSPITAL	19250	5560	35380
453072	EAST TEXAS MED CTR REHAB HOSP	45892	8640	46340
01T011	EASTERN HEALTH REHAB CENTER, MCE	01360	1000	13820
20T033	EASTERN MAINE MEDICAL CENTER	20090	0733	12620
39T162	EASTON HOSPITAL	39590	0240	10900
333029	EDDY COHOES REHABILITATION CTR	33000	0160	10580
45T119	EDINBURG REGIONAL MEDICAL	45650	4880	32580
36T241	EDWIN SHAW REHABILITATION HOSPITAL	36780	0080	10420
14T208	EHS CHRIST HOSPITAL & MEDICAL CENTER	14141	1600	16974
03T080	EL DORADO HOSPITAL	03090	8520	46060
15T018	ELKHART GENERAL HEALTHCARE SYSTEMS	15190	2330	21140
39T289	ELKINS PARK HOSPITAL	39560	6160	37964
33T128	ELMHURST HOSPITAL CENTER	33590	5600	35644
11T010	EMORY HOSPITAL CTR FOR REHAB	11370	0520	12060
05T158	ENCINO-TARZANA REGIONAL MEDICAL CENTER	05200	4480	31084
05T039	ENLOE MEDICAL CENTER	05030	1620	17020
45T833	ENNIS REGIONAL MEDICAL CENTER	45470	1920	19124
39T225	EPHRATA COMMUNITY HOSPITAL	39440	4000	29540
33T219	ERIE COUNTY MEDICAL CENTER	33240	1280	15380
19T078	EUNICE COMMUNITY MEDICAL CENTER	19480	3880	19
39T013	EVANGELICAL COMMUNITY HOSPITAL	39720	39	39
14T010	EVANSTON NORTHWESTERN HEALTHCARE	14141	1600	16974
50T124	EVERGREEN HEALTHCARE	50160	7600	42644
36T072	FAIRFIELD MEDICAL CENTER	36230	1840	18140
223029	FAIRLAWN REHABILITATION HOSPITAL	22170	1123	49340
36T077	FAIRVIEW HOSPITAL	36170	1680	17460
11T125	FAIRVIEW PARK HOSPITAL	11660	11	11
28T125	FAITH REGIONAL HEALTH SERVICES	28590	28	28
10T236	FAWCETT MEMORIAL HOSPITAL	10070	6580	39460
33T044	FAXTON-ST. LUKES HEALTHCARE	33510	8680	46540
15T064	FAYETTE MEMORIAL HOSPITAL	15200	15	15
36T025	FIRELANDS REGIONAL MEDICAL CENTER	36220	36	41780
34T115	FIRSTHEALTH MOORE REGIONAL HOSPITAL	34620	34	34
47T003	FLETCHER ALLEN HEALTH CARE	47030	1303	15540
10T068	FLORIDA HOSPITAL ORMOND DIVISION	10630	2020	19660
10T007	FLORIDA HOSPITAL REHABILITATION AND SPORTS MEDICIN	10470	5960	36740
36T074	FLOWER REHABILITATION CENTER	36490	8400	45780
11T054	FLOYD MEDICAL CENTER	11460	11	40660
39T267	FORBES REGIONAL HOSPITAL	39010	6280	38300
26T021	FOREST PARK	26950	7040	41180
25T078	FORREST GENERAL HOSPITAL REHAB UNIT	25170	3285	25620
36T132	FORT REHABILITATION CENTER	36080	3200	17140
10T223	FORT WALTON BEACH MEDICAL CENT	10450	2750	23020
453041	FORT WORTH REHABILITATION HOSPITAL	45910	2800	23104
26T137	FR	26480	3710	27900
52T004	FRANCISCAN SKEMP MEDICAL CENTER REHAB	52310	3870	29100
18T040	FRAZIER REHAB INSTITUTE	18550	4520	31140
17T074	FRED C BRAMLAGE INPATIENT REHABILITATION UNIT	17300	17	17
52T177	FROEDTERT MEMORIAL LUTHERAN HOSPITAL	52390	5080	33340
34T116	FRYE REGIONAL MEDICAL CENTER	34170	3290	25860
36T194	GALION COMMUNITY HOSPITAL	36160	4800	36
23T244	GARDEN CITY HOSPITAL	23810	2160	19804
05T432	GARFIELD MEDICAL CENTER	05200	4480	31084
44T035	GATEWAY MEDICAL CENTER	44620	1660	17300
14T125	GATEWAY REGIONAL MEDICAL CENTER	14680	7040	41180
183031	GATEWAY REHAB HOSPITAL	18550	4520	31140
183030	GATEWAY REHABILITATION HOSPITAL	18070	1640	17140
33T058	GE	33530	6840	40380
393047	GEISINGER HEALTHSOUTH REHABILITATION HOSPITAL	39580	39	39
39T270	GEISINGER WYOMING VALLEY MEDICAL CENTER	39480	7560	42540

TABLE 3.—INPATIENT REHABILITATION FACILITIES WITH CORRESPONDING STATE AND COUNTY LOCATION; CURRENT LABOR MARKET AREA DESIGNATION; AND PROPOSED NEW CBSA-BASED LABOR MARKET AREA DESIGNATION—Continued

Provider number	Provider name	SSA State and county code	FY 06 MSA code	FY 06 CBSA code
36T039	GENESIS HEALTH CARE SYSTEM	36610	36	36
16T033	GENESIS MEDICAL CENTER	16810	1960	19340
23T197	GENESYS REGIONAL MEDICAL CTR	23240	2640	22420
373026	GEORGE NIGH REBABILITATION CTR	37550	37	46140
45T191	GEORGETOWN HEALTHCARE SYSTEM	45970	0640	12420
11T087	GLANCY	11530	0520	12060
05T239	GLENDALE ADVENTIST MEDICAL CENTER	05200	4480	31084
05T058	GLENDALE MEMORIAL HOSPITAL	05200	4480	31084
33T191	GLENS FALLS HOSPITAL	33750	2975	24020
19T160	GLENWOOD REHABILITATION CENTER	19360	5200	33740
26T175	GOLDEN VALLEY MEMORIAL HO INPATIENT REHAB FACILITY	26410	26	26
05T471	GOOD SAMARITAN HOSPITAL	05200	4480	31084
15T042	GOOD SAMARITAN HOSPITAL	15410	15	15
28T009	GOOD SAMARITAN HOSPITAL	28090	28	28
36T134	GOOD SAMARITAN HOSPITAL	36310	1640	17140
50T079	GOOD SAMARITAN HOSPITAL	50260	8200	45104
14T046	GOOD SAMARITAN REGIONAL HEALTH CENTER	14490	14	14
03T002	GOOD SAMARITAN REHABILITATION INSTITUTE	03060	6200	38060
39T031	GOOD SAMARITAN-STINE ACUTE REHAB	39650	39	39
45T037	GOOD SHEPHERD MEDICAL CENTER	45570	4420	30980
393035	GOOD SHEPHERD REHABILITATION HOSPITAL	39470	0240	10900
393050	GOOD SHEPHERD REHABILITATION HOSPITAL	39590	0240	10900
24T064	GRAND ITASCA CLINIC & HOSPITAL	24300	24	24
36T133	GRANDVIEW MEDICAL CENTER	36580	2000	19380
36T017	GRANT/RIVERSIDE METHODIST HOSPITALS	36250	1840	18140
23T030	GRATIOT COMMUNITY HOSPITAL	23280	23	23
16T057	GREAT RIVER MEDICAL CENTER	16280	16	16
09T008	GREATER SOUTHEAST COMMUNITY HOSPITAL	09000	8840	47894
363032	GREENBRIAR REHABILITATION HOSPITAL	36510	9320	49660
36T026	GREENE MEMORIAL HOSPITAL	36290	2000	19380
05T026	GROSSMONT HOSPITAL SHARP	05470	7320	41740
45T104	GUADALUPE VALLEY HOSPITAL	45581	7240	41700
45T214	GULF COAST MEDICAL CENTER	45954	45	45
52T087	GUNDERSEN LUTHERAN MEDICAL CENTER,INC.	52310	3870	29100
39T185	GUNDERSON REHABILITATION CENTER	39480	7560	42540
513028	H/S REHAB HOSPITAL OF HUNTINGTON	51050	3400	26580
23T066	HACKLEY HOSPITAL	23600	3000	34740
36T137	HANNA HOUSE INPATIENT REHAB CENTER	36170	1680	17460
50T064	HARBORVIEW MEDICAL CENTER	50160	7600	42644
33T240	HARLEM HOSPITAL/COLUMBIA UNIVERSITY	33420	5600	35644
45T289	HARRIS COUNTY HOSPITAL DISTRICT	45610	3360	26420
45T135	HARRIS METHODIST FORT WORTH	45910	2800	23104
45T639	HARRIS METHODIST HEB	45910	2800	23104
07T025	HARTFORD HOSPITAL	07010	3283	25540
03T069	HAVASU REGIONAL MEDICAL CENTER	03070	4120	03
17T013	HAYS MEDICAL CENTER	17250	17	17
18T029	HAZARD ARH REGIONAL MEDICAL CENTER	18960	18	18
013028	HEALTH SOUTH REHAB HOSPITAL OF MONTGOMERY	01500	5240	33860
23T275	HEALTHSOURCE SAGINAW	23720	6960	40980
053031	HEALTHSOUTH BAKERSFIELD REHAB HOSPITAL	05140	0680	12540
223027	HEALTHSOUTH BRAINTREE REHAB HOSPITAL	22130	1123	14484
443030	HEALTHSOUTH CANE CREEK REHAB HOSPITAL	44910	44	44
113027	HEALTHSOUTH CENTRAL GA REHAB HOSPITAL	11090	4680	31420
213028	HEALTHSOUTH CHESAPEAKE REHAB HOSPITAL	21220	21	41540
103040	HEALTHSOUTH EMERALD COAST REHABILITATION HOSPITAL	10020	6015	37460
393027	HEALTHSOUTH HARMARVILLE REHABILITATION HOSPITAL	39010	6280	38300
013025	HEALTHSOUTH LAKESHORE REHABILITATION HOSPITAL	01360	1000	13820
033025	HEALTHSOUTH MERIDIAN POINT REHAB HOSP	03060	6200	38060
513030	HEALTHSOUTH MOUNTAINVIEW REGIONAL REHAB HOSPITAL	51300	51	34060
393039	HEALTHSOUTH NITTANY VALLEY REHABILITATION HOSPITAL	39200	8050	44300
183027	HEALTHSOUTH NORTHERN KENTUCKY REHABILITATION	18580	1640	17140
393040	HEALTHSOUTH OF ALTOONA, INC	39120	0280	11020
423027	HEALTHSOUTH OF CHARLESTON, INC	42170	1440	16700
453047	HEALTHSOUTH PLANO REHABILITATION HOSP	45310	1920	19124
043032	HEALTHSOUTH REHAB HOSP IN PART WITH RE	04710	2580	22220
453044	HEALTHSOUTH REHAB HOSP OF AUSTIN	45940	0640	12420
183028	HEALTHSOUTH REHAB HOSP OF CENTRAL KY	18460	18	21060

TABLE 3.—INPATIENT REHABILITATION FACILITIES WITH CORRESPONDING STATE AND COUNTY LOCATION; CURRENT LABOR MARKET AREA DESIGNATION; AND PROPOSED NEW CBSA-BASED LABOR MARKET AREA DESIGNATION—Continued

Provider number	Provider name	SSA State and county code	FY 06 MSA code	FY 06 CBSA code
063030	HEALTHSOUTH REHAB HOSP OF COLORADO SPGS	06200	1720	17820
423026	HEALTHSOUTH REHAB HOSP OF FLORENCE	42200	2655	22500
013029	HEALTHSOUTH REHAB HOSP OF NORTH ALA	01440	3440	26620
103042	HEALTHSOUTH REHAB HOSP OF SPRING HILL	10260	8280	45300
223030	HEALTHSOUTH REHAB HOSP OF WESTERN MA	22070	8003	44140
033029	HEALTHSOUTH REHAB HOSPITAL	03090	8520	46060
103031	HEALTHSOUTH REHAB HOSPITAL	10570	7510	42260
103038	HEALTHSOUTH REHAB HOSPITAL OF MIAMI	10120	5000	33124
453059	HEALTHSOUTH REHAB HOSPITAL OF NORTH HOUSTON	45801	3360	26420
393026	HEALTHSOUTH REHAB HOSPITAL OF READING	39110	6680	39740
103033	HEALTHSOUTH REHAB HOSPITAL OF TALLHASSEE	10360	8240	45220
453054	HEALTHSOUTH REHAB HOSPITAL OF WICHITA FALLS	45960	9080	48660
453031	HEALTHSOUTH REHAB INSTITUTE OF SAN ANTONIO	45130	7240	41700
033028	HEALTHSOUTH REHAB INSTITUTE OF TUCSON	03090	8520	46060
393031	HEALTHSOUTH REHAB OF MECHANICSBURG-ACUTE REHAB	39270	3240	25420
393046	HEALTHSOUTH REHABILITATION HOSPITAL OF ERIE	39320	2360	21500
423028	HEALTHSOUTH REHABILITATION HOSPITAL	42450	1520	16740
443029	HEALTHSOUTH REHABILITATION CENTER OF MEMPHIS	44780	4920	32820
153027	HEALTHSOUTH REHABILITATION HOSP OF KOK	15330	3850	29020
393037	HEALTHSOUTH REHABILITATION HOSP YORK	39800	9280	49620
013030	HEALTHSOUTH REHABILITATION HOSPITAL	01340	2180	20020
043028	HEALTHSOUTH REHABILITATION HOSPITAL	04650	2720	22900
103037	HEALTHSOUTH REHABILITATION HOSPITAL	10510	8280	45300
153029	HEALTHSOUTH REHABILITATION HOSPITAL	15830	8320	45460
303027	HEALTHSOUTH REHABILITATION HOSPITAL	30060	1123	31700
323027	HEALTHSOUTH REHABILITATION HOSPITAL	32000	0200	10740
403025	HEALTHSOUTH REHABILITATION HOSPITAL	40640	7440	41980
443027	HEALTHSOUTH REHABILITATION HOSPITAL	44810	3660	28700
453029	HEALTHSOUTH REHABILITATION HOSPITAL	45610	3360	26420
453048	HEALTHSOUTH REHABILITATION HOSPITAL	45700	0840	13140
443031	HEALTHSOUTH REHABILITATION HOSPITAL-NORTH	44780	4920	32820
193031	HEALTHSOUTH REHABILITATION HOSPITAL OF ALEXANDRIA	19090	3960	29340
453040	HEALTHSOUTH REHABILITATION HOSPITAL OF ARLINGTON	45910	2800	23104
423025	HEALTHSOUTH REHABILITATION HOSPITAL OF COLUMBIA	42390	1760	17900
043029	HEALTHSOUTH REHABILITATION HOSPITAL OF JONESBORO	04150	3700	27860
293026	HEALTHSOUTH REHABILITATION HOSPITAL OF LAS VEGAS	29010	4120	29820
313029	HEALTHSOUTH REHABILITATION HOSPITAL OF NEW JERSEY	31310	5190	20764
453090	HEALTHSOUTH REHABILITATION HOSPITAL OF ODESSA	45451	5800	36220
393045	HEALTHSOUTH REHABILITATION HOSPITAL OF SEWICKLEY	39010	6280	38300
453053	HEALTHSOUTH REHABILITATION HOSPITAL OF TEXARKANA	45170	8360	45500
453056	HEALTHSOUTH REHABILITATION HOSPITAL OF TYLER	45892	8640	46340
463025	HEALTHSOUTH REHABILITATION HOSPITAL OF UTAH	46170	7160	41620
493028	HEALTHSOUTH REHABILITATION HOSPITAL OF VIRGINIA	49430	6760	40060
013032	HEALTHSOUTH REHABILITATION OF GADSDEN	01270	2880	23460
453057	HEALTHSOUTH REHABILITATION OF MIDLAND ODESSA	45794	5800	33260
293032	HEALTHSOUTH REHABILITIATION HOSPITAL OF HENDERSON	29010	4120	29820
103034	HEALTHSOUTH SEA PINES REHABILITATION HOSPITAL	10050	2680	22744
193085	HEALTHSOUTH SPECIALTY HOSPITAL	19350	5560	35380
45T758	HEALTHSOUTH SPECIALTY HOSPTIAL, INC.	45390	1920	19124
103028	HEALTHSOUTH SUNRISE REHABILITATION HOSPITAL	10050	2680	22744
103032	HEALTHSOUTH TREASURE COAST REHAB HOSPITAL	10300	10	46940
153025	HEALTHSOUTH TRI-STATE REHABILITATION HOSPITAL	15810	2440	21780
053034	HEALTHSOUTH TUSTIN REHABILITATION HOSP	05400	5945	42044
033032	HEALTHSOUTH VALLEY OF THE SUN	03060	6200	38060
513027	HEALTHSOUTH WESTERN HILLS REGIONAL REHAB HOSPITAL	51530	6020	37620
193074	HEALTHWEST REHABILITATION HOSPITAL	19250	5560	35380
26T006	HEARTLAND REGIONAL MEDICAL CENTER	26100	7000	41140
333027	HELEN HAYES HOSPITAL	33620	5600	35644
04T085	HELENA REGIONAL REHABILITATION CENTER	04530	04	04
45T229	HENDRICK CENTER FOR REHABILITATION	45911	0040	10180
49T118	HENRICO DOCTORS HOSPITAL PARHA	49430	6760	40060
23T204	HENRY FORD BI-COUNTY HOSPITAL	23490	2160	47644
23T146	HENRY FORD WYANDOTTE HOSPITAL	23810	2160	19804
05T624	HENRY MAYO NEWHALL MEMORIAL HOSPITAL	05200	4480	31084
34T107	HERITAGE HOSPITAL	34320	6895	40580
45T068	HERMANN HOSPITAL	45610	3360	26420
23T120	HERRICK MEMORIAL HOSPITAL	23450	0440	23

TABLE 3.—INPATIENT REHABILITATION FACILITIES WITH CORRESPONDING STATE AND COUNTY LOCATION; CURRENT LABOR MARKET AREA DESIGNATION; AND PROPOSED NEW CBSA-BASED LABOR MARKET AREA DESIGNATION—Continued

Provider number	Provider name	SSA State and county code	FY 06 MSA code	FY 06 CBSA code
14T011	HERRIN HOSPITAL	14990	14	14
34T004	HIGH POINT REGIONAL HOSPITAL	34400	3120	24660
453086	HIGHLANDS REGIONAL REHABILITATION HOS	45480	2320	21340
50T011	HIGHLINE COMMUNITY HOSPITAL	50160	7600	42644
45T101	HILLCREST BAPTIST MEDICAL CENTER	45780	8800	47380
37T001	HILLCREST KAISER REHABILITATION CENTER	37710	8560	46140
363026	HILLSIDE REHABILITATION HOSPITAL	36790	9320	49660
14T122	HINSDALE HOSPITAL—PAULSON REHAB NETWORK	14250	1600	16974
10T225	HOLLYWOOD MEDICAL CENTER	10050	2680	22744
10T073	HOLY CROSS HOSPITAL	10050	2680	22744
14T133	HOLY CROSS HOSPITAL	14141	1600	16974
52T107	HOLY FAMILY MEMORIAL, INC	52350	52	52
36T054	HOLZER MEDICAL CENTER	36270	36	36
45T236	HOPKINS COUNTY MEMORIAL HOSPITAL	45654	45	45
44T046	HORIZON MEDICAL CENTER	44210	5360	34980
33T389	HOSPITAL FOR JOINT DISEASES	33420	5600	35644
07T001	HOSPITAL OF SAINT RAPHAEL	07040	5483	35300
39T111	HOSPITAL OF UNIV OF PENNSYLVANIA	39620	6160	37964
04T076	HOT SPRING COUNTY MEDICAL CENTER	04290	04	04
153039	HOWARD REGIONAL HEALTH SYSTEM-WEST CAMPUS	15330	3850	29020
52T091	HOWARD YOUNG MEDICAL CENTER	52420	52	52
11T200	HUGHSTON ORTHOPEDIC HOSPITAL	11780	1800	17980
05T438	HUNTINGTON MEMORIAL HOSPITAL	05200	4480	31084
23T132	HURLEY MEDICAL CENTER	23240	2640	22420
17T020	HUTCHINSON HOSPITAL CORP.	17770	17	17
133025	IDAHO ELKS REHABILITATION HOSPITAL	13000	1080	14260
13T018	IDAHO REGIONAL MEDICAL CENTER	13090	13	26820
28T081	IMMANUEL REHABILITATION CENTER	28270	5920	36540
26T095	INDEPENDENCE REGIONAL HEALTH CENTER	26470	3760	28140
14T191	INGALLS MEMORIAL HOSPITAL	14141	1600	16974
23T167	INGHAM REGIONAL MEDICAL CENTER	23320	4040	29620
49T122	INOVA REHAB CENTER @ INOVA MOUNT VERNON HOSPITAL	49290	8840	47894
45T132	INPATIENT REHAB	45451	5800	36220
453025	INSTUTUTE FOR REHAB & RESEARCH,THE	45610	3360	26420
37T106	INTEGRIS SOUTHWEST MEDICAL CENTER	37540	5880	36420
323029	INTERFACE INC DBA LIFECOURSE REHAB SERVICES	32220	32	22140
16T082	IOWA METHODIST MEDICAL CENTER	16760	2120	19780
15T024	J.W. SOMMER REHABILIATION UNIT	01160	3480	26900
01T157	JACKSON MEMORIAL HOSPITAL	10120	2650	22520
33T014	JACOBI MEDICAL CENTER	33020	5600	35644
10T022	JAMAICA HOSPITAL MEDICAL CENTER	33590	5000	33124
33T127	JAMESON HOSPITAL	39450	5600	35644
39T016	JANE PHILLIPS MEMORIAL MEDICAL CENTER	37730	39	39
37T018	JEANES HOSPITAL	39620	37	37
39T080	JEANNETTE HOSPITAL	39770	6160	37964
39T010	JEFFERSON REGIONAL MEDICAL CENTER	04340	6280	38300
04T071	JEFFERSON REGIONAL MEDICAL CENTER	39010	6240	38220
39T265	JFK JOHNSON REHAB INSTITUTE	31270	6280	38300
31T108	JIM THORPE REHAB UNIT	37190	5015	20764
37T029	JOHN D. ARCHBOLD MEMORIAL HOSPITAL	11890	37	37
11T038	JOHN HEINZ INST OF REHAB MEDICINE	39680	11	11
393036	JOHN MUIR MEDICAL CENTER	05060	3680	39
05T180	JOHNSON CITY MEDICAL CTR	44890	5775	36084
44T063	JOHNSON REGIONAL REHABILITATION CENTER	04350	3660	27740
04T002	JOHNSTON R. BOWMAN HEALTH CTR.	14141	04	04
14T119	JOINT TOWNSHIP DISTRICT MEMORIAL HOSPITAL, REHABIL	36050	1600	16974
36T032	KADLEC MEDICAL CENTER	50020	4320	36
33T005	KAISER FOUNDATION HOSPITAL-FONTANA REHAB CENTER	05460	1280	15380
50T058	KAISER MEDICAL CENTER	05580	6740	28420
05T140	KALEIDA HEALTH	33240	6780	40140
05T073	KALISPELL REGIONAL MEDICAL CENTER	27140	8720	46700
27T051	KANSAS REHABILITATION HOSPITAL, INC	17880	27	27
173025	KANSAS UNIVERSITY REHAB	17986	8440	45820
17T040	KAPLAN REHABILITATION HOSPITAL	19560	3760	28140
193057	KAWEAH DELTA REHABILITATION HOSPITAL	05640	19	19
05T057	KENMORE MERCY HOSPITAL	33240	8780	47300
33T102	KENT COUNTY MEMORIAL HOSPITAL	41010	1280	15380

TABLE 3.—INPATIENT REHABILITATION FACILITIES WITH CORRESPONDING STATE AND COUNTY LOCATION; CURRENT LABOR MARKET AREA DESIGNATION; AND PROPOSED NEW CBSA-BASED LABOR MARKET AREA DESIGNATION—Continued

Provider number	Provider name	SSA State and county code	FY 06 MSA code	FY 06 CBSA code
41T009	KEOKUK AREA HOSPITAL	16550	6483	39300
16T008	KESSLER REHAB	31200	16	16
313025	KESSLER ADVENTIST REHABILITATION HOSPITAL	21150	5640	35084
213029	KETTERING MEDICAL CENTER	36580	8840	13644
36T079	KINGMAN REGIONAL MEDICAL CENTER	03070	2000	19380
03T055	KINGS COUNTY HOSPITAL CENTER	33331	4120	03
33T202	KING'S DAUGHTER MEDICAL CENTER	18090	5600	35644
18T009	KINGSBROOK JEWISH MEDICAL CENTER	33331	3400	26580
33T201	KINGWOOD MEDICAL CENTER	45610	5600	35644
45T775	KOOTENAI MEDICAL CENTER	13270	3360	26420
13T049	LA PALMA INTERCOMMUNITY HOSPITAL	05400	13	17660
05T580	LABETTE COUNTY MEDICAL CENTER	17490	5945	42044
17T120	LAC/RANCHO LOS AMIGOS NATIONAL MED CTR	05400	17	17
05T717	LAFAYETTE GENERAL MEDICAL CENTER	19270	5945	42044
19T002	LAGRANGE COMMUNITY HOSPITAL	15430	3880	29180
15T096	LAKE CHARLES MEMORIAL HOSPITAL	19090	15	15
19T060	LAKE CUMBERLAND REGIONAL HOSP	18972	3960	29340
18T132	LAKE HOSPITAL SYSTEM INC	36440	18	18
36T098	LAKE REGION HEALTHCARE CORPORATION	24550	1680	17460
24T052	LAKELAND HOSPITAL, ST. JOSEPH	23100	24	24
23T021	LAKESHORE CARRAWAY REHABILITATION HOSPITAL	01360	0870	35660
01T064	LAKEWAY REGIONAL HOSPITAL	44310	1000	13820
44T067	LAKEWOOD HOSPITAL	36170	44	34100
36T212	LAKEWOOD REGIONAL MEDICAL CENTER	05200	1680	17460
05T581	LANCASTER COMMUNITY HOSPITAL	05200	4480	31084
05T204	LANCASTER GENERAL HOSP	39440	4480	31084
39T100	LANCASTER REGIONAL MEDICAL CENTER	39440	4000	29540
39T061	LANDER VALLEY MEDICAL CENTER	53060	4000	29540
53T010	LANE FROST HEALTH AND REHABILITATION CENTER	37110	53	53
373032	LANE REHABILTATION CENTER	19160	37	37
19T020	LAPLACE REHABILITATION HOSPITAL	19350	0760	12940
193064	LAPORTE HOSPITAL AND HEALTH SERVICES	15450	5560	35380
45T029	LAREDO MEDICAL CENTER	45953	4080	29700
45T107	LAS PALMAS REHABILITATION HOSP	45480	2320	21340
05T095	LAUREL GROVE HOSPITAL	05000	5775	36084
10T246	LAWNWOOD REGIONAL MEDICAL CENT	10550	2710	38940
07T007	LAWRENCE & MEMORIAL HOSPITAL	07050	5523	35980
17T137	LAWRENCE MEMORIAL HOSPITAL	17220	4150	29940
46T010	LDS HOSPITAL	46170	7160	41620
32T065	LEA REGIONAL MEDICAL CENTER	32120	32	32
49T012	LEE REGIONAL MEDICAL CENTER	49520	49	49
10T084	LEESBURG REGIONAL MEDICAL CENTER	10340	5960	36740
193086	LEESVILLE REHABILITATION HOSPITAL LLC	19570	19	19
38T017	LEGACY GOOD SAMARITAN HOSP & MED CTR	38250	6440	38900
34T027	LENOIR MEMORIAL HOSPITAL REHAB UNIT	34530	34	34
05T060	LEON S. PETERS REHABILITATION	05090	2840	23420
36T086	LEVINE REHABILITATION CENTER	36110	2000	44220
49T048	LEWIS GALE MEDICAL CENTER	49838	6800	40220
15T006	LIBERTY REHABILITATION INSTITUTE	31230	15	33140
31T118	LIMA MEMORIAL HEALTH SYSTEM	36010	3640	35644
36T009	LINCOLN PARK HOSPITAL	14141	4320	30620
14T207	LITTLE COMPANY OF MARY—SAN PEDRO HOSPITAL REHAB	05200	1600	16974
05T078	LIVINGSTON REGIONAL HOSPITAL	44660	4480	31084
44T187	LODI MEMORIAL HOSPITAL	05490	44	44
05T336	LOGAN REGIONAL MEDICAL CENTER	51220	8120	44700
51T048	LOMA LINDA UNIVERSITY MEDICAL CENTER	05460	51	51
05T327	LONG BEACH MEDICAL CENTER	33400	6780	40140
33T225	LONG BEACH MEMORIAL MEDICAL CENTER	05200	5380	35004
05T485	LONG ISLAND COLLEGE HOSPITAL	33331	4480	31084
33T152	LONGVIEW REGIONAL PHYSICAL REHABILITATION	45570	5600	35644
45T702	LOS ROBLES HOSPITAL & MEDICAL CENTER	05660	4420	30980
05T549	LOUIS A. WEISS MEMORIAL HOSPITAL	14141	8735	37100
14T082	LOUISIANA REHABILIATAION HOSPITAL OF MORGAN CITY L	19500	1600	16974
193084	LOURDES	18720	19	19
18T102	LOURDES MEDICAL CENTER	50100	18	18
50R337	LOURDES MEDICAL CENTER	50100	6740	28420
50T023	LOYOLA UNIVERSITY MEDICAL CENTER	14141	6740	28420

TABLE 3.—INPATIENT REHABILITATION FACILITIES WITH CORRESPONDING STATE AND COUNTY LOCATION; CURRENT LABOR MARKET AREA DESIGNATION; AND PROPOSED NEW CBSA-BASED LABOR MARKET AREA DESIGNATION—Continued

Provider number	Provider name	SSA State and county code	FY 06 MSA code	FY 06 CBSA code
14T276	LULING REHABILITATION HOSPITAL	19440	1600	16974
193060	LUTHERAN HOSPITAL ACUTE REHAB UNIT	36170	5560	35380
36T087	LUTHERAN MEDICAL CENTER	33331	1680	17460
33T306	MADISON COUNTY HOSPITAL INPATIENT REHAB	36500	5600	35644
45T032	MADONNA REHABILITATION HOSPITAL	28540	4420	45
36T189	MAGEE REHABILITATION HOSPITAL	39620	1840	18140
283025	MAGNOLIA REGIONAL HEALTH CENTER	25010	4360	30700
393038	MAINLAND MEDICAL HOSPITAL	45550	6160	37964
25T009	MARIA PARHAM HEALTHCARE ASSOCIATION, INC.	34900	25	25
45T530	MARIANJOY REHABILITATION HOSPITAL	14250	2920	26420
34T132	MARIETTA MEMORIAL HOSPITAL	36850	34	34
143027	MARLETTE COMMUNITY HOSP CTR FOR REHAB	23750	1600	16974
36T147	MARLTON REHABILITATION HOSPITAL	31150	6020	37620
23T082	MARQUETTE GENERAL HOSPITAL	23510	23	23
313032	MARY BLACK CENTER FOR REHAB	42410	6160	15804
23T054	MARY FREE BED HOSPITAL & REHABILITATION CENTER	23400	23	23
42T083	MARY GREELEY MEDICAL CENTER	16840	3160	43900
233026	MARYVIEW CENTER FOR PHYSICAL REHABILITATION	49711	3000	24340
16T030	MASSILLON COMMUNITY HOSPITAL	36770	16	11180
49T017	MATAGORDA GENERAL HOSPITAL	45790	5720	47260
36T100	MAYO CLINIC HOSPITAL	03060	1320	15940
45T465	MCALESTER REGIONAL HEALTH CENTER	37600	45	
45	MCKAY-DEE HOSPITAL	46280	6200	38060
37T034	MCKEE MEDICAL CENTER	06340	37	37
46T004	MCKENNA REHAB INSTITUTE	45320	7160	36260
06T030	MCLAREN REGIONAL MEDICAL CENTER	23240	2670	22660
45T059	MCO REHAB HOSPITAL	36490	7240	41700
23T141	MEADOWBROOK REHAB HOSPITAL	17450	2640	22420
36T048	MEADOWBROOK REHAB HOSPITAL OF WEST GAB	10120	8400	45780
04T088	MEADOWBROOK REHABILITAION HOSPITAL	45610	04	04
17T180	MEADVILLE MEDICAL CENTER	39260	3760	28140
103036	MECOSTA COUNTY GENERAL HOSPITAL	23530	5000	33124
453052	MED CTR OF LA AT NEW ORLEANS	19350	3360	26420
39T113	MEDCENTER ONE, INC.	35070	39	39
23T093	MEDCENTRAL HEALTH SYSTEM	36710	23	23
19T005	MEDICAL CENTER AT TERRELL	45730	5560	35380
35T015	MEDICAL CENTER OF ARLINGTON	45910	1010	13900
36T118	MEDICAL CENTER OF PLANO	45310	4800	31900
45T683	MEDICAL CENTER OF SOUTH ARKANSAS	04690	1920	19124
45T675	MEDICAL CITY DALLAS HOSPITAL	45390	2800	23104
45T651	MEDICAL CNTR OF DELAWARE	08010	1920	19124
45T647	MEDINA HOSPITAL	33550	1920	19124
08T001	MEMORIAL HEALTH UNIVERSITY MEDICAL CENTER	11220	9160	48864
33T053	MEMORIAL HEALTHCARE CENTER	23770	6840	40380
11T036	MEMORIAL HERMAN BAPTIST HOSP ORANGE	45840	7520	42340
23T121	MEMORIAL HERMANN FT. BEND INPATIENT REHABILITATION	45610	23	23
45T005	MEMORIAL HERMANN NORTHWEST HOSPITAL	45610	0840	13140
45T848	MEMORIAL HOSPITAL	10050	3360	26420
45T184	MEMORIAL HOSPITAL—SOUTH BEND	15700	3360	26420
10T038	MEMORIAL HOSPITAL AT GULFPORT	25230	2680	22744
15T058	MEMORIAL HOSPITAL OF RI	41030	7800	43780
25T019	MEMORIAL MED CENTER OF EAST TE	45020	0920	25060
41T001	MEMORIAL MEDICAL CENTER	14920	6483	39300
45T211	MEMORIAL MEDICAL CENTER—REHABILITATION INSTITUTE	19350	45	45
14T148	MEMORIAL REHABILITATION HOSPITAL	45794	7880	44100
19T135	MENA MEDICAL CENTER	04560	5560	35380
45T133	MENORAH MEDICAL CENTER	17450	5800	33260
04T015	MERCY FITZGERALD HOSPITAL	39290	04	04
17T182	MERCY FRANCISCAN HOSPITAL MT. AIRY	36310	3760	28140
39T156	MERCY FRANCISCAN HOSPITAL WESTERN HILLS	36310	6160	37964
36T234	MERCY GENERAL HEALTH PARTNERS	23600	1640	17140
36T113	MERCY GENERAL HOSPITAL	05440	1640	17140
23T004	MERCY HEALTH CENTER	17800	3000	34740
05T017	MERCY HEALTH CENTER, INC	37540	6920	40900
17T142	MERCY HEALTH SYSTEM CORP	52520	17	17
37T013	MERCY HEALTH SYSTEM OF KANSAS	17050	5880	36420
52T066	MERCY HOSPITAL	10120	3620	27500

TABLE 3.—INPATIENT REHABILITATION FACILITIES WITH CORRESPONDING STATE AND COUNTY LOCATION; CURRENT LABOR MARKET AREA DESIGNATION; AND PROPOSED NEW CBSA-BASED LABOR MARKET AREA DESIGNATION—Continued

Provider number	Provider name	SSA State and county code	FY 06 MSA code	FY 06 CBSA code
17T058	MERCY HOSPITAL	14141	17	17
10T061	MERCY HOSPITAL OF PITTSBURGH	39010	5000	33124
14T158	MERCY HOSPITAL PORT HURON	23730	1600	16974
39T028	MERCY HOSPITAL REHABILITATION UNIT	34590	6280	38300
23T031	MERCY MEDICAL	01010	2160	47644
34T098	MERCY MEDICAL CENTER	33400	1520	16740
013027	MERCY MEDICAL CENTER	36770	5160	01
33T259	MERCY MEDICAL CENTER	52690	5380	35004
36T070	MERCY MEDICAL CENTER-DES MOINES	16760	1320	15940
52T048	MERCY MEDICAL CENTER-DUBUQUE	16300	0460	36780
16T083	MERCY MEDICAL CENTER-SIOUX CITY	16960	2120	19780
16T069	MERCY MEDICAL CENTER-NORTH IOWA	16160	2200	20220
16T153	MERCY MEMORIAL HEALTH CENTER	37090	7720	43580
16T064	MERCY PROVIDENCE HOSPITAL	39010	16	16
37T047	MERIDIA EUCLID HOSPITAL	36170	37	37
39T136	MERITCARE HEALTH SYSTEM	35080	6280	38300
36T082	MERITER HOSPITAL INC.	52120	1680	17460
35T011	MERWICK REHAB HOSPITAL	31260	2520	22020
52T089	MESA GENERAL HOSPITAL	03060	4720	31540
31T010	MESA LUTHERAN HOSPITAL REHAB	03060	8480	45940
03T017	MESQUITE COMMUNITY HOSPITAL	45390	6200	38060
03T018	METHODIST HOSPITAL	19350	6200	38060
45T688	METHODIST HOSPITAL	19350	1920	19124
19T124	METHODIST HOSPITAL	24260	5560	35380
19T200	METHODIST HOSPITAL OF SOUTHERN CA	05200	5560	35380
24T053	METHODIST HOSPITAL REHABILITATION CENTER	18500	5120	33460
05T238	METHODIST HOSPITAL, THE	45610	4480	31084
18T056	METHODIST MEDICAL CENTER	45390	2440	21780
45T358	METHODIST MEDICAL CENTER OF ILLINOIS	14800	3360	26420
45T051	METHODIST NORTHLAKE	15440	1920	19124
14T209	METHODIST SPECIALTY/TRANSPLANT	45130	6120	37900
15T002	METROHEALTH MEDICAL CENTER	36170	2960	23844
45T631	METROPOLITAN HOSPITAL	33420	7240	41700
36T059	METROPOLITAN HOSPITAL AND METRO HEALTH CORPORATION	23400	1680	17460
33T199	METROPOLITAN METHODIST HOSP	45130	5600	35644
23T236	MI LAND E. KNAPP REHABILITATION CENTER	24260	3000	24340
45T388	MIAMI VALLEY HOSPITAL	36580	7240	41700
24T004	MICHAEL REESE HOSPITAL	14141	5120	33460
36T051	MID AMERICA REHABILITATION HOSPITAL	17450	2000	19380
14T075	MID JEFFERSON HOSPITAL	45700	1600	16974
173026	MIDDLETOWN REGIONAL HOSPITAL	36080	3760	28140
45T514	MILLER DWAN MEDICAL CENTER	24680	0840	13140
36T076	MILLS HEALTH CENTER	05510	3200	17140
24T019	MILTON S HERSHEY MEDICAL CENTER	39280	2240	20260
05T007	MINDEN MEDICAL CENTER REHAB	19590	7360	41884
39T256	MISSION HOSPITAL	05400	3240	25420
19T144	MISSION HOSPITAL	45650	7680	19
05T567	MISSISSIPPI METHODIST REHABILITATION CENTER	25240	5945	42044
45T176	MISSISSIPPI METHODIST REHABILITATION CENTER	25240	4880	32580
253025	MISSOURI BAPTIST MEDICAL CENTER	26940	3560	27140
25T152	MISSOURI DELTA MEDICAL CENTER	26982	3560	27140
26T108	MOBILE INFIRMARY	01480	7040	41180
26T113	MODESTO REHABILITATION HOSPITAL	05600	26	26
01T113	MONONGAHELA VALLEY HOSPITAL	39750	5160	33660
053036	MONTEFIORE MEDICAL CENTER	33020	5170	33700
39T147	MORGAN HOSPITAL & MEDICAL CTR	15540	6280	38300
33T059	MORTON PLANT NORTH BAY HOSPITAL	10500	5600	35644
15T038	MOSES CONE HEALTH SYSTEM	34400	3480	26900
34T091	MOSS REHAB	39620	3120	24660
39T142	MOUNT CARMEL REGIONAL MEDICAL CENTER	17180	6160	37964
17T006	MOUNT SINAI MEDICAL CENTER	10120	17	17
10T034	MOUNTAINVIEW REGIONAL MEDICAL CENTER	32060	5000	33124
32T085	MT CARMEL INPATIENT REHAB UNIT	36250	4100	29740
36T035	MT SINAI HOSPITAL	33420	1840	18140
33T024	MUNSON MEDICAL CENTER	23270	5600	35644
23T097	MUSKOGEE REGIONAL REHABILITATION CENTER	37500	23	23
37T025	NACOGDOCHES COUNTY HOSPITAL DISTRICT	45810	37	37

TABLE 3.—INPATIENT REHABILITATION FACILITIES WITH CORRESPONDING STATE AND COUNTY LOCATION; CURRENT LABOR MARKET AREA DESIGNATION; AND PROPOSED NEW CBSA-BASED LABOR MARKET AREA DESIGNATION—Continued

Provider number	Provider name	SSA State and county code	FY 06 MSA code	FY 06 CBSA code
45T508	NAPLES COMMUNITY HOSPITAL, INC.	10100	45	45
10T018	NASHVILLE REHABILITATION HOSPITAL	44180	5345	34940
44T026	NASSAU UNIVERSITY MEDICAL CENTER	33400	5360	34980
33T027	NATCHEZ REGIONAL MEDICAL CENTER	25000	5380	35004
25T084	NATIONAL PARK	04250	25	25
04T078	NATIONAL REHABILITATION HOSPITAL	09000	04	26300
093025	NAVARRO REGIONAL HOSPITAL	45820	8840	47894
45T447	NAZARETH HOSPITAL	39620	45	45
39T204	NEBRASKA METHODIST HEALTH SYSTEM	28270	6160	37964
28T040	NEW ENGLAND REHAB HOSPITAL OF PORTLAND	20020	5920	36540
203025	NEW ENGLAND REHABILITAION HOSPITAL-WOBURN	22090	6403	38860
223026	NEW HANOVER REGIONAL MEDICAL CENTER	34640	1123	15764
34T141	NEW MEXICO REHABILITATION CENTER	32020	9200	48900
323026	NEW ORLEANS EAST REHABILITATION	19350	32	32
193089	NEW YORK METHODIST HOSPITAL	33331	5560	35380
33T236	NEW YORK PRESBYTERIAN HOSPITAL	33420	5600	35644
33T101	NEWMAN REGIONAL HEALTH	17550	5600	35644
17T001	NEWPORT HOSPITAL	41020	17	17
41T006	NEWTON MEDICAL CENTER	17390	6483	39300
17T103	NEWTON MEMORIAL HOSPITAL	31360	9040	48620
31T028	NEXT STEP ACUTE REHABILITATION CENTER	39190	5640	35084
39T194	NIX HEALTH CARE SYSTEM	45130	0240	10900
45T130	NOBLE HOSPITAL REHAB UNIT	22070	7240	41700
10T063	NORMAN REGIONAL HOSPITAL	37130	8280	45300
22T065	NORTH AUSTIN MEDICAL CENTER	45940	8003	44140
37T008	NORTH BROWARD MEDICAL CENTER	10050	5880	36420
45T809	NORTH CAROLINA BAPTIST HOSPITALS	34330	0640	12420
10T086	NORTH CENTRAL MEDICAL CENTER	45310	2680	22744
34T047	NORTH COLORADO MEDICAL CENTER	06610	3120	49180
45T403	NORTH COUNTRY REGIONAL HOSPITAL	24030	1920	19124
06T001	NORTH DALLAS REHABILITATION HOSPITAL	45620	3060	24540
24T100	NORTH DALLAS REHABILITATION HOSPITAL	45390	24	24
453032	NORTH FULTON REGIONAL HOSPITAL	11470	1920	19124
11T198	NORTH HILLS HOSPITAL	45910	0520	12060
45T087	NORTH KANSAS CITY HOSPITAL	26230	2800	23104
26T096	NORTH MEMORIAL HEALTH CENTER	24260	3760	28140
24T001	NORTH MISS. MEDICAL CENTER	25400	5120	33460
25T004	NORTH MONROE MEDICAL CENTER	19360	25	25
19T197	NORTH OAKLAND MEDICAL CENTERS	23620	5200	33740
23T013	NORTH OAKS REHAB HOSP INC	19520	2160	47644
193044	NORTH SHORE REGIONAL MEDICAL CENTER	19510	19	19
19T204	NORTH SHORE UNIVERSITY HOSPITAL @ GLEN COVE	33400	5560	35380
33T181	NORTH SUBURBAN MEDICAL CENTER	06000	5380	35004
06T065	NORTHEAST GEORGIA MEDICAL CENTER	11550	2080	19740
11T029	NORTHEAST METHODIST HOSPITAL	45130	11	23580
45T733	NORTHEAST OKLAHOMA REHABILITATION ASSOCIATES, LP	37710	7240	41700
373029	NORTHEAST REGIONAL MEDICAL CENTER	26000	8560	46140
26T022	NORTHEAST REHABILITATION HOSPITAL	30070	26	26
303026	NORTHERN CALIFORNIA REHABILITATION HOSPITAL	05550	1123	40484
05T699	NORTHERN ILLINOIS MEDICAL CENTER	14640	6690	39820
14T116	NORTHERN MICHIGAN HOSPITAL	23230	1600	16974
23T105	NORTHERN NEVADA MEDICAL CENTER	29150	23	23
29T032	NORTHLAKE MEDICAL CENTER	11370	6720	39900
11T033	NORTHPORT MEDICAL CENTER	01620	0520	12060
01T145	NORTHRIDGE HOSPITAL MEDICAL CENTER	05200	8600	46220
05T116	NORTHWEST HEALTH SYSTEM	04710	4480	31084
04T022	NORTHWEST HOSPITAL	50160	2580	22220
50T001	NORTHWEST MISSISSIPPI REGIONAL MED CTR	25130	7600	42644
25T042	NORTHWEST REGIONAL HOSPITAL	45830	25	25
45T131	NORWALK HOSPITAL ASSOCIATION	07000	1880	18580
07T034	OAK FOREST HOSPITAL	14141	5483	14860
14T301	OAKLAND REGIONAL HOSPITAL	23620	1600	16974
233028	OAKWOOD HERITAGE HOSPITAL	23810	2160	47644
23T270	OCHSNER REHABILITATION CENTER	19250	2160	19804
19T036	OGDEN REGIONAL MEDICAL CENTER	46280	5560	35380
46T005	OHIO STATE UNIVERSITY HOSPITAL	36250	7160	36260
36T085	OHIO VALLEY GENERAL HOSPITAL ARU	39010	1840	18140

TABLE 3.—INPATIENT REHABILITATION FACILITIES WITH CORRESPONDING STATE AND COUNTY LOCATION; CURRENT LABOR MARKET AREA DESIGNATION; AND PROPOSED NEW CBSA-BASED LABOR MARKET AREA DESIGNATION—Continued

Provider number	Provider name	SSA State and county code	FY 06 MSA code	FY 06 CBSA code
39T157	OM	18290	6280	38300
18T038	OPELOUSAS GENERAL HOSPITAL	19480	5990	36980
19T017	ORANGE REGIONAL MEDICAL CENTER	33540	3880	19
33T001	ORANGE REGIONAL MEDICAL CENTER	33540	5660	39100
33T126	OREGON REHABILITATION CENTER	38190	5660	39100
38T033	ORLANDO REGIONAL HEALTHCARE-CMR	10470	2400	21660
10T006	OSTEOPATHIC MEDICAL CENTER OF TEXAS	45910	5960	36740
45T121	OU MEDICAL CENTER	37540	2800	23104
37T093	OUR LADY OF LOURDES MEDICAL CENTER	31160	5880	36420
31T029	OUR LADY OF LOURDES REG MED CENTER	19270	6160	15804
19T102	OUR LADY OF THE LAKE REGIONAL MEDICAL CENTER	19160	3880	29180
19T064	OVERLAKE HOSPITAL MEDICAL CENTER	50160	0760	12940
50T051	PALESTINE REGIONAL REHAB HOSPITAL	45000	7600	42644
45T113	PALMYRA MEDICAL CENTER	11390	45	45
11T163	PALOMAR MEDICAL CENTER	05470	0120	10500
05T115	PAMPA REGIONAL MEDICAL CENTER	45563	7320	41740
45T099	PARADISE VALLEY HOSPITAL	05470	45	45
05T024	PARIS REGIONAL MEDICAL CENTER	45750	7320	41740
45T196	PARK PLACE MEDICAL CENTER	45700	45	45
45T518	PARK PLAZA HOSPITAL	45610	0840	13140
45T659	PARKLAND HEALTH AND HOSPITAL SYSTEM	45390	3360	26420
45T015	PARKRIDGE MEDICAL CENTER	44320	1920	19124
44T156	PARKVIEW HOSPITAL	15010	1560	16860
15T021	PARKVIEW MEDICAL CENTER	06500	2760	23060
06T020	PARKVIEW REGIONAL HOSPITAL	45758	6560	39380
45T400	PARKWAY REGIONAL MEDICAL CENTER	10120	45	45
10T114	PARMA COMMUNITY GENERAL HOSPITAL	36170	5000	33124
36T041	PATRICIA NEAL REHABILITATION CENTER	44460	1680	17460
44T125	PENINSULA HOSPITAL CENTER	33590	3840	28940
33T002	PENNYSLVANIA HOSPITAL, ACUTE REHABILITATION UNIT	39620	5600	35644
39T226	PENROSE HOSPITAL/ELEANOR-CAPRON	06200	6160	37964
06T031	PETERSON REHABILITATION HOSPITAL AND GERIATIC CEN	51340	1720	17820
513025	PHELPS COUNTY REGIONAL MED CENTER	26800	9000	48540
26T017	PHELPS MEMORIAL HOSPITAL	33800	26	26
33T261	PHOEBE PUTNEY	11390	5600	35644
11T007	PHOENIX BAPTIST HOSPITAL	03060	0120	10500
03T030	PHYSICAL REHABILITAITON UNIT AT OTTUMWA REGIONAL H	16890	6200	38060
16T089	PIEDMONT HOSPITAL	11470	16	16
11T083	PIKEVILLE METHODIST REHABILITATION HOSPITAL	18970	0520	12060
18T044	PINECREST REHABILITATION HOSPITAL	10490	18	18
103030	PINNACLE REHAB	37540	8960	48424
373025	PINNACLEHEALTH HOSPITALS	39280	5880	36420
39T067	PITT COUNTY MEMORIAL HOSPITAL	34730	3240	25420
34T040	PLAZA MEDICAL CENTER	45910	3150	24780
45T672	POPLAR BLUFF REGIONAL MEDICAL CENTER	26110	2800	23104
26T119	PORTER ADVENTIST HOSPITAL	06150	26	26
06T064	PORTNEUF MEDICAL CENTER	13020	2080	19740
13T028	POTTSTOWN MEMORIAL MEDICAL CENTER	39560	6340	38540
39T123	POTTSVILLE HOSPITAL-WARNE CLINIC	39650	6160	37964
39T030	POUDRE VALLEY HEALTH CARE INC	06340	39	39
06T010	PREMIER REHABILITATION HOSPITAL	19360	2670	22660
14T007	PRESBYTERIAN HOSPITAL OF DALLAS	45390	1600	16974
193082	PRESBYTERIAN INTERCOMMUNITY HOSPITAL	05200	5200	33740
45T462	PROVENA COVENANT MEDICAL CENTER REHAB	14090	1920	19124
05T169	PROVENA SAINT JOSEPH HOSPITAL	14530	4480	31084
14T113	PROVENA ST. JOSEPH MEDICAL CENTER	14989	1400	16580
14T217	PROVIDENCE ALASKA MEDICAL CENTER	02020	1600	16974
02T001	PROVIDENCE CENTRALIA HOSPITAL	50200	0380	11260
50T019	PROVIDENCE EVERETT MEDICAL CENTER	50300	50	50
50T014	PROVIDENCE HOLY CROSS MEDICAL CENTER	05200	7600	42644
05T278	PROVIDENCE HOSPITAL	23620	4480	31084
23T019	PROVIDENCE MEDFORD MEDICAL CENTER	38140	2160	47644
38T075	PROVIDENCE PORTLAND MEDICAL CENTER	38250	4890	32780
38T061	PROVIDENCE SAINT JOSEPH MEDICAL CENTER	05200	6440	38900
05T235	PROVIDENCE ST. PETER HOSPITAL	50330	4480	31084
50T024	QUEEN OF ANGELS-HOLLYWOOD PRESBYTERIAN MEDICAL C	05200	5910	36500
05T063	QUEEN OF THE VALLEY HOSPITAL	05380	4480	31084

TABLE 3.—INPATIENT REHABILITATION FACILITIES WITH CORRESPONDING STATE AND COUNTY LOCATION; CURRENT LABOR MARKET AREA DESIGNATION; AND PROPOSED NEW CBSA-BASED LABOR MARKET AREA DESIGNATION—Continued

Provider number	Provider name	SSA State and county code	FY 06 MSA code	FY 06 CBSA code
05T009	QUEENS HOSPITAL CENTER	33590	8720	34900
33T231	RANCHO REHABILITATION	29010	5600	35644
29T007	RAPID CITY REGIONAL HOSPITAL	43510	4120	29820
43T077	REBSAMEN MEDICAL CENTER	04590	6660	39660
04T074	REDMOND REHABILITATION CENTER	11460	4400	30780
11T168	REGIONAL MEDICAL CENTER	18530	11	40660
18T093	REGIONAL REHAB CENTER AT HUGH CHATHAM	34850	18	18
34T097	REGIONAL REHAB CENTER OF NORTON COMMUNITY HOSPITAL	49661	34	34
49T001	REGIONAL REHABILITATION CENTER	42280	49	49
42T036	REGIONAL REHABILITATION HOSPITAL	01500	42	42
013033	REGIONS HOSPITAL REHAB INSTITUTE	24610	5240	33860
24T106	REHAB CARE CENTER AT INDIANA REGIONAL MEDICAL CTR	39390	5120	33460
39T173	REHAB CENTER OF MARION	36520	39	39
36T011	REHAB HOSP OF R I	41030	36	36
413025	REHAB HOSP OF THE CAPE AND ISLANDS	22000	6483	39300
223032	REHAB HOSPITAL OF BATON ROUGE	19160	0743	12700
193028	REHAB INSTITUTE AT SANTA BARBARA,THE	05520	0760	12940
053028	REHAB INSTITUTE AT TCMC	44180	7480	42060
44T135	REHAB MEDICINE ST. MARY'S ATHENS	11260	5360	34980
11T006	REHAB UNIT OF PACIFIC ALLIANCE MEDICAL CENTER	05200	0500	12020
05T018	REHABCARE CENTER AT HOSPITAL DR. PILA	40560	4480	31084
40T003	REHABILITATION CENTER AT LAFAYETTE HOME HOSPITAL	15780	6360	38660
15T109	REHABILITATION CENTER OF NORTHERN ARIZONA	03020	3920	29140
03T023	REHABILITATION HOSPITAL	15010	2620	22380
153030	REHABILITATION HOSPITAL OF CONNECTICUT,THE	07010	2760	23060
073025	REHABILITATION HOSPITAL OF INDIANA	15480	3283	25540
153028	REHABILITATION HOSPITAL OF INDIANA AT ST VINCENT	15480	3480	26900
153038	REHABILITATION HOSPITAL OF MEMPHIS	44780	3480	26900
44T152	REHABILITATION HOSPITAL OF NEW MEXICO	32000	4920	32820
323028	REHABILITATION HOSPITAL OF SOUTH JERSEY	31190	0200	10740
313036	REHABILITATION HOSPITAL OF THE PACIFIC	12020	8760	47220
123025	REHABILITATION HOSPITAL OF TINTON FALLS	31290	3320	26180
313035	REHABILITATION INSTITUTE AT MORRISTOWN MEMORIAL	31300	5190	20764
31T015	REHABILITATION INSTITUTE OF CHICAGO	14141	5640	35084
143026	REHABILITATION INSTITUTE OF MCALLEN	45650	1600	16974
45T811	REHABILITATION INSTITUTE OF MICHIGAN	23810	4880	32580
233027	REHABILITATION INSTITUTE OF ST LOUIS, THE	26940	2160	19804
263028	REHABILITATION PATIENT CARE UNIT	06200	7040	41180
06T022	REID HOSP-ACUTE REHAB UNIT	15880	1720	17820
15T048	RENO REHAB ASSOCIATES, LIMITED PARTNERSHIP	29150	15	15
293027	RESEARCH MEDICAL CENTER	26070	6720	39900
26T027	RESURRECTION MEDICAL CENTER	14141	26	26
14T117	RHD MEMORIAL MEDICAL CENTER	45390	1600	16974
45T379	RICHLAND PARISH REHABILITATION HOSPITA	19410	1920	19124
193075	RILEY MEMORIAL HOSPITAL	25370	19	19
25T081	RIO VISTA REHAB HOSPITAL	45480	25	25
453033	RIVER PARK HOSPITAL	44880	2320	21340
44T151	RIVER REGION HEALTH SYSTEM	25740	44	44
25T031	RIVER WEST MEDICAL CENTER	19230	25	25
19T131	RIVERSIDE MEDICAL CENTER	14540	19	12940
14T186	RIVERSIDE REHAB INSTITUTE	49622	3740	28100
493027	RIVERVIEW HOSPITAL	15280	5720	47260
15T059	RIVERVIEW MEDICAL CENTER	31290	3480	26900
31T034	ROCHESTER GENERAL HOSPITAL	33370	5190	20764
33T125	ROGER C. PEACE	42220	6840	40380
42T078	ROGERS CITY REHABILITATION HOSPITAL	23700	3160	24860
233029	ROME MEMORIAL HOSPITAL	33510	23	23
33T215	ROPER REHABILITATION HOSPITAL	42090	8680	46540
42T087	ROWAN REGIONAL MEDICAL CENTER	34790	1440	16700
34T015	ROXBOROUGH	39620	1520	34
39T304	RUSH OAK PARK HOSPITAL	14141	6160	37964
14T063	RUSH-COPLEY MEDICAL CENTER	14530	1600	16974
14T029	RUSK INSTITUTE	33420	1600	16974
33T214	RUSK REHABILITATION CENTER LLC	26090	5600	35644
263027	RUTLAND REGIONAL MEDICAL CENTER	47100	1740	17860
47T005	SACRED HEART HOSPITAL	52170	47	47
52T013	SACRED HEART REHAB INST	52390	2290	20740

TABLE 3.—INPATIENT REHABILITATION FACILITIES WITH CORRESPONDING STATE AND COUNTY LOCATION; CURRENT LABOR MARKET AREA DESIGNATION; AND PROPOSED NEW CBSA-BASED LABOR MARKET AREA DESIGNATION—Continued

Provider number	Provider name	SSA State and county code	FY 06 MSA code	FY 06 CBSA code
523025	SADDLEBACK MEMORIAL MEDICAL CENTER	05400	5080	33340
05T603	SAGE REHAB INSTITUTE	19160	5945	42044
193078	SAINT ALPHONSUS REGIONAL MEDICAL CENTER	13000	0760	12940
13T007	SAINT ANTHONY'S HEALTH CENTER	14680	1080	14260
14T052	SAINT FRANCIS HOSPITAL	31230	7040	41180
313037	SAINT FRANCIS HOSPITAL	33230	3640	35644
33T067	SAINT FRANCIS HOSPITAL	44780	2281	39100
44T183	SAINT FRANCIS MEDICAL CENTER	14800	4920	32820
14T067	SAINT FRANCIS MEMORIAL HOSPITAL	05480	6120	37900
05T152	SAINT JOHNS MERCY MEDICAL CENTER	26940	7360	41884
26T020	SAINT JOSEPH HEALTH CENTER	26470	7040	41180
26T085	SAINT JOSEPH HOSPITAL	14141	3760	28140
14T224	SAINT JOSEPH REGIONAL MEDICAL CENTER	15700	1600	16974
15T012	SAINT LUKE'S SOUTH HOSPITAL	17450	7800	43780
17T185	SAINT MARY OF NAZARETH HOSPITAL	14141	3760	28140
14T180	SAINT MARYS REGIONAL MEDICAL CENTER	29150	1600	16974
29T009	SAINT VINCENT CATHOLIC MEDICAL CENTERS OF NEW YORK	33420	6720	39900
33T290	SAINT VINCENT HEALTH CENTER	39320	5600	35644
39T009	SALEM HOSPITAL REGIONAL REHABILITATION CENTER	38230	2360	21500
38T051	SALINA REGIONAL HEALTH CENTER	17840	7080	41420
17T012	SALINE MEMORIAL HOSPITAL	04620	17	17
04T084	SALT LAKE REGIONAL MEDICAL CENTER	46170	4400	30780
46T003	SAM KARAS ACUTE REHAB AT NATIVIDAD MEDICAL CENTER	05370	7160	41620
05T248	SAMARITAN MEDICAL CENTER	33330	7120	41500
33T157	SAN ANGELO COMMUNITY MEDICAL CENTER	45930	33	33
45T340	SAN ANTONIO WARM SRPINGS REHABILITATION HOSPITAL	45130	7200	41660
453035	SAN CLEMENTE HOSPITAL	05400	7240	41700
05T585	SAN JACINTO METHODIST HOSPITAL	45610	5945	42044
45T424	SAN JOAQUIN GENERAL HOSPITAL	05490	3360	26420
05T167	SAN JOAQUIN VALLEY REHABILITATION HOSP	05090	8120	44700
053032	SAN JOSE MEDICAL CENTER	05530	2840	23420
05T215	SAN LUIS VALLEY REGIONAL MEDICAL CENTER	06010	7400	41940
06T008	SANTA CLARA VALLEY MEDICAL CENTER	05530	06	06
05T038	SANTA ROSA MEMORIAL HOSPITAL	05590	7400	41940
05T174	SARASOTA MEMORIAL HOSPITAL	10570	7500	42220
10T087	SATILLA REGIONAL REHABILITATION INSTITUTE	11940	7510	42260
11T003	SAVOY MEDICAL CENTER	19190	11	11
19T025	SCHWAB REHABILITATION HOSPITAL	14141	19	19
143025	SCOTT & WHITE	45120	1600	16974
45T054	SCOTTSDALE HEALTHCARE INPATIENT REHAB	03060	3810	28660
03T038	SCRIPPS MEMORIAL HOSPITAL ENCINITAS	05470	6200	38060
05T503	SENTARA NORFOLK GENERAL HOSPITAL	49641	7320	41740
49T007	SEWICKLEY VALLEY HOSPITAL	39010	5720	47260
39T037	SHANDS REHAB HOSPITAL	10000	6280	38300
10T113	SHANNON WEST TEXAS MEMORIAL HOSPITAL	45930	2900	23540
45T571	SHARON REGIONAL HEALTH SYSTEM	39530	7200	41660
39T211	SHARP MEMORIAL REHABILITATION CENTER	05470	7610	49660
05T100	SHELTERING ARMS REHABILITATION HOSPITAL	49430	7320	41740
493025	SHORE REHABILITATION INSTITUTE	31310	6760	40060
313033	SHREVEPORT REHABILITATION HOSPITAL	19080	5190	20764
193083	SID PETERSON MEMORIAL HOSPITAL	45734	7680	43340
45T007	SIERRA VISTA REGIONAL MEDICAL CENTER	05500	45	45
05T506	SILVER CROSS HOSPITAL	14989	7460	42020
14T213	SIMI VALLEY HOSPITAL & HEALTH CARE SVC	05660	1600	16974
05T236	SINAI-GRACE HOSPITAL	23810	8735	37100
23T024	SINGING RIVER HOSPITAL	25290	2160	19804
25T040	SIOUX VALLEY HOSPITAL	43490	0920	37700
43T027	SISKIN HOSPITAL FOR PHYSICAL REHABILITATION	44320	7760	43620
443025	SISTER KENNY REHAB INSTITUTE—ABBOTT NORTHWESTERN	24260	1560	16860
24T057	SISTER KENNY REHAB INSTITUTE—UNITED HOSPITAL	24610	5120	33460
24T038	SKYLINE REHABILITATION CENTER	44180	5120	33460
44T006	SLIDELL MEMORIAL HOSPITAL	19510	5360	34980
19T040	SOUTH FULTON	11470	5560	35380
11T219	SOUTH GEORGIA MEDICAL CENTER	11700	0520	12060
11T122	SOUTH MIAMI HOSPITAL PHYSICAL MEDICINE & REHAB	10120	11	46660
10T154	SOUTH POINTE HOSPITAL	36170	5000	33124
36T144	SOUTH TEXAS REGIONAL SPECIALTY HOSPITAL	45060	1680	17460

TABLE 3.—INPATIENT REHABILITATION FACILITIES WITH CORRESPONDING STATE AND COUNTY LOCATION; CURRENT LABOR MARKET AREA DESIGNATION; AND PROPOSED NEW CBSA-BASED LABOR MARKET AREA DESIGNATION—Continued

Provider number	Provider name	SSA State and county code	FY 06 MSA code	FY 06 CBSA code
45T165	SOUTHCOAST HOSPITALS GROUP, INC.	22150	45	41700
22T074	SOUTHEAST MISSOURI HOSPITAL	26150	1123	14484
26T110	SOUTHEASTERN REGIONAL REHABILITATION CENTER	34250	26	26
34T028	SOUTHERN HILLS REGIONAL REHAB	51270	2560	22180
513026	SOUTHERN INDIANA REHABILITATION HOSPITAL	15210	51	51
153037	SOUTHERN KENTUCKY REHABILITATION HOSPITAL	18986	4520	31140
183029	SOUTHERN OHIO MEDICAL CENTER	36740	18	14540
36T008	SOUTHERN TENNESSEE MEDICAL CENTER	44250	36	36
44T058	SOUTHSIDE HOSPITAL	33700	44	44
33T043	SOUTHWEST GENERAL HOSPITAL	45130	5380	35004
45T697	SOUTHWEST MEDICAL CENTER	19270	7240	41700
19T205	SOUTHWEST MISSISSIPPI REGIONAL MEDICAL CENTER	25560	3880	29180
25T097	SOUTHWEST WASHINGTON MEDICAL CENTER	50050	25	25
50T050	SOUTHWESTERN MEDICAL CENTER	37540	6440	38900
37T097	SOUTHWESTERN REHABILITATION HOSPITAL	23120	5880	36420
233025	SPAIN REHABILITATION CENTER	01360	3720	12980
01T033	SPALDING REHABILITATION HOSPITAL	06150	1000	13820
063027	SPRING BRANCH MEDICAL CENTER	45610	2080	19740
45T630	SSM DEPAUL HEALTH CENTER	26940	3360	26420
26T104	SSM REHABILITATION INSTITUTE	26940	7040	41180
263025	SSM ST. JOSEPH KIRKWOOD	26940	7040	41180
26T081	ST. FRANCIS MEDICAL CTR	19360	7040	41180
04T007	ST. AGNES MEDICAL CENTER	39620	4400	30780
19T125	ST. ALEXIUS MEDICAL CENTER	35070	5200	33740
39T022	ST. ANTHONYS MEDICAL CENTER	26940	6160	37964
35T002	ST. ANTHONY'S REHABILITATION HOSPITAL	10050	1010	13900
26T077	ST. CATHERINE'S REHABILITATION HOSPITAL	10120	7040	41180
103027	ST. DAVIDS REHABILITATION CENTER	45940	2680	22744
103026	ST. EDWARD MERCY MEDICAL CENTER	04650	5000	33124
453038	ST. ELIZABETH HEALTH CENTER	36510	0640	12420
04T062	ST. FRANCIS MEDICAL CENTER	26260	2720	22900
36T064	ST. JOHN DETROIT RIVERVIEW HOSP	23810	9320	49660
26T183	ST. JOHN MACOMB HOSPITAL	23490	26	26
23T119	ST. JOHN MEDICAL CENTER, INC.	37710	2160	19804
23T195	ST. JOHN NORTH SHORES HOSPITAL	23490	2160	47644
37T114	ST. JOHNS REGIONAL MEDICAL CENTER	26480	8560	46140
23T257	ST. JOHN'S REGIONAL MEDICAL CENTER	05660	2160	47644
26T001	ST. JOHN'S REHABILITATION HOSPITAL	19250	3710	27900
05T082	ST. JOSEPH HEALTH SERVICES OF RI	41030	8735	37100
193061	ST. JOSEPH HOSPITAL	05110	5560	35380
41T005	ST. JOSEPH HOSPITAL	30050	6483	39300
05T006	ST. JOSEPH HOSPITAL & HEALTH CENTER	15330	05	05
30T011	ST. JOSEPH REGIONAL REHAB	45190	1123	31700
15T010	ST. JOSEPHS HOSPITAL	52390	3850	29020
45T011	ST. JOSEPH'S MERCY HEALTH CENTER	04250	1260	17780
52T136	ST. LAWRENCE REHABILITATION CENTER	31260	5080	33340
04T026	ST. LUKES EPISCOPAL HOSPTIAL	45610	04	26300
313027	ST. LUKES HOSPITAL OF KANSAS CITY	26470	8480	45940
45T193	ST. LUKES NORTHLAND HOSPITAL	26230	3360	26420
26T138	ST. LUKE'S REHABILITATION HOSPITAL OF LAFAYETTE	19270	3760	28140
26T062	ST. LUKES REHABILITATION INSTITUTE	50310	3760	28140
193087	ST. MARGARET MERCY HLTHCARE CTRS	15440	3880	29180
503025	ST. MARY MEDICAL CENTER	05200	7840	44060
15T004	ST. MARY MEDICAL CENTER	50350	2960	23844
05T191	ST. MARY-CORWIN MEDICAL CENTER	06500	4480	31084
50T002	ST. MARYS HOSPITAL	24540	50	50
06T012	ST. MARY'S HOSPITAL BLUE SPRINGS	26470	6560	39380
24T010	ST. MARYS MEDICAL CENTER	15810	6820	40340
26T193	ST. MARYS MEDICAL CENTER	44460	3760	28140
15T100	ST. MARY'S MEDICAL CENTER	05480	2440	21780
44T120	ST. MARY'S WEST PALM BEACH	10120	3840	28940
05T457	ST. NICHOLAS HOSPITAL	52580	7360	41884
10T288	ST. PAUL HOSPITAL	45390	5000	33124
52T044	ST. VINCENT HEALTHCARE	27550	7620	43100
45T044	ST. VINCENT HOSPITAL	32240	1920	19124
27T049	ST. VINCENT HOSPITAL	52040	0880	13740
32T002	ST. VINCENT REHAB HOSP IN PART HLTHSOUT	04590	7490	42140

TABLE 3.—INPATIENT REHABILITATION FACILITIES WITH CORRESPONDING STATE AND COUNTY LOCATION; CURRENT LABOR MARKET AREA DESIGNATION; AND PROPOSED NEW CBSA-BASED LABOR MARKET AREA DESIGNATION—Continued

Provider number	Provider name	SSA State and county code	FY 06 MSA code	FY 06 CBSA code
52T075	ST. AGNES HOSPITAL	52190	3080	24580
043031	ST. ALEXIUS HOSPITAL	26940	4400	30780
52T088	ST. ANTHONY HOSPITAL REHAB CENTER	37540	52	22540
26T210	ST. ANTHONY MEDICAL CENTER	15440	7040	41180
37T037	ST. ANTHONY MEMORIAL HEALTH CENTERS	15450	5880	36420
15T126	ST. CHARLES HOSPITAL AND REHABILITATION CENTER	33700	2960	23844
15T015	ST. CHARLES MERCY HOSPITAL	36490	15	33140
33T246	ST. CLAIR HOSPITAL	39010	5380	35004
36T081	ST. CLAIRE MC	18975	8400	45780
39T228	ST. CLOUD HOSPITAL	24720	6280	38300
18T018	ST. ELIZABETH HOSPITAL	52430	18	18
24T036	ST. ELIZABETH HOSPITAL REHAB	14900	6980	41060
52T009	ST. FRANCIS HOSPITAL REHAB	08010	0460	11540
14T187	ST. JAMES HOSPITAL AND HEALTH CENTERS	14141	7040	41180
08T003	ST. JOHN NORTHEAST COMMUNITY HOSPITAL	23810	9160	48864
14T172	ST. JOHNS REGIONAL HEALTH CENTER	26380	1600	16974
23T065	ST. JOSEPH HOSPITAL	50360	2160	19804
26T065	ST. JOSEPH MEDICAL CENTER	50260	7920	44180
50T030	ST. JOSEPH MERCY HOSPITAL-ANN ARBOR	23800	0860	13380
50T108	ST. JOSEPHS HOSPITAL	03060	8200	45104
23T156	ST. JOSEPH'S HOSPITAL	33070	0440	11460
03T024	ST. JOSEPH'S HOSPITAL	52700	6200	38060
33T108	ST. JOSEPH'S MERCY OF MACOMB	23490	2335	21300
52T037	ST. JOSEPH'S WAYNE HOSPITAL	31320	52	52
23T047	ST. JUDE MEDICAL CENTER	05400	2160	47644
31T116	ST. LUKE'S	24680	0875	35644
05T168	ST. LUKE'S/ROOSEVELT HOSPITAL CENTER	33420	5945	42044
24T047	ST. LUKES ACUTE REHAB	03060	2240	20260
33T046	ST. LUKES HOSPITAL	16560	5600	35644
03T037	ST. LUKE'S HOSPITAL	26940	6200	38060
16T045	ST. LUKE'S HOSPITAL	36490	1360	16300
26T179	ST. LUKE'S REHAB UNIT AT ST. LUKE'S SOUTH SHORE	52580	7040	41180
36T090	ST. MARY MEDICAL CENTER	39140	8400	45780
52T138	ST. MARY MEDICAL CENTER INC	15440	7620	43100
39T258	ST. MARYS HOSPITAL AND MEDICAL CENTER	06380	6160	37964
15T034	ST. MARY'S REGIONAL MEDICAL CENTER	04570	2960	23844
06T023	ST. MARY'S REGIONAL MEDICAL CENTER	37230	2995	24300
04T041	ST. PETERS HOSPITAL	33000	04	04
37T026	ST. RITA'S MEDICAL CENTER	36010	2340	37
33T057	ST. ROSE DOMINICAN HOSPITAL	29010	0160	10580
36T066	ST. TAMMANY PARISH HOSPITAL	19510	4320	30620
29T012	ST. VINCENT INFIRMARY MEDICAL CENTER	04590	4120	29820
19T045	ST. VINCENT'S MEDICAL CENTER	07000	5560	35380
07T028	ST. FRANCIS HEALTH CENTER	17880	5483	14860
17T016	ST. JOSEPH HOSPITAL REHAB UNIT	15010	8440	45820
15T047	STAMFORD HOSPITAL	07070	2760	23060
073026	STANFORD HOSPITAL & CLINICS	05530	07	07
05T441	STANLY MEMORIAL HOSPITAL	34830	7400	41940
34T119	STARKE MEMORIAL HOSPITAL	15740	1520	34
15T102	STATEN ISLAND HOSPITAL	33610	15	15
33T160	STERLINGTON REHAB HOSPITAL	19360	5600	35644
193069	STILLWATER MEDICAL CENTER	37590	5200	33740
37T049	STRONG MEMORIAL HOSPITAL	33370	37	37
33T285	SUMMA HEALTH SYSTEM	36780	6840	40380
29T041	SUMMERLIN HOSPITAL MEDICAL CENTER	29010	4120	29820
36T020	SUMNER REGIONAL MEDICAL CENTER	44820	0080	10420
44T003	SUMTER REGIONAL HOSPITAL	11870	5360	34980
11T044	SUN COAST HOSPITAL	10510	11	11
10T015	SUN HEALTH ROBERT H BALLARD REHAB HOSPITAL	05460	8280	45300
053037	SUNNYVIEW HOSPITAL AND REHABILITATION CENTER	33650	6780	40140
333025	SUNRISE HOSPITAL & MEDICAL CEN	29010	0160	10580
29T003	SUNY DOWNSTATE MEDICAL CENTER	33331	4120	29820
33T350	SUTTER AUBURN FAITH HOSPITAL	05410	5600	35644
05T498	SWEDISH COVENANT HOSPITAL	14141	6920	40900
14T114	SWEDISH GENERAL REHABILITATION	06020	1600	16974
06T034	SWEDISH MEDICAL CENTER	50160	2080	19740
50T025	TAH INPATIENT REHAB UNIT	39260	7600	42644

TABLE 3.—INPATIENT REHABILITATION FACILITIES WITH CORRESPONDING STATE AND COUNTY LOCATION; CURRENT LABOR MARKET AREA DESIGNATION; AND PROPOSED NEW CBSA-BASED LABOR MARKET AREA DESIGNATION—Continued

Provider number	Provider name	SSA State and county code	FY 06 MSA code	FY 06 CBSA code
39T122	TAKOMA ADVENTIST HOSPITAL	44290	39	39
44T050	TAMPA GENERAL REHABILATION CTR	10280	44	44
10T128	TARRANT COUNTY REHABILITATION HOSPITAL	45910	8280	45300
453042	TEMPLE UNIVERSITY HOSPITAL	39620	2800	23104
39T027	TERREBONNE GENERAL MEDICAL CENTER	19540	6160	37964
19T008	TEXOMA MEDICAL CENTER	45564	3350	26380
28T061	THE ACUTE REHAB UNIT AT REGIONAL WEST MEDICAL CENT	28780	28	28
20T018	THE AROOSTOOK MEDICAL CENTER	20010	20	20
36T163	THE CHRIST HOSPITAL REHAB UNIT	36310	1640	17140
09T001	THE GEORGE WASHINGTON UNIVERSITY ARU	09000	8840	47894
39T066	THE GOOD SAMARITAN HOSPITAL	39460	3240	30140
33T004	THE KINGSTON HOSPITAL REHABILITATION CENTER	33740	33	28740
25T099	THE LEFLORE REHABILITATION CENTER	25410	25	25
33T056	THE PARKSIDE ACUTE REHABILITATION CENTER	33331	5600	35644
33T049	THE PAUL ROSENTHAL REHABILITATION CENTER AT NDH	33230	2281	39100
39T044	THE READING HOSPITAL AND MEDICAL CENTER	39110	6680	39740
42T068	THE REGIONAL MEDICAL CENTER REHABCENTRE	42370	42	42
15T051	THE REHAB CENTER AT BLOOMINGTON HOSPITAL	15520	1020	14020
11T024	THE REHAB CENTER AT CANDLER	11220	7520	42340
44T059	THE REHAB CENTER AT COOKEVILLE RMC	44700	44	44
16T146	THE REHAB CENTER AT ST. LUKE'S	16960	7720	43580
11T043	THE REHAB CENTER AT ST. JOSEPHS	11220	7520	42340
15T008	THE REHABILITATION CENTER AT ST. CATHERINE HOSPITA	15440	2960	23844
10T012	THE REHABILITATION HOSPITAL	10350	2700	15980
20T039	THE REHABILITATION INSTITUTE AT MGMC	20050	20	20
42T067	THE REHABILITATION UNIT AT BEAUFORT MEMORIAL HOSPI	42060	42	42
36T211	THE TRINITY REHABILITATION CENTER	36420	8080	48260
39T042	THE WASHINGTON HOSPITAL ACUTE REHABILITATION UNIT	39750	6280	38300
52T045	THEDA CLARK MEDICAL CENTER	52690	0460	36780
19T004	THIBODAUX REGIONAL MEDICAL CENTER	19280	3350	26380
39T174	THOMAS JEFFERSON UNIVERSITY HOSPITAL	39620	6160	37964
343025	THOMS REHABILITATION HOSP	34100	0480	11700
23T015	THREE RIVERS REHABILITATION PAVILION	23740	23	23
11T095	TIFT REGIONAL MEDICAL CENTER	11900	11	11
45T080	TITUS REGIONAL MEDICAL CENTER	45531	45	45
45T324	TOMBALL REGIONAL HOSPITAL	45610	7640	43300
45T670	TOURO REHABILITATION CENTER	19350	3360	26420
193034	TRI-CITY MEDICAL CENTER	05470	5560	35380
05T128	TRI PARISH REHABILITATION HOSPITAL LLC	19050	7320	41740
193050	TRINITY MEDICAL CENTER	14890	19	19
14T280	TRINITY REHABCARE CENTER	35500	1960	19340
35T006	TULANE INPATIENT REHAB CENTER	19350	35	35
19T176	TULSA REGIONAL MEDICAL CENTER	37710	5560	35380
37T078	TWELVE OAKS MEDICAL CENTER	45610	8560	46140
45T378	TWIN RIVERS REGIONAL MEDICAL CENTER	26340	3360	26420
26T015	U W HOSPITAL & CLINIC	52120	26	26
52T098	UAB MEDICAL WEST REHABILITATION UNIT	01360	4720	31540
01T114	UC DAVIS MEDICAL CENTER	05440	1000	13820
05T599	UCLA MED CTR-RRU	05200	6920	40900
05T262	UHS HOSPITALS	33030	4480	31084
33T394	UNC HOSPITALS	34670	0960	13780
34T061	UNION HOSPITAL	15830	6640	20500
15T023	UNIONTOWN HOSPITAL	39330	8320	45460
39T041	UNITED MEDICAL CENTER ARU	53100	6280	38300
53T014	UNITED MEDICAL REHABILITATION HOSPITAL	19350	1580	16940
193079	UNITY HEALTH CENTER	37620	5560	35380
37T149	UNITY HEALTH SYSTEM	33370	5880	37
33T226	UNIV OF CA IRVINE MED CTR	05400	6840	40380
05T348	UNIV OF PITTSBURGH MED CTR-MUH	39010	5945	42044
39T164	UNIVERSITY COMMUNITY HOSPITAL	10280	6280	38300
10T173	UNIVERSITY HEALTH SYSTEM	45130	8280	45300
45T213	UNIVERSITY HOSPITAL	33520	7240	41700
33T241	UNIVERSITY MEDICAL CENTER	44940	8160	45060
44T193	UNIVERSITY MEDICAL CENTER	45770	5360	34980
45T686	UNIVERSITY OF COLORADO HOSPITAL	06150	4600	31180
06T024	UNIVERSITY OF ILLINOIS MEDICAL CENTER AT CHICAGO	14141	2080	19740
14T150	UNIVERSITY OF MICHIGAN HOSPITAL	23800	1600	16974

TABLE 3.—INPATIENT REHABILITATION FACILITIES WITH CORRESPONDING STATE AND COUNTY LOCATION; CURRENT LABOR MARKET AREA DESIGNATION; AND PROPOSED NEW CBSA-BASED LABOR MARKET AREA DESIGNATION—Continued

Provider number	Provider name	SSA State and county code	FY 06 MSA code	FY 06 CBSA code
23T046	UNIVERSITY OF UTAH HOSPITAL	46170	0440	11460
46T009	UNIVERSITY OF WASHINGTON MED CTR	50160	7160	41620
50T008	UNIVERSITY REHABILITATION CENTER	25240	7600	42644
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39T178	UPMC LEE REGIONAL REHAB UNIT	39160	7610	49660
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39T102	UPPER VALLEY MEDICAL CENTER	36560	6280	38300
36T174	UTAH VALLEY REGIONAL MEDICAL CENTER-REHABILITATION	46240	2000	19380
46T001	UVA-HEALTHSOUTH REHABILITATION HOSPITAL	49191	6520	39340
493029	VALLEY BAPTIST HEALTH SYSTEM REHAB UNIT	45240	1540	16820
45T033	VALLEY HOSPITAL MEDICAL CENTER REHABILITAION UNIT	29010	1240	15180
29T021	VALLEY MEMORIAL HOSPITAL	05000	4120	29820
05T283	VALLEY PRESBYTERIAN HOSPITAL	05200	5775	36084
05T126	VALLEY VIEW HOSPITAL	06070	4480	31084
06T075	VALLEY VIEW REGIONAL HOSPITAL	37610	06	06
37T020	VAN MATRE HEALTHSOUTH REHABILITATION HOSPITAL	14991	37	37
143028	VANDERBILT STALLWORTH REHAB HOSPITAL	44180	6880	40420
443028	VCUHS	49791	5360	34980
49T032	VERMILION REHABILITATION HOSPITAL	19480	6760	40060
193047	VIA CHRISTI REHABILITATION CENTER	17860	3880	19
173028	VICTORIA WARM SPRINGS REHAB HOSPITAL	45948	9040	48620
453083	VICTORY MEMORIAL HOSPITAL	33331	8750	47020
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453091	WESLEY REHABILITATION HOSPITAL	17860	4880	32580
173027	WESLEY WOODS GERIATRIC HOSPITAL	11370	9040	48620
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45T644	WEST JEFFERSON MEDICAL CENTER	19250	3360	26420
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Provider number	Provider name	SSA State and county code	FY 06 MSA code	FY 06 CBSA code
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38T071	WILLIAM BEAUMONT HOSPITAL	23620	6440	38900
23T130	WILLIAM N. WISHARD MEMORIAL HOSPITAL	15480	2160	47644
39T045	WILLIAMSPORT HOSPITAL REHAB	39510	9140	48700
19T111	WILLIS-KNIGHTON MEDICAL CENTER	19080	7680	43340
45T469	WILSON N. JONES MEDICAL CENTER-MAIN CAMPUS	45564	7640	43300
45T393	WILSON N. JONES MEDICAL CENTER-NORTH CAMPUS	45564	7640	43300
49T005	WINCHESTER REHABILITATION CTR	49962	49	49020
15T014	WINONA MEMORIAL HOSPITAL	15480	3480	26900
10T052	WINTER HAVEN HOSPITAL	10520	3980	29460
33T239	WOMANS CHRISTIAN ASSOCIATION	33060	3610	33
33T396	WOODHULL MEDICAL CENTER	33331	5600	35644
45T484	WOODLAND HEIGHTS MEDICAL CENTER	45020	45	45
53T012	WYOMING MEDICAL CENTER	53120	1350	16220
50T012	YAKIMA REGIONAL	50380	9260	49420
07T022	YALE-NEW HAVEN HOSPITAL	07040	5483	35300
033034	YUMA REHABILITATION HOSPITAL	03130	9360	49740
45T766	ZALE LIPSHY UNIVERSITY HOSPITAL	45390	1920	19124

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108th Congress

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